

# advocacy annual

2011·2012

This annual provides a synopsis of the most important advocacy issues Queensland Law Society (QLS) undertook from May 2011 to April 2012. It highlights our achievements and shows the way forward for ongoing issues.

Queries regarding these issues can be directed to 1300 FOR QLS (1300 367 757) or email [policy@qls.com.au](mailto:policy@qls.com.au).



# Advocacy Annual 2012

## About Queensland Law Society

QLS represents the majority of Queensland's solicitors, providing the State with leadership in law via a range of strategic and practical services.

As the dynamic hub of Queensland's legal community, we support more than 11,000 members with quality advice, advocacy and learning and development.

Our advocacy functions focus on access to justice for disadvantaged Queenslanders and protecting the welfare of the profession and community regarding current public issues, identifying areas for reform.

## Advocacy at QLS

Advocacy services are among the most important QLS offers to the legal profession and general community:

- We believe that everyone should have access to legal services as a basic democratic right.
- We examine proposed legislation to ensure it is fair and just, and provide submissions to government when we identify issues.
- Our finger is on the pulse of social issues and we proactively suggest changes to current legislation to support member and community interests.

## For our members

QLS provides members with a trusted, well-informed advocacy service. We fly the flag for the rights of Queensland practitioners, their clients and the Queensland community.

Our advocacy efforts are informed by our 27 committees that focus on specific areas of law or industry and are staffed by specialist and experienced practitioners.

They provide a forum in which members can raise and discuss issues that affect their practice areas.

Following are a range of comparative results that illustrate:

- the total number of submissions year on year (YOY), that were:
  - proactive (where QLS raised the need to resolve an issue), or
  - reactive (where we responded to a request for our views)
- requests for comment where QLS' written input was sought by key stakeholders such as the Attorney-General, government departments and other official forums
- consultative events where we presented our views in formal settings such as the new Parliamentary Portfolio Committee public hearings and stakeholder reference group meetings.

### Comparative results

	2011/12 (to end April 2012)	2010/11	2009/10
Submissions	200	193	166
– Proactive	92 (46%)	98 (51%)	78 (47%)
– Reactive	108 (54%)	95 (49%)	88 (53%)
Requests for comment	149	155	141
Consultative events	95	116	108

# Contents

<b>Advocacy Annual 2012</b> .....	<b>i</b>
About Queensland Law Society .....	i
Advocacy at QLS .....	i
For our members .....	ii
<b>Contents</b> .....	<b>iii</b>
Abbreviations .....	viii
<b>State Government election 2012</b> .....	<b>1</b>
<b>National Legal Profession Reform</b> .....	<b>2</b>
A watching brief .....	2
<b>Access to justice</b> .....	<b>3</b>
Pro bono .....	3
Judicial resourcing.....	3
<b>Accident compensation and tort law matters</b> .....	<b>4</b>
Disability care and support .....	4
Thresholds for access to common law in the ACT.....	6
LSC no-win no-fee public information .....	6
<b>Banking and finance law</b> .....	<b>7</b>
Personal property securities reform .....	7
<b>Business law</b> .....	<b>8</b>
Business names registration .....	8
<b>Children’s law</b> .....	<b>9</b>
Youth justice.....	9
17 year olds in the adult criminal justice system .....	9
Child protection .....	10
Children’s law practice issues .....	10
<b>Company law</b> .....	<b>11</b>
Closure of ASX Brisbane Listing Office .....	11
<b>Competition and consumer law</b> .....	<b>12</b>

<b>Criminal law</b> .....	<b>13</b>
Unexplained wealth and criminal confiscations .....	14
Armed robbery.....	14
Access to legal representation and court access.....	15
Police powers .....	16
Child sex offenders.....	17
Animal law issues .....	17
Education .....	18
Probation and parole issues.....	18
Transport issues.....	19
Improving criminal law practice and procedure.....	19
<i>Weapons Act 1990</i> .....	19
Criminal Organisation Amendment Bill 2011 .....	20
Protecting fundamental legal rights .....	20
Two-up amendment legislation.....	20
Moynihan reforms .....	21
Aboriginal and Torres Strait Islander issues .....	21
<b>Elder law</b> .....	<b>22</b>
Elder Abuse Issues Paper response .....	22
Retirement villages in Queensland.....	22
Review of the guardianship laws in Queensland .....	23
Advance health directives.....	23
Amalgamation of the Office of the Public Advocate and the Office of the Adult Guardian.....	24
<b>Equalising opportunities in the law</b> .....	<b>25</b>
Aboriginal and Torres Strait Islander issues .....	25
Consolidation of anti-discrimination laws.....	25
<b>Family law</b> .....	<b>26</b>
Domestic and Family Violence Protection Bill .....	26
Contact centre review .....	26
Amendments to the <i>Acts Interpretation Act</i> .....	27
Civil Partnerships Bill .....	27
<b>Franchising law</b> .....	<b>28</b>
Franchising in Queensland .....	28
Franchising in South Australia.....	28

Franchising in Western Australia .....	28
Franchising in New Zealand .....	29
Small Business Commissioner Bill (SA) .....	29
Small business disputes – ADR in franchising.....	29
<b>Intellectual property.....</b>	<b>30</b>
IP laws amendment Bills.....	30
The GITC Review .....	30
Collaborations between public and private sectors .....	31
<b>International law .....</b>	<b>32</b>
International issues .....	32
Migration issues.....	32
Autonomous Sanctions Bill .....	33
<b>Legal costs.....</b>	<b>35</b>
Increasing legal fees in the Queensland Courts.....	35
<b>Civil litigation .....</b>	<b>36</b>
New Federal Court Rules .....	36
Updates to the UCPR bulletin.....	36
Uniform model proportionate liability law .....	36
Pilot case management practice in the Federal Court.....	37
Legal Services Commission draft Regulatory Guide on Itemised Bills.....	37
<i>Federal Judicial Review Act</i> .....	37
<b>Planning and environment law.....</b>	<b>38</b>
Infrastructure charges disputes.....	38
Greentape reduction.....	39
Planning reforms.....	40
Strategic cropping land .....	41
<b>Property law.....</b>	<b>42</b>
Suspension of Time Clause.....	42
<i>Land Sales Act</i> reform.....	42
Body corporate reforms – two-lot schemes.....	43
Split of the <i>Property Agents and Motor Dealers Act 2000</i> .....	44
Neighbourhood disputes legislation .....	45
Development of electronic conveyancing .....	46

<b>Revenue law .....</b>	<b>48</b>
Aggregation of dutiable transactions .....	48
OSR information notice request .....	48
<b>Legal practice .....</b>	<b>50</b>
Pre-admission practical legal training .....	50
<b>Succession law .....</b>	<b>51</b>
Probate delays .....	51
Public Trustee unclaimed monies searches .....	51
Review of the Justice of the Peace framework .....	51
<b>Advocacy relationships .....</b>	<b>52</b>
The courts .....	52
The judiciary .....	52
Regulators .....	53
International bodies .....	53
Law Council of Australia and interstate colleagues .....	54
Lexon risk management team .....	54
Aboriginal and Torres Strait Islander law students .....	55
Bar Association of Queensland .....	55
<b>Acknowledgement and thanks .....</b>	<b>56</b>

If Solicitors and Conveyancers sufficiently realised the great advantage of having a strong Association to safeguard their interests, and act as their representatives and mouthpiece, it is believed that the great majority of those practising in Queensland would apply for enrolment.

Annual Report of the Queensland Law Association 1909

## Abbreviations

Acronym	Description
ACIP	Advisory Council on Intellectual Property
AHD	Advance Health Directives
APLEC	Australasian Professional Legal Education Council
ARNECC	Australian Registrar's National Electronic Conveyancing Council
ASIC	Australian Securities and Investments Commission
ASX	Australian Securities Exchange
Cdecs	Commissioner for Declarations
EPA	Enduring Powers of Attorney
LCA	Law Council of Australia
LNP	Liberal National Party
LPA	<i>Legal Profession Act 2004 (Qld)</i>
LSC	Legal Services Commission
NECDL	National Electronic Conveyancing Development Limited
OSR	Office of State Revenue
PEXA	Property Exchange Australia
PPSR	Personal Property Securities Register
QLRC	Queensland Law Reform Commission
SCAG	Standing Committee of Attorneys-General
UCPR	Uniform Civil Procedure Rules

# State Government election 2012

The 2012 Queensland State election was anticipated to be a watershed event which would significantly set the political tone in this State for some time. QLS was eager to ensure that there was a thoughtful consideration of issues affecting the law and a recognition that there were many areas where there was a need for reform.

Our policy committees developed an issues consultation paper of the top eleven issues from across the spectrum of legal practice which was put to members for comment. Incorporating member feedback, the QLS Council endorsed a list of 11 top issues the Society saw as integral, which was provided to all the major political parties. We communicated with all major parties on these issues and published in full the written responses received from the Labor and Liberal National parties in the March edition of Proctor prior to the election.

In this way, members of the Society had an opportunity to contribute to the policy formation of the major political parties in the lead-up to the election and could also assess the responses of the two major parties to the profession's issues. QLS advocacy on the profession's issues also played an important part in announcements on the reform of residential conveyancing, criminal justice policy and access to justice initiatives.

# National Legal Profession Reform

## A watching brief

With the consultation period of National Legal Profession Reform complete, last year saw decisions made at the federal level on a couple of building blocks for implementation.

Victoria will be the first state to pass the national legislation, while New South Wales will host the national legal services board and commissioner. The purpose of the commissioner is to manage the national relationships with LSCs as they continue to provide the process for managing complaints against legal professionals.

Responsibility for implementation currently rests with the federal Standing Committee of Law and Justice Ministers and we are keeping a watching brief on proceedings.

Our last active involvement in the reform was reviewing the legislation released in September 2011 and we noted further detail was required to make the national law workable.

We await the final form of the legislation which would apply in Queensland and appointment of the national legal services board.

In the meantime, we will strive to ensure:

- any change towards a national system does not seriously disadvantage our members and that there is a smooth transition with minimal administrative and financial impacts to practitioners
- the profession is fully aware of what the change means when we become aware of further detail.

At the moment, implementation is expected to start in FY 2012/13.

# Access to justice

## Pro bono

In October 2011, the National Pro Bono Resource Centre released a discussion paper, *Alternative Dispute Resolution and the possible role of pro bono lawyers*.

In December 2011, the Society made two comprehensive submissions to the discussion paper. Some of the issues we advocated for included:

- the need for solicitors to advise and, where possible, represent parties in the ADR process
- appropriate funding of ADR services
- accreditation for mediators providing pro bono services.

The Society's submissions were favourably received and we continue to collaborate with the National Pro Bono Resource Centre on this issue.

## Judicial resourcing

In 2011, the Queensland Law Society President received 32 requests for assistance from members about overdue reserved judgments in the Federal Magistrates Court Brisbane Registry. These judgments were not delivered by the required three months after the completion of the hearing. Some reports indicated there were judgments still outstanding from 2010.

In July and December 2011, the Society made two submissions to the Federal Attorney-General concerning the judicial resourcing of the Federal Magistrates Court. The Society urged the appointment of more than one Federal Magistrate in Brisbane in order to address the number of overdue reserve judgments and the lengthy delays experienced by our members.

We have received a letter from the Federal Attorney-General advising that arrangements are underway to fill the vacancy at the Brisbane registry.

# Accident compensation and tort law matters

## Disability care and support

The Australian Government asked the Productivity Commission to undertake a public inquiry into a long-term disability care and support scheme. This included considering:

- how a scheme should be designed and funded to better meet the long-term needs of people with a disability, their families and carers
- how to determine the people most in need of support, the services that should be available to them, and service delivery arrangements
- the costs, benefits, feasibility and funding options of alternative schemes
- how the scheme will interact with the health, aged care, informal care, income support and injury insurance systems
- its impacts on the workforce
- how any scheme should be introduced and governed
- what protections and safeguards should be part of the scheme.

The Productivity Commission proposed a two entity model:

- a National Disability Insurance Scheme (NDIS) to deal with the care and support of individuals with significantly reduced functioning in self-care, communication, mobility or self-management and requiring significant ongoing support
- a National Injury Insurance Scheme (NIIS) which was a collection of State-based insurance schemes that would provide fully-funded care and support for all catastrophic injuries on a no-fault basis.

We provided written submissions to the Productivity Commission Inquiry and also appeared before a public hearing. The Society was a strong supporter of better care and support for individuals with a disability. It welcomed discussion of a NIIS and NDIS provided that these schemes:

- were affordable and sustainable
- provided quality care to all disabled persons
- did not diminish existing rights.

In response to the Productivity Commission's draft report we raised a number of concerns, including:

- concern that the schemes will prove to be significantly more costly than is presently anticipated and that small errors in cost estimation initially may prove to place ongoing burdens on the schemes which could threaten their sustainability, ultimately to the detriment of those needing support
- concern that the proposed schemes should not unduly interfere with the Queensland workers' compensation and motor vehicle accidents schemes which are based primarily on common law and are fully funded, well-run, have nationally low levels of disputation and reach speedy and early resolution of claims
- concern that the New Zealand Accident Compensation Corporation is not an appropriate, viable or sustainable model on which to base an Australian disability support scheme and that any such Australian scheme should follow an insurance model and be fully funded or follow a social welfare model and be supported directly by the consolidated revenue
- that disabilities suffered by overseas visitors should be appropriately addressed in any scheme
- that all existing common law rights for fault-based claims should be retained and disabled persons be given choice about which scheme to access.

Despite open hostility to common law claims for injury from the Productivity Commission, the Society stated it is imperative Queensland has open access to successful, fully funded, well-run and accessible common law compensation schemes. We consider that the right to access common law is an important and fundamental issue.

The government has considered our view that disability support and care schemes need to be equitable, affordable and sustainable to be of true benefit to the community. We will continue to advocate for the retention of common law rights.

At the moment, implementation is expected to start in FY 2012/13.

## Thresholds for access to common law in the ACT

The Australian Capital Territory Government proposed changes to their motor vehicles accident system which would apply injury thresholds for access to certain common law heads of damage. The ACT Law Society joined with the ACT Bar and the Australian Lawyers Alliance to defend common law rights.

QLS openly supported the legal profession in the ACT in defending common law rights and open access to the common law in that jurisdiction. We sent submissions to the ACT Greens and the Canberra Liberals providing the benefits of our Queensland experiences and argued against any diminution in common law rights.

As a result of advocacy from the ACT legal profession and support from QLS, the relevant proposal was referred to a parliamentary committee for in-depth analysis and further community consultation. We were directly acknowledged by the Canberra Liberals as being a significant contributor to the debate.

## LSC no-win no-fee public information

The Legal Services Commissioner sought our input on information for the public on conditional client agreements (no-win no-fee arrangements).

The Society raised a number of concerns about the draft material regarding its purpose and proposed content. Although supportive of empowering consumers of legal services, we noted that the material related to conditional costs agreement disclosures was more relevant to a first meeting between a lawyer and their client.

The Commissioner received our feedback and revised the material prior to publication.

# Banking and finance law

## Personal property securities reform

2011 was a momentous year of preparation for the commencement of the Personal Property Securities Register (PPSR) under the *Personal Property Securities Act 2009* on 30 January 2012. This national reform will significantly affect the legal profession.

QLS held two seminars and conducted sessions at various conferences throughout the year to prepare members. We also developed a PPSR page on the QLS website which has received more than 2600 pageviews and that we continually update with information sheets, key legislation updates and relevant articles. QLS was consulted by the Department of Justice and Attorney-General in October 2011 on searches for historical encumbrances on various Queensland registers. We provided information to members via QLS Update regarding:

- PPS and conveyancing settlements
- searching migrated Australian Securities and Investments Commission (ASIC) data
- searching the register and Queensland Bills of Sale
- grantor searches in residential conveyancing matters.

We will continue to monitor issues that may arise from this reform and help the profession transition to the new system.

# Business law

## Business names registration

During 2011 the Business Names Registration Bill was introduced into Federal Parliament. The main objective of the Bill was to nationalise business name registration through one central Commonwealth entity, ASIC.

This issue received joint action from the QLS Business, Franchising, and Technology and Intellectual Property Law committees. The committees wrote to the Federal Minister for Small Business, the Commonwealth Senate and the Queensland Legal Affairs Parliamentary Committee throughout 2011, supporting the national register but outlining concerns about its operation and scope. In particular, we highlighted concerns with the definition of 'business' and transitional arrangements for the Bill.

The Bill passed through both Houses in late 2011, and the national business names register commenced in May 2012.

# Children's law

## Youth justice

The justice system in Queensland has separate criminal and correctional facilities for children and adults.

The Society made numerous submissions on various youth justice issues. We wrote to the:

- Department of Communities regarding the admissibility of offences subject of a youth justice conference
- Sentencing Advisory Council about improving community understanding of youth justice issues, and subsequently met with the council
- Law Society of Western Australia raising concerns about the *Prohibited Behaviour Orders Act 2010*.

We continue to strongly advocate on behalf of children and young people involved in the youth justice system and have raised these issues with the new Attorney-General, Minister for Communities, Child Safety and Disability Services and the Chief Magistrate of Queensland.

## 17 year olds in the adult criminal justice system

Queensland remains the only state or territory in Australia where 17 year olds are treated as adults, not children, in the criminal justice system and are incarcerated in adult correctional facilities. This is contrary to Australia's international treaty obligations. QLS has strongly advocated for reform in this area.

In 2011/12 we:

- submitted our concerns to the Minister for Community Services and Housing and the Attorney-General
- requested our inclusion in the Senior Officers Group, tasked with providing advice to government on this issue
- wrote to the Law Council of Australia (LCA) requesting the inclusion of the 17 year old issue in the submission for the national Draft Baseline Study for a National Human Rights Action Plan
- raised it as a priority legal profession concern in our State election issues paper presented to political parties prior to the Queensland election.

## Child protection

QLS continues to advocate for improvements to the protection of children in the care of the government.

Over the course of the year we:

- wrote to the Minister for Child Safety expressing concerns that children in residential care are being referred to the police for behavioural incidents
- met with the Minister in November 2011, and attended stakeholder meetings in January and March 2012 regarding this issue
- wrote to the Minister to request access to the Positive Behaviour Support policy of the Department of Child Safety
- met with the Department of Child Safety to discuss amendments to the *Child Protection and Other Acts Amendment Act 2010* (commenced on 29 August 2011) and drafted guidance for the profession
- wrote to the Minister regarding the inadequate notice of the commencement for the provisions.

The department is giving public access to all child safety policies. We will continue to be involved in departmental roundtables to discuss the decriminalisation of children in care.

## Children's law practice issues

QLS proactively helps train legal practitioners who represent children and young people.

We wrote to the Law Society of New South Wales regarding their publication, *Representation Principles for Children's Lawyers*, and are currently working on developing a similar publication for Queensland practitioners. We also conducted free member seminars throughout the year on children's law practice issues.

This is an ongoing project for QLS.

# Company law

## Closure of ASX Brisbane Listing Office

Late in 2011 the Australian Securities Exchange (ASX) announced, without consultation, that it was closing its Brisbane Listings Office and moving those functions to a dedicated team housed in ASX's Sydney office. Over many years Brisbane-listed entities and their advisers had developed excellent working relationships with local ASX representatives.

We expressed our concern and the concern of the local corporate advisory community to the ASX. We were deeply troubled by the lack of consultation by the ASX in making this decision and the risk of service level reductions should the head offices of local listed entities be migrated to Sydney. Our concerns were supported by the Law Council of Australia's Business Law Section.

At the instigation of QLS, representatives of the ASX met with us and local corporate lawyers. The ASX offered the Queensland market continued personal attention and gave undertakings relating to levels of service and attendance at local events. Negotiation with the ASX regarding support of the Queensland market continues.

# Competition and consumer law

## Constitutional Corporations (Farm Gate to Plate) Bill

The Constitutional Corporations (Farm Gate to Plate) Bill was introduced into Federal Parliament in late 2011, with the main objective to mandate the publication of producer prices.

QLS wrote to the House of Representatives Standing Committee on Agriculture, Resources, Fisheries and Forestry outlining the practical difficulties in calculating an accurate and up-to-date producer price given fluctuations of the market, particularly in times of natural disasters. We highlighted concerns that to only provide the producer price (and not disclose other prices such as transportation and storage) may mislead consumers. Alternatively, to fully itemise complete costs from farm gate to plate would be cost prohibitive.

The Senate Committee's recommendations, as outlined in its report, was that the Bill not be passed. The Bill will be debated further in the House of Representatives in 2012.

# Criminal law

## Standard non-parole periods

Throughout the year the government has been working towards introducing standard non-parole periods in Queensland. The Sentencing Advisory Council was given a referral on what model of standard non-parole periods should be introduced.

QLS firmly opposes any form of mandatory sentencing and has advocated against standard non-parole periods.

We wrote to the:

- Sentencing Advisory Council on their consultation paper on standard non-parole periods in July 2011
- Attorney-General on the community consultation on standard non-parole periods
- Queensland Parliamentary Committee on the Law Reform Amendment Bill 2011 which contained the standard non-parole period scheme.
- Department of Justice and Attorney-General and Sentencing Advisory Council in February 2011
- the then-Queensland Opposition leader on mandatory sentencing
- NSW Minister for Police and Emergency Services expressing objection to the proposed mandatory life sentence scheme for people who are convicted of murdering police officers
- President of the NSW Law Society on their mandatory sentencing scheme.

