

Call to Parties

2024 ACT Election

actlaw
society



Call to Parties

At a glance

The ACT Law Society is the peak professional association that represents, advances, and defends the interests of an independent legal profession in the ACT. The Society lobbies for 'good laws' in the ACT, and the efficient and effective operation of the legal and justice system.

The Society seeks an overarching commitment by parties to:

- evidence-based policy development and decision making, underpinned by transparent processes and robust policy justification;
- upholding the rule of law, including promoting human rights and access to justice; and
- adequately resourcing and evaluating the implementation of policies;

As guided by the following principles to be incorporated in the policy development process:

- Clear explanation of the policy problem and the goals being sought
- Credible and objective data as the basis of well-informed decisions
- Balanced assessment of a range of possible solutions
- Thorough consideration of implementation
- Monitoring and evaluation arrangements to determine ongoing effectiveness

QUESTIONNAIRE FOR POLITICAL PARTIES

1. Will your party commit to this approach to policy development and decision-making, particularly in relation to the legislation governing the ACT?
2. How will your party invest in better statistics and research into criminal justice and related family and personal violence matters?
3. How does your party propose to draw on the knowledge and expertise of the legal profession in the ACT in developing and implementing law reform proposals?
4. How will your party support the finalisation and implementation of national policy initiatives to combat elder abuse?
5. How will your party ensure a balanced approach to integrating the rights, needs and interests of victims in the criminal justice process, while upholding the core human rights of the accused?
6. How will your party work with the Commonwealth to progress the recommendations of the NLAP Report?
7. How will your party work to ensure long-term sustainable funding for the ACT legal assistance sector?
8. How will your party work to increase investment in key law and justice institutions?
9. How will your party address the current limitations on the transactions that can be processed by e-conveyancing platforms?
10. How will your party ensure the ongoing effectiveness of ACT laws?
11. Will your party commit to ongoing funding for the ACT Law Reform and Sentencing Advisory Council?
12. Will your party commit to considering review and reform of ACT succession laws?

Making an Overarching Commitment

The Society seeks an overarching commitment by parties to:

- evidence-based policy development and decision making, underpinned by transparent processes and robust policy justification;
- upholding the rule of law, including promoting human rights and access to justice; and
- adequately resourcing and evaluating the implementation of policies;

guided by the following principles.

- A.** There should be a clear explanation for what the policy problem is, why government intervention is necessary, and what will be achieved by government intervention (i.e., what does success look like?).
- B.** Policy decisions should be well-informed, based on credible and objective data, and consider a diverse range of stakeholder perspectives. This includes:
 - considering the quality of available data, whether there are any information gaps, and a plan for how those gaps will be filled; and
 - early and iterative stakeholder engagement that is inclusive, supports a balanced representation of views, and includes appropriate feedback mechanisms; and
 - learning from the experience of other jurisdictions, while ensuring that the policy decision is appropriate and adapted to the situation in the ACT.
- C.** There should be a balanced assessment of a range of possible solutions to policy problems, including non-legislative options. This includes:
 - carefully considering the impact (and any unintended consequences) on business, the community and individuals, including the more vulnerable sectors of society; and
 - ensuring law reform proposals uphold the rule of law, and promote human rights (and provide a clear case for any limitation on those rights) and access to justice.
- D.** Implementation must be considered as part of the policy development process to ensure that the proposal achieves its intended objectives. This includes:
 - considering what implementation activities are necessary to support business and the community (including vulnerable sectors of society) to understand and comply with any legislative reform;
 - understanding the capacity and capability requirements of the institutions responsible for administering and enforcing the law (e.g., courts, tribunals and police), as well as the legal assistance sector and related community support organisations; and
 - setting appropriate timeframes for implementation and committing sufficient resources to operationalise reforms
- E.** The underlying policy objective should also inform monitoring and evaluation arrangements, to determine the ongoing effectiveness and efficiency of the policy decision. This includes ensuring that significant reforms and bodies of law are scheduled for regular review.

Q1. Will your party commit to this approach to policy development and decision-making, particularly in relation to the legislation governing the ACT?

The Society, with input from its special interest committees, has also identified a range of specific issues on which we seek a response from parties.

Evidence-based policy

Development and decision making

Investment in statistics and research to inform policy making

Investment in data capture, analytics and research, and making this publicly available, supports the development of evidence-based policy, leading to a more efficient, effective and equitable justice system. Several Australian jurisdictions (such as New South Wales and Queensland) have established independent bodies to publish statistics about, and undertake research into, criminal justice. This also includes information and insights about family and personal violence matters (extending into the process for granting and enforcing civil-based protection orders).

Having statistics about the incidence and key characteristics of crime, police response to crime, and outcomes of criminal court processes, diversionary programs and restorative justice – along with demographic information about victims and offenders – facilitates the measurement of crime trends and the evaluation of crime control initiatives.

While different organisations in the ACT collect some of this data, this is not comprehensive and lacks the benefit of dedicated and centralised resources which can drive best practice and a coordinated and strategic research agenda.

Unlike other industry and professional associations, the Society does not focus its efforts on issues that are simply in the professional and commercial interests of its members. In lobbying for 'good law' our aim is that it benefits the community and supports the proper administration of justice.

The Society is supported by a range of expert committees whose members comprise specialists in many areas of law. Our committee members bring their legal knowledge and practical experience to all stages of the policy development process, providing feedback on policy proposals and draft bills, to ensure that potential problems are identified at an early stage and resolved before they have an adverse effect. In doing so, they bring the multiple perspectives of the profession, clients and the community.

Q2. How will your party invest in better statistics and research into criminal justice and related family and personal violence matters?

Q3. How does your party propose to draw on the knowledge and expertise of the legal profession in the ACT in developing and implementing law reform proposals?

Upholding the rule of law, Including promoting human rights and access to justice

Protecting the vulnerable and upholding human rights

The more vulnerable sectors of the community are at higher risk of their human rights being violated. Vulnerability can occur in different ways and can be intersectional. That is, people can be vulnerable in more than one way.

Older persons can be a particularly vulnerable group within our community. The Society is concerned that the ongoing cost of living crisis is likely to lead to an increased risk of elder abuse. According to the National Elder Abuse Prevalence Study, one in six older Australians experience elder abuse each year, but only one in three victims seek help. Elder abuse can take various forms, including financial, physical, psychological, emotional and sexual abuse, or neglect.

The Standing Council of Attorneys-General are progressing national policy issues such as the Second National Plan to Respond to the Abuse of Older Australians and addressing financial elder abuse and achieving greater consistency in laws for financial enduring powers of attorney.

The Society recognises that different stakeholders in the criminal justice system – the accused, victims and the broader community – have different rights, interests and needs. The rights of the accused are a fundamental pillar of our criminal justice system. The pursuit of justice, however, must occur in a way that minimises secondary traumatisation of victims and their families.

Conversations about legislative and procedural reform in this space need to move beyond binary approaches, in which a gain for accused is a loss for victims, and vice versa.

Q4. How will your party support the finalisation and implementation of national policy initiatives to combat elder abuse?

Q5. How will your party ensure a balanced approach to integrating the rights, needs and interests of victims in the criminal justice process, while upholding the core human rights of the accused?

Addressing the capacity, capability and long-term sustainability of the legal assistance sector

Access to justice remains a significant issue for an increasing number of people in the ACT. Many vulnerable people within our community are only able to access the justice system through ACT Legal Aid and community legal centres, or with the assistance of the pro bono work of ACT legal practitioners. Current cost-of-living pressures are significantly increasing demands on the legal assistance sector; a sector already stretched following the impact of the COVID-19 pandemic and ongoing housing shortage.

Q6. How will your party work with the Commonwealth to progress the recommendations of the NLAP Report?

Q7. How will your party work to ensure long-term sustainable funding for the ACT legal assistance sector?

On 28 May 2024, the Final Report of the Independent Review of the National Legal Assistance Partnership was released (NLAP Report). The Society welcomes key recommendations contained in the NLAP Report, including those targeted towards greater investment in the legal assistance sector, better justice outcomes for First Nations peoples, support for the long-term capabilities of those in the legal assistance workforce, and the need for improved data collection to support evidence-based decision making.



Adequately resourcing and evaluating the implementation of policies

Increased investment in key law and justice institutions

Ensuring that key law and justice institutions are adequately resourced has a range of benefits, including enhancing public safety outcomes, improving access to justice, streamlining the judicial process, reducing consequential pressures on community and social services resources, and facilitating compliance with regulatory requirements. Increased investment contributes to upholding the rule of law, improving trust and confidence in the legal system, and supporting economic and social stability.

The Society seeks a commitment from parties to increase resourcing in supporting the efficiency and effectiveness of key law and justice institutions, as follows:

- ACT Courts and Tribunal to: maintain the availability of specialised court services tailored to the needs of vulnerable persons; continue system-wide modernisation efforts, including those that support the online delivery of court registry services (such as the full realisation of e-filing for civil matters); and support faster finalisation of civil litigation, and reducing delays in criminal proceedings;
- the ACT Human Rights Commission to ensure it can continue to focus on its core responsibilities, including as part of the ACT's National Preventive Mechanism, while meeting an increased demand in services as a result of the new complaints and conciliation mechanism.
- ACT Policing, including to ensure officers can effectively engage in the prevention, investigation and timely response to sexual, family and personal violence.
- the Public Trustee and Guardian to ensure it can continue to deliver high quality services in the pursuit of safeguarding, managing and upholding the personal, legal and financial interests of its clients, particularly those from more vulnerable sectors of the community.

Q8. How will your party work to increase investment in key law and justice institutions?

Q9. How will your party address the current limitations on the transactions that can be processed by e-conveyancing platforms?

The Society also seeks a commitment from parties to support e-conveyancing for all property-related transactions in the ACT, particularly given the federal government's commitment to phasing out the cheques system (which some financial institutions are already doing).

Ensuring the ongoing effectiveness of key bodies of law

Increasingly, the introduction of new legislative regimes or significant amendments, has been accompanied by provisions which require review after a certain period of operation. The Society supports the use of statutory review mechanisms, which contribute to maintaining a legal system that is responsive, just and effective in meeting the needs of a changing society. The Society also notes the need to ensure that implementation arrangements, to support major bodies of reform such as further raising the age of criminal responsibility to 14 years of age, remain on track.

Q10. How will your party ensure the ongoing effectiveness of ACT laws?

Q11. Will your party commit to ongoing funding for the ACT Law Reform and Sentencing Advisory Council?

The Society also supports the maintenance of the ACT Law Reform and Sentencing Advisory Council. The Council was established in late 2023, on a pilot basis, to provide the Attorney-General with high level, independent advice in relation to law reform issues and sentencing matters in the ACT. The Society encourages parties to maintain the Council on a more permanent basis, with ongoing funding.

Further, there are bodies of ACT law which have not been the subject of holistic review and reform for some time.

With the value of an average estate increasing considerably, and numerous amendments to intestacy provisions in other States, the Society is concerned that intestacy reform in the ACT is well overdue. The Society seeks the commitment of parties to modernise ACT intestacy legislation so that the distribution of an estate for someone who dies without a Will is completed in a more timely and cost-effective manner. It would also be opportune to consider other areas of succession law which may require reform, including in relation to Wills and family provision legislation.

Q12. Will your party commit to considering review and reform of ACT succession laws?