

# President's column

**Dr Ruth Higgins SC**  
Banco Chambers

## Anti-money laundering

As I wrote in my September 2024 President's message, the Commonwealth introduced proposed legislation as part of its Tranche 2 reforms to anti-money laundering and counterterrorism financing (AML/CTF), expanding and extending the AML/CTF regime to the legal profession.

The NSW Bar Association has opposed the application of reforms to barristers in submissions made to the Commonwealth Attorney-General's Department, on the basis that it constitutes a disproportionate burden on barristers as sole practitioners and unnecessary over-regulation, given that instructing solicitors will be subject to the new AML/CTF requirements.

If enacted, the amendments will subject those providing certain designated professional services to the existing AML/CTF regime. The description of the designated services has the potential to capture barristers who provide advice, or act for a client, in transactions to buy or sell real estate; transactions to buy or sell a body corporate or other legal arrangement; transactions for equity or debt financing relating to a body corporate or other legal arrangement; and the creation or restructuring of a body corporate or other legal arrangement.

Subject to some limited exceptions, barristers who assist in the organisation, planning or execution of these transactions or otherwise act for, or on behalf of, a person in these transactions, will need to comply with onerous obligations. These include:

- having an 'AML/CTF program' in place, comprising a 'money laundering and terrorism financing risk assessment' and 'AML/CTF policies';
- undertaking customer due diligence;
- registering with AUSTRAC;
- reporting obligations, including obligations to provide suspicious matter reports to AUSTRAC in certain circumstances; and
- complying with record-keeping requirements (including retaining any document received from, or on behalf of, the customer for seven years).



As presently drafted, the legislation may capture certain advice work provided by barristers, including advice on certain settlements during litigation. These changes could significantly affect how barristers perform their work, the cost of providing certain services and our professional obligations.

The Association has established a working group to consider the impact of these changes, if enacted, on the New South Wales Bar and to support barristers in achieving compliance with the new laws. We are also continuing to work with the Law Council of Australia and the Australian Bar Association to advocate for an exemption for barristers where they are briefed by solicitors who have AML/CTF obligations with respect to the same clients. Subjecting both solicitors and barristers to these obligations is unnecessary over-regulation and is apt to increase costs for

legal services provided by the Bar, potentially impeding access to justice.

In recognition of the risk of legal practitioners being unwittingly misused by financial criminals, the Law Council of Australia has published *National Legal Profession AML/CTF Guidance*.

The Bill provides that, if passed, the regulatory obligations on Tranche 2 reporting entities will commence on 1 July 2026. At the time of writing, the Bill is still before the Parliament, and we are engaged in extensive advocacy to get the best possible outcome for the Bar.

## Policy and law reform

The Association continues to work closely with local, state and federal governments, the Law Council of Australia and the broader

legal profession to build better public policy and support the administration of justice.

Thanks to the depth and breadth of expertise across our specialist committees, the Association has made a significant contribution to a range of government programs, policies and initiatives.

Examples of the Association's recent policy and law reform work include:

- making a submission to the Law Enforcement Conduct Commission regarding the legislative framework on bail compliance checks in New South Wales;
- appearing before the New South Wales Parliament Portfolio Committee No. 1 – Premier and Finance regarding its inquiry into the impact of the regulatory framework for cannabis in New South Wales;
- making a submission to the Australian Parliament Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs regarding the Truth and Justice Commission Bill 2024 (Cth);
- providing input to the Law Council of Australia for its submission to the Australian Competition and Consumer Commission (ACCC) regarding the review of the ACCC's immunity and cooperation policy for cartel conduct;
- providing input to the Law Council of Australia regarding consultation on options to enhance civil protections and remedies for forced marriage; and
- providing input to the Law Council of Australia regarding consultation to inform the agenda of the new Aboriginal and Torres Strait Islander Social Justice Commissioner.

There is still much work to be done. In September, new data from the New South Wales Bureau of Crime Statistics and Research revealed that a declining proportion of young people were being formally diverted from New South Wales courts. Diversion can reduce reoffending and avoid or delay the stigma and harms associated with a court appearance. The Association will continue to press for appropriate youth diversion and a raise in the minimum age of criminal responsibility to 14 years.

The Association will continue to advocate for a fairer and more effective legal and justice system, based on the best available evidence and the deep expertise of our members.

### National Access to Justice Partnership

On 6 September 2024, the Commonwealth Government announced a funding increase to the legal assistance sector of nearly \$800 million over five years, beginning in the 2025–26 financial year.

This funding was agreed to by the Commonwealth, state and territory governments as part of the new National Access to Justice Partnership, which will replace the National Legal Assistance Partnership when it expires on 30 June 2025.

Ensuring our legal assistance sector is adequately funded is critical for providing access to justice for all who need it. Without appropriate funding, we cannot ensure that suitably experienced and qualified legal representation is available to the most vulnerable members of our community.

That is why the Association joined our colleagues across the country in launching the Access to Justice for All campaign, in which we called on the Commonwealth, states and territories to implement the recommendations of Dr Warren Mundy's *Independent Review of the National Legal Assistance Partnership*.

We are pleased to see that the profession's advocacy has led to a significant injection of funding for the legal assistance sector. However, like the Law Council of Australia and the Aboriginal Legal Service (NSW/ACT), we consider much more is required to address unmet need and to fully implement Dr Mundy's recommendations.

The Association is continuing to work with our colleagues across the country to support the legal assistance sector.

### First Nations clerkship program

As part of the 2024 First Nations clerkship program, three First Nations law students completed a three-week rotation at the Federal Court, the Supreme Court of New

South Wales, the Land and Environment Court of New South Wales, and the District Court of New South Wales (including the Walama List), as well as with barristers at Forbes Chambers, Crown Prosecutors' Chambers and Martin Place Chambers. The clerkship program culminated with a graduation ceremony in September 2024, hosted by the Judicial Commission of New South Wales.

I extend my congratulations to this year's three graduates and my thanks to the judicial officers, courts, barristers and chambers for their contributions, which helped ensure that our clerks gained valuable insights into the inner workings of the justice system, the courts and the New South Wales Bar.

### Celebrating women in law

The annual Sybil Morrison Lecture was held on 14 August 2024. This year's lecture celebrated the distinguished legal career of Her Excellency the Hon Margaret Beazley AC KC, and Her Excellency's contribution as a role model for women in law.

The lecture was chaired by the Hon Virginia Bell AC who, with Her Excellency and the Hon Carolyn Simpson AO, formed part of what is believed to be the first all-female appellate Bench in the common-law world.

A recording of the lectures presented by the 2023 recipients of the Katrina Dawson Award, Rachel Thampapillai and Lucy Geddes, is available via CPD Online. I encourage members to watch it – it was a truly joyful event.

### Wellness resources in the Bar Library

The Bar Association's library now has a dedicated mental health and wellbeing collection with a variety of books and games on mental health, addiction, ADHD, anxiety, depression, eating disorders, trauma, men's health, relationships, sleep and women's health. Members are encouraged to look at the resources available next time they visit the Bar Library – there may be a resource available that could be of assistance with respect to a family member, a friend or a colleague. BN