The Law Reform Amendment Bill 2011 was not passed due to Parliament being prorogued. The NSW mandatory life sentence scheme was passed in June 2011. We will continue to oppose any scheme that proposes mandatory sentencing as unjust and unworkable.

## Unexplained wealth and criminal confiscations

Unexplained wealth laws are a relatively recent development in confiscation law, which require a person who lives beyond their apparent means to justify the legitimacy of their financial circumstances. They are currently in place in the Northern Territory and Western Australia, while Commonwealth provisions recently came into effect. Laws of this nature are thought to deter would-be criminals by reducing the profitability of illegal activities and prevent crime by diminishing offenders' ability to finance their future criminal acts. However, critics argue that the laws infringe on people's right to silence and undermine the presumption of innocence.<sup>1</sup>

The Society wrote to the Department of Justice opposing the Criminal Proceeds Confiscation (Serious and Organised Crime Unexplained Wealth) Amendment Bill 2010.

The Bill was not passed.

<sup>1</sup>Australian Institute of Criminology –  
<http://www.aic.gov.au/publications/current%20series/tandi/381-400/tandi395.aspx>

## Armed robbery

The Attorney-General referred the issue of sentencing of armed robbery offences to the Sentencing Advisory Council.

We made two preliminary submissions on the terms of reference given to the Sentencing Advisory Council in September and November 2011 particularly highlighting the importance of judicial discretion in all sentencing decisions.

The Sentencing Advisory Council has now been disbanded.

## Access to legal representation and court access

The Society advocates for improving access for lawyers to clients in correctional facilities and easier access for legal professionals to law courts.

We have written several submissions to the Department of Community Safety regarding access to legal representations for prisoners in Queensland's correctional facilities. We have also made joint submissions with the Bar Association of Queensland to advocate for the use of the Brisbane Law Courts Complex access cards in the Magistrates Court.

The Society has formed a working group with Department of Community Safety representatives to discuss amendments to departmental operating procedures which will function to benefit prisoners. The Brisbane Law Courts Complex access cards issue is being discussed at monthly Court Users Reference Group meetings.

## Police powers

The Society is interested in issues involving police and the proper exercise of their duties and powers.

We were heavily involved in the *Police Powers and Responsibilities Act 2000* review roundtables and made several submissions in relation to police matters, including:

- Submission to the Chair of the Parliamentary Crime and Misconduct Committee concurring with the Police Union to hold a review of the *Crime and Misconduct Commission Act* in the same forum as the *Police Powers and Responsibilities Act* review
- Letter to the Minister for Police containing our views on the consultation draft of the Police Powers and Responsibilities and Other Legislation Amendment Bill 2011
- Letter to the Minister advising of the status of the issues with respect to police referrals in Queensland
- Submission to the Legal Affairs, Police, Corrective Services and Emergency Services Committee on the Police Powers And Responsibilities and Other Legislation Amendment Bill 2011
- Letter to the Premier on the introduction of amendments to the *Penalties and Sentences Act 1992* to establish drink safe precincts without stakeholder consultation
- Letter to the Department of the Premier and Cabinet on the Queensland Police Complaints, Discipline and Misconduct System
- Letter to the Independent Review of Queensland Police Complaints, Discipline and Misconduct Systems on issues relating to effecting and expediting police discipline matters.

We were invited by the Legal Affairs, Police, Corrective Services and Emergency Services Committee to present at a public hearing on the Police Powers and Responsibilities and Other Legislation Amendment Bill 2011. The government accepted the recommendations of the committee to clarify the application of the Bill's amendments to discharging security interests on impounded vehicles as suggested by QLS in the public hearing. In line with the proposals put forward at the public hearing, the committee and previous government mandated the use of the regional lawyer list.

## Child sex offenders

The government sought to introduce new offences and penalties for child sex offences, and referred sentencing issues to the Sentencing Advisory Council for advice.

Over the course of the year we provided:

- submissions on the Criminal and Other Legislation Amendment Bill 2011, stressing that an increase in penalties for child sexual offences is not justified
- recommendations on the drafting of the proposed new child sexual offence, 'grooming children under 16'
- three submissions to the Sentencing Advisory Council on their reference on the sentencing of child sexual offences.

The Criminal and Other Legislation Amendment Bill 2011 was not passed due to the proroguing of Parliament. The Sentencing Advisory Council has published its report but has since been disbanded.

## Animal law issues

The Attorney-General sought to introduce dangerous dog laws as a consequence of the nationwide shock at the death of Ayeon Choi in Victoria.

The offence, dangerous management of a dog, was included in the Criminal and Other Legislation Amendment Bill 2011. QLS provided advice to the Department of Justice and Attorney-General on this proposal, pointing out that death by dangerous dog is already covered by offences in the Criminal Code. We also made a submission on the community consultation draft amendment to the code and to the Legal Affairs, Police, Corrective Services and Emergency Services Committee.

The Criminal and Other Legislation Amendment Bill 2011 was not passed due to the proroguing of Parliament.

## Education

The Education and Training Legislation Amendment Bill 2011 was introduced in August 2011 and referred to the Industry, Education, Training and Industrial Relations Committee for consideration.

QLS provided lengthy submissions on criminal and administrative aspects of the Bill. We stated concerns with broadening the provisions on mandatory reporting of sexual abuse, risk of young people being charged with sexual offences, gaps in review rights and automatic revocation of eligibility declarations only on the basis of a charge. We also appeared at the public hearing.

QLS was heavily quoted in the committee's final report. In response to some of our concerns, the committee recommended automatic revocation on conviction, increased rights of appeal, and clearer definitions for mandatory reporting. The Bill was passed with amendment in November 2011.

## Probation and parole issues

QLS called for improvements to the treatment of prisoners, especially with regard to probation and parole issues.

We wrote to the Minister for Police, Corrective Services and Emergency Services on a number of occasions regarding:

- access to relevant programs for sexual offenders in correctional facilities in order to not frustrate eligibility to parole
- availability and accessibility of parole programs
- biometric reporting for low level risk offenders
- the closure of the male unit at Numinbah Correctional Centre.

Some of these issues were also discussed face to face with the Minister.

In addition, we wrote to the LCA holding that parole decisions in the Northern Territory should not be transferred to Cabinet and should remain with parole boards.

We continue to monitor these issues and will continue to work with the government.

## Transport issues

The Society is concerned with the operation of transport law in Queensland.

We wrote to the Minister for Transport seeking consideration of an amendment to section 78(3) of the *Transport Operations (Road Use) Management Act 1995* to cure what we believed to be the unfair operation of that provision. We also wrote to the Scrutiny of Legislation Committee regarding the Transport and Other Legislation Amendment Bill 2011, raising concerns that the reforms proposed in the Bill were not adequately supported by scientific or empirical evidence in some instances and did not accord to the fundamental legislative principles as defined in the *Legislative Standards Act 1992*.

The Scrutiny of Legislation Committee tabled our submissions in Parliament.

## Improving criminal law practice and procedure

The Society passionately advocates for equitable access to justice.

We wrote to the Attorney-General, noting the success of the Justice Mediation Program as an addition or alternative to conventional resolution of matters before the courts. We also wrote to the Supreme Court in support of the criminal jurisdiction notification procedures as an effective method to streamline trials in the Supreme Court of Queensland.

We continue to work with the government on these issues.

## Weapons Act 1990

The Minister for Police introduced the Weapons Amendment Bill 2011 in May 2011, with the stage one recommendations proposed by the Weapons Review Committee. The Scrutiny of Legislation Committee held an inquiry into the Bill.

We wrote to the committee with our views, including support of the regulation of laser pointers with strength greater than one milliwatt and highlighting that sentencing discretion should be unfettered.

We also participated in the Weapons Review Committee in the last quarter of 2011.

The Bill was passed in November 2011.

## Criminal Organisation Amendment Bill 2011

The Attorney-General introduced the Criminal Organisation Amendment Bill 2011 in October 2011, citing this as priority legislation for the government. The Parliamentary Crime and Misconduct Committee held an inquiry into the Bill.

Despite the extremely short time given to participate, QLS and the Bar Association of Queensland issued a joint submission raising our concerns on various aspects of the Bill, including the inconsistency with fundamental legislative principles, the definition of 'criminal intelligence' and the truncation of the requirement to provide full criminal histories of informants. Unfortunately, no public hearing was convened on this Bill.

The Bill was passed roughly a month after it was introduced.

## Protecting fundamental legal rights

Criminal law advocacy often involves the protection of civil liberties and fundamental legal rights.

We made various submissions on issues such as the payment of interpreters in criminal law proceedings, mandatory sentencing, sentencing double jeopardy and privilege for sexual assault communication to be limited in order for an accused to receive a fair trial.

We will continue to advocate on behalf of the profession for the protection of rights.

## Two-up amendment legislation

The Finance and Administration Committee of the Queensland Parliament held an inquiry into two Bills dealing with legalising the game of two-up on certain days – Charitable and Non-Profit Gaming (Two-up) Amendment Bill 2011 and Criminal Code (Anzac Day Betting) Amendment Bill 2011.

QLS wrote to the committee and also appeared at the public hearing.

Our submission was heavily quoted in the committee's final report and our concern with the definition of 'game' formed part of the committee's recommendations. The Charitable and Non-Profit Gaming (Two-up) Amendment Bill 2011 was passed with amendment in February 2012.

## Moynihan reforms

The vast majority of provisions contained in the *Civil and Criminal Jurisdiction Reform and Modernisation Act 2010* commenced on 1 November 2010. This marked the first stage of implementing the Moynihan report recommendations.

We produced multiple submissions on the Moynihan reforms, including writing to the Director of Public Prosecutions regarding the ex officio indictment process and the Chief Magistrate regarding publication on judgments and the possible recommencement of the roundtable discussion group. We also conducted clinical legal education sessions on the changes to assist practitioners with the new legislation.

We continue to monitor the impact of the changes on the profession and will be involved with Stage Two discussions.

## Aboriginal and Torres Strait Islander issues

The Queensland Murri Court is a court used to sentence Aboriginal and Torres Strait Islanders who choose to plead guilty to offences that are within the jurisdiction of the Magistrates Court of Queensland. The Murri Court holds less formal proceedings and is unique as it allows a variety of groups to inform the sentencing process including elders, community justice groups and the offender's family. However, the Magistrate has the ability to make the final decision.

In March 2011 we made submissions to the Deputy Premier, broadly endorsing the observations and recommendations in the paper *Evaluation of the Queensland Murri Court: Final report* and expressing support for the Murri Court, both as an effective vehicle to curb recidivism among Aboriginal and Torres Strait Islander offenders and as appropriate recognition of Indigenous Australian customs and traditions.

We continue to work with the new state government on this and other issues impacting on Aboriginal and Torres Strait Islander peoples.

# Elder law

## Elder Abuse Issues Paper response

QLS members, concerned about the prevalence of elder abuse in Queensland, launched a joint issues paper with the Public Advocate in June 2010 inviting community and stakeholder feedback.

We prepared a report with recommendations for reducing the incidence of elder abuse in Queensland and submitted it to the Labor Queensland Government for consideration in July 2011.

We continue to monitor this issue and are awaiting a formal response.

## Retirement villages in Queensland

QLS members continue to be perturbed about how the laws governing retirement villages impact upon Queensland seniors.

We participated in a Parliamentary Committee hearing where we outlined critical issues regarding the retrospective application of the proposed new exit fee calculation. We also wrote to the Department of Fair Trading setting out recommendations for the Chief Executive when considering a retirement village scheme as well as recommendations for cooling off periods.

While amendments to the exit fee calculation were passed, the Parliamentary Committee acknowledged our concerns. The Department of Fair Trading also adopted our recommendations for the Chief Executive when considering a retirement village scheme, as well as recommendations for cooling off periods.

## Review of the guardianship laws in Queensland

The Queensland Parliament's Health and Disabilities Committee called for submissions on guardianship laws in Queensland.

QLS wrote to the committee calling for the establishment of a central repository for enduring powers of attorney and advance health directives. We also invited the committee to further consider whether there should be special funding of legal aid for all victims of financial abuse.

We are awaiting confirmation from the Liberal National Party (LNP) Government whether this Review will recommence and whether a final report will be tabled for the new Government.

## Advance health directives

In 2011 the then-Minister for Health invited QLS to make specific submissions in relation to the access of advance health directives (AHD) and enduring powers of attorney (EPA) to attorneys and health care professionals, following the Queensland Parliament's Health and Disabilities Committee's call for submissions on guardianship laws in Queensland.

Our response outlined concerns that the substituted decision making framework is poorly understood and that better education was needed, together with a central online registry for AHDs and EPAs and an update to the forms.

The then-Minister for Health appreciated our views and we continue to monitor this issue.

## Amