

2017
ACCESS TO JUSTICE



Access to Justice Scorecard

Evaluating access to justice in Queensland

2017 Data analysis and report

Introduction

Since 2013, the *Access to Justice Scorecard* has sought to gauge the views of the Queensland legal profession about the state of access to justice in Queensland. The Scorecard is an initiative of Queensland Law Society's Access to Justice and Pro Bono Law Committee.

The Scorecard acknowledges and celebrates achievements in improving access to justice, identifies where improvements are necessary and proposes solutions to overcome barriers to accessing justice.

The Scorecard assesses whether laws achieve fair and intended outcomes in Queensland. This year, the Scorecard drew on responses from previous years by focusing on access to legal assistance services, issues in resolving disputes through courts and tribunals, and the role of technology. The report provides a platform for the Society to advocate for improvements to access to justice in Queensland.

In 2017, we received our largest response from the legal profession yet. The survey response indicates that there has been some improvement to access to justice in Queensland from previous years, with an overall score of 5.33 out of 10. This is the second highest score since the survey commenced in 2013. However, the relative low score overall indicates there remains considerable room for improvement.

Overview of survey

Methodology

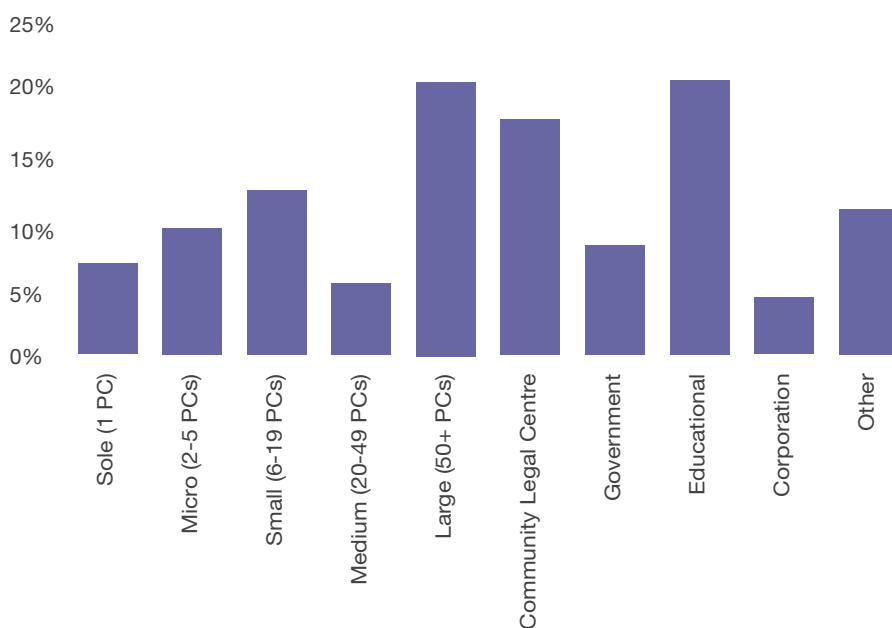
In 2017, the survey was comprised of multiple choice questions about the state of access to justice in Queensland. The choices were based on responses from previous years. For each question, respondents could select 'Other' from the choices provided and complete their answer in the open text field.

The survey was promoted in Queensland Law Society's newsletter, QLS Update, on 5 July 2017, 12 July 2017 and 26 July 2017 and remained open on the Queensland Law Society's website from 1 July 2017 to 31 July 2017, allowing one month for the survey to be completed. The survey was distributed to Queensland Law Society's committees, including members of the Access to Justice and Pro Bono Law Committee who shared the survey with colleagues and various networks. QLS Learning and Professional Development events, social media and website tiles on Queensland Law Society's website were other marketing channels used throughout the month.

Survey Monkey was the platform used to collect the data, which was then analysed by Queensland Law Society's internal Data Analyst. The response rate more than doubled from that in 2016, and was the largest response to date.

Survey respondents

The majority of responses were from private practitioners; around one third of survey respondents work as sole practitioners or in small and micro firms (19 solicitors or fewer) and 26% of respondents were from larger firms (20 solicitors or more). Community Legal Centres (CLCs) comprised 18% of respondents.



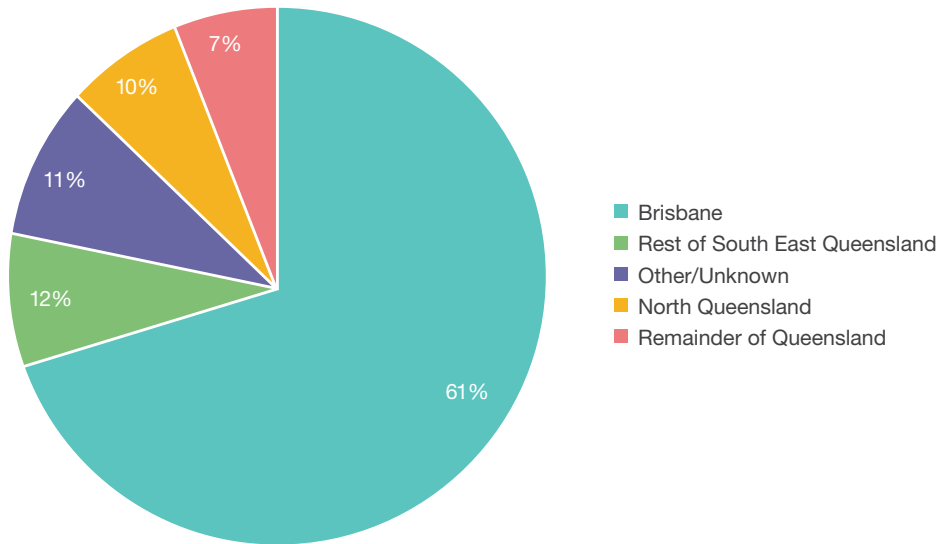
Post Admission Experience

The largest group of survey respondents (41%) were early career lawyers (5 years or fewer post-admission experience (PAE)). Career builders (6 to 12 years PAE), secure achievers (13 to 20 years PAE) and pinnacle practitioners (21 years or more PAE) each comprised approximately 20% of respondents.

Location

As expected, results indicated a higher representation from Brisbane and the South East corner of Queensland.

The majority of respondents (61%) were from Brisbane, which is proportionate to the number of practising certificate holders in Queensland.

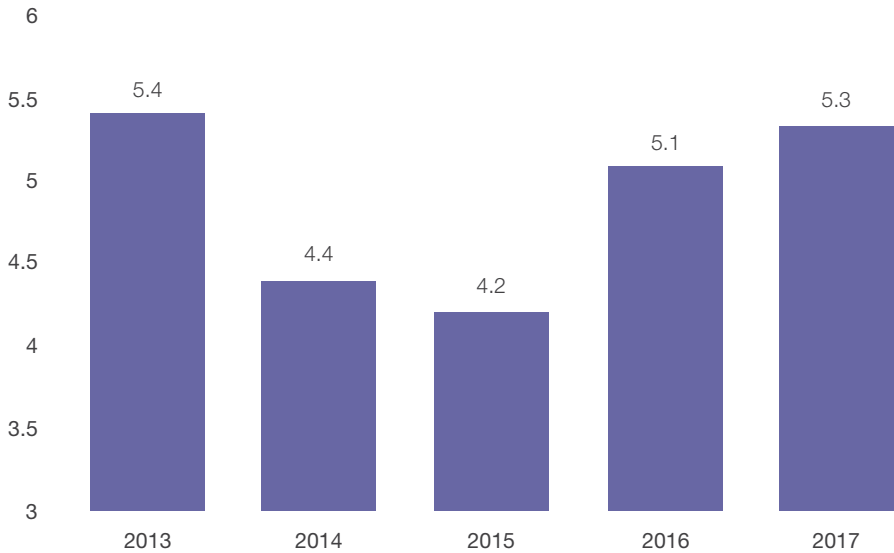


Survey findings

Access to justice overall

On a scale of 1 to 10, survey respondents were asked to score access to justice in Queensland. The average score was 5.33, representing a slight improvement from previous years.

In 2014, a significant proportion of respondents identified laws that operated unfairly and failed to achieve a balance of rights as a factor impacting on the score provided. At this time, there were a number of significant legislative amendments that were perceived by respondents to be inconsistent with access to justice. In 2015, the lowest scoring year to date, survey respondents showed increasing concern about people having adequate access to legal assistance. Survey respondents identified significant barriers to access to justice including the capacity of many Queenslanders to afford legal services and the lack of funding provided to legal assistance services. In 2017, the federal government announced a reversal of the decision to cut significant funding from Community Legal Centres. However, the concerns outlined above continued to be expressed in 2017.



Most significant barriers to accessing justice in Queensland

Question
 In previous years, the following were identified as barriers to access to justice. From the list below, please select up to three issues which you believe are the most significant barriers to accessing justice in Queensland.



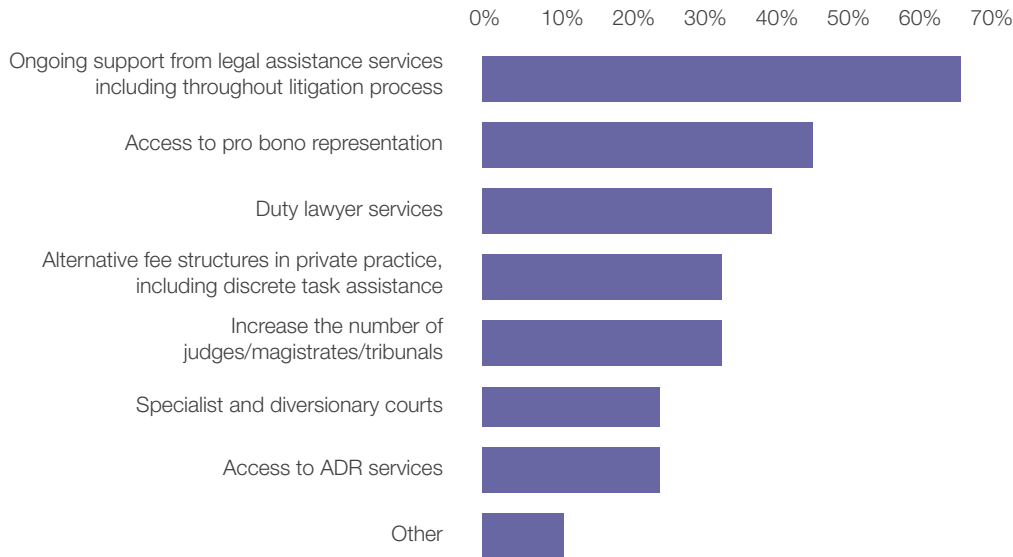
Survey respondents remain highly concerned about the cost of legal representation and the inadequate funding of legal assistance services. The affordability of legal representation in more complex matters, particularly involving litigation, is a particular concern. Overall, 80% of survey respondents identified inadequate funding of legal assistance services as one of the top three barriers for allowing access to justice. Closely following this, 72% of survey respondents identified affordability of legal representation as a key barrier. Inadequate numbers of judicial officers in Queensland was also a significant concern for 33% of respondents.

Of respondents who selected ‘Other’, around a third identified the complexity of the legal system, and in particular procedural aspects of the court process, as a key barrier to accessing justice.

Improving access to justice in Queensland

Question

In previous years the following were identified as ways to improve access to justice. From the list below, please select up to three factors which you believe would most significantly improve access to justice in Queensland.



Respondents emphatically indicated that access to justice in Queensland could most significantly be improved through the provision of ongoing support from legal assistance services, including throughout the litigation process. Legal assistance providers commonly offer initial advice but have little capacity to assist clients through to resolution of the matter. Access to pro bono representation and extending duty lawyer services were also identified as key factors to improving access to justice.

Just over a third of respondents believe alternative fee structures in private practice, including discrete task legal service provision, would improve access to justice.

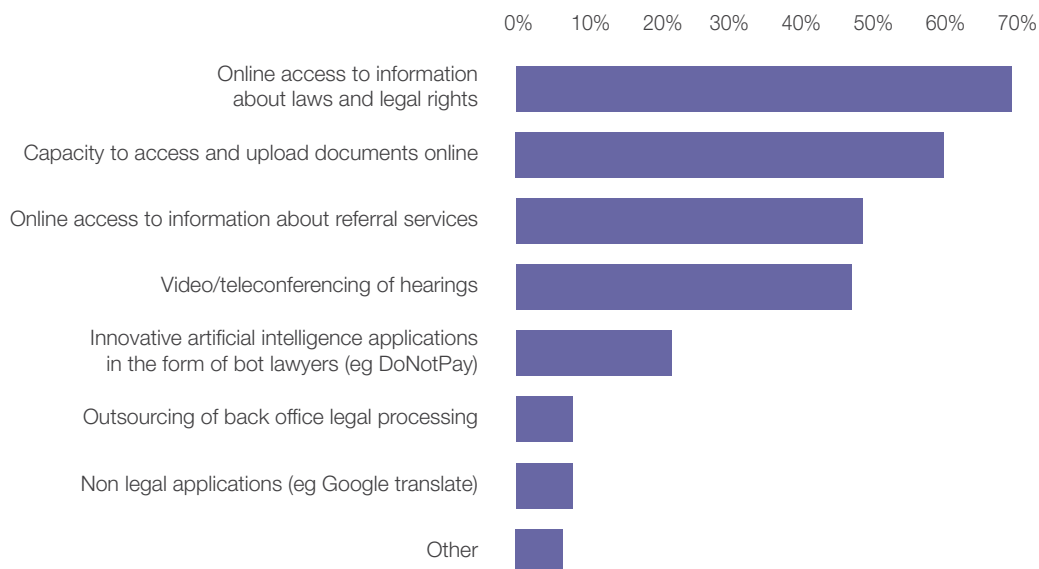
Respondents also identified the following 'Other' factors that would result in improvements:

- greater access to subsidised or free legal services for marginalised groups;
- greater focus in legislation on the rights of marginalised individuals; and
- greater support for diversity within the legal profession.

Technology and access to justice

Question

Technology has been identified as having an important role in access to justice. From the list below, please select up to three technological advancements which you believe will most significantly improve access to justice in Queensland.



The role of technology in access to justice was highlighted as a key theme in our 2016 report.

In 2017, respondents indicated that technology could most significantly improve access to justice by facilitating online access to information about laws and legal rights. Most respondents also consider the capacity to access and upload documents online to be one of the most significant ways technology can improve access to justice.

Use of artificial intelligence applications and non-legal applications were not yet considered as important in improving access to justice, with innovative artificial intelligence applications selected by just 22% of respondents. However, it is interesting to note that legal practitioners with fewer years PAE were more than twice as likely to select artificial intelligence applications than pinnacle practitioners.

Case study: Online legal resources

Recognising the importance of online access to information and laws about legal rights, as evidenced by the survey results from 2017 and previous years, both LawRight and Caxton Legal Centre have launched online and user friendly legal information tools.

LawRight's 'Legalpedia' (legalpediaqld.org.au) compiles information, resources and tools for self represented litigants from various sources across a wide area of laws, from guardianship and administration law to mental health and bankruptcy, allowing individuals to easily access information and referrals.

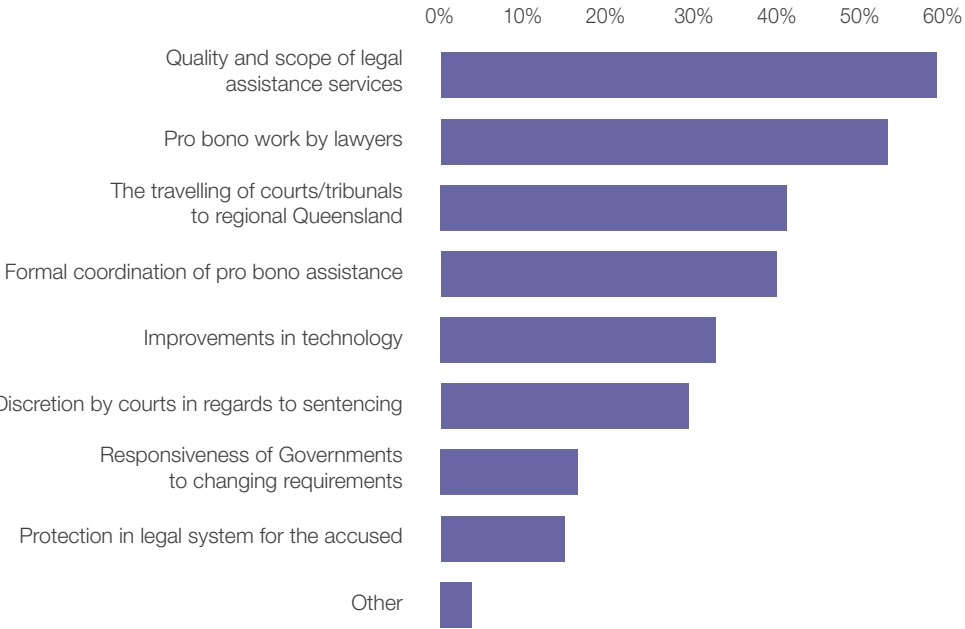
The 'Queensland Law Handbook' (queenslandlawhandbook.org.au), published by Caxton Legal Centre, is a comprehensive, plain-English legal resource which covers legal issues across all areas of law and is developed with the assistance of volunteer legal practitioners.

Both resources are heavily used, showing their value to the community. Since the Queensland Law Handbook was published online in September 2016, there have been over 150,000 visitors, each visiting a number of pages. That figure has continued to increase since the launch, with 21,885 visitors and 52,000 page views in October 2017, and currently approximately 1,200 visitors and 2,500 page views every day. Similarly, Legalpedia has had over 1,800,000 views since its inception in January 2016.¹

¹ <http://www.legalpediaqld.org.au/index.php?title=Special:Statistics>.

What is working well

Question
 In previous years the following were identified as aspects of the law that are working well for access to justice. From the list below, please select up to three areas which you believe best support access to justice in Queensland.



An overwhelming majority of respondents indicated that the quality and scope of legal assistance services is the aspect of the law that best supports access to justice in Queensland. Closely following this, pro bono work undertaken by lawyers in Queensland was selected by over half of respondents. Responsiveness of government and protections in the legal system for the accused received the lowest responses.

The legal assistance sector is comprised of CLCs, Legal Aid, Aboriginal and Torres Strait Islander Legal Services and Family Violence Prevention Legal Services. CLCs are independent organisations that provide legal advice, information, legal representation and support to those in need. Each year, CLCs in Queensland help almost 60,000 individuals with their legal issues.²

² <http://communitylegalqld.org.au/fundingcliff>.

Actions in response to survey findings

Queensland Law Society believes everyone should have access to legal services. Limited or no access to legal services can have a serious impact on a person's ability to obtain a just outcome from a legal process. Queensland Law Society, and its members, have undertaken action in a range of areas in response to findings in the Access to Justice Scorecard in previous years.

Legal assistance funding

Queensland Law Society recognises the importance of legal assistance and strongly advocates for increased legal assistance sector funding. Unresolved legal problems generate a range of flow-on effects. With a quarter of all Australians facing serious legal problems each year, the human, social and economic cost of inadequate legal assistance funding is significant.

In 2014, the federal government announced funding cuts to the legal assistance sector, which were due to take effect from 1 July 2017, including almost \$35 million from CLCs and \$4 million from Aboriginal and Torres Strait Islander Legal Services. Queensland Law Society advocated extensively for a reversal of the decision to cut funding from the legal assistance sector and directly engaged with the Prime Minister, Treasurer and Attorney-General on the issue. In April 2017, Queensland Law Society welcomed the federal government announcement to abandon the planned funding cuts, as well as the Queensland government's further contributions to funding of CLCs in Queensland.

Advocacy

Queensland Law Society has 26 standing policy committees and five working groups. Their dedicated expert members work to further the Society's advocacy to encourage government to draft and amend legislation and policy that has a positive impact on both the legal profession and the Queensland community. Queensland Law Society values its relationship with government, and is regularly consulted on the development of policy positions and proposed legislative amendments, leading to better outcomes and responsive legislation. Queensland Law Society engages with the courts on procedural reform and practical issues affecting court users, including consultation on draft practice directions.

During the 2016-17 financial year, Queensland Law Society made a total of 142 submissions, many of which aimed at improving individuals' access to justice, including in relation to:

- the removal of 17 year olds from the adult criminal justice system in Queensland;
- the expungement of historic homosexual convictions;
- increased resourcing for the family law courts and for the legal assistance sector to manage the considerable demand on court services; and
- systemic reforms to protect vulnerable witnesses in matters involving family violence.

Pro bono work

Queensland Law Society members across the state undertake an average of 54 hours of pro bono work each year. This totals almost 300,000 hours of pro bono work in Queensland. Pro bono work is an integral part of the legal profession. The benefits of pro bono work include improved skills and experience for practitioners, but importantly it is direct provision of legal services to people who would otherwise not have been able to retain a lawyer.

Queensland Law Society Pro Bono Scheme is managed by LawRight. This valuable initiative aims to enhance the standing of the profession and gives Queensland Law Society members a structured system in which to demonstrate practical support for their communities.

The Scheme provides a central point of contact for pro bono referrals in civil matters where legal assistance is needed and where the applicant cannot afford private legal services or obtain Legal Aid. The Scheme focuses on people experiencing hardship to maximise use of pro bono resources and covers all areas of civil law.

However, outside this Scheme, many firms give significantly of their time providing services free or at low cost to those in need.

Discrete task services and limited scope retainers

Providing discrete task services (where instead of representing a client for the whole of the case, the solicitor undertakes agreed tasks) is one way of making legal services more accessible to more people. This is an important way to enhance access to legal services for those who are ineligible for free legal assistance, but cannot afford the cost of a traditional full service retainer. It has been highlighted in previous Access to Justice Scorecards and identified in the Productivity Commission's review of access to justice arrangements. However, many solicitors remain cautious about providing service in this way.

To assist them, in June 2017, the QLS Ethics Centre published Guidance Statement No. 7 – Limited scope representation in dispute resolution. The Guidance Statement is specifically concerned with limited scope representation in a dispute resolution context.

For solicitors acting in dispute resolution, limited scope representation may mean providing advice on drafting or checking documents alone or providing discrete advice about a particular step. The Guidance Statement outlines some of the ethical principles and issues which solicitors should consider when acting on a limited scope representation retainer.

Technology and new law

Previous Scorecards have highlighted the role that technology can play in enhancing access to justice. Queensland Law Society recognises the important role of technology as an integral part of legal practice, including in relation to back office processes and in the provision of legal advice and information. Queensland Law Society aims to support the legal profession in embracing technology in the practice and delivery of legal services. Since 2011, Queensland Law Society has offered over 40 technology-focused professional development events. By way of example, QLS Symposium 2017 included a session which provided practical advice to practitioners on adopting new technology and business structures, as well as outsourcing and dealing with more informed clients. QLS Symposium 2018 similarly includes a session on how technology can improve legal practice.

Queensland Law Society Access to Justice and Pro Bono Law Committee is continuing to engage with stakeholders in the legal profession to investigate further ways in which technology can support access to justice in Queensland.

Conclusion

In 2017, survey respondents were clear in their concern about the current inadequate access to legal assistance. Respondents believe the quality of service offered by the legal assistance sector is excellent and that additional funding for these services is crucial in improving access to justice.

Significant barriers to accessing justice continue to exist in Queensland, including:

- a lack of funding provided to services such as Legal Aid Queensland and CLCs;
- the capacity of many Queenslanders to afford the legal services they need;
- the perceived complexity and length of resolving legal issues through courts and tribunals; and
- insufficient court resources and in particular, insufficient numbers of judges and magistrates to resolve disputes.

Based on the responses, key items for continued development and reform to improve access to justice include:

- increased funding and resources for legal assistance services, court and tribunals;
- development by the legal profession of alternative fee structures, including discrete task assistance;
- expansion of online resources and file management capabilities.

Given trends, it is expected that the use of technology in ensuring access to justice will continue to be a theme in future years.

The Scorecard has again identified challenges and barriers faced by Queenslanders with legal problems. Queensland Law Society will continue to advocate for improvements to access to justice, particularly the potential solutions identified through the survey that warrant consideration by our governments and key stakeholders.

Access to justice is fundamental to our democracy and Queensland Law Society will continue to strive for genuine equality before the law and greater accessibility to our justice system.



Law Society House
179 Ann Street, Brisbane Qld 4000

1300 367 757 | info@qls.com.au | qls.com.au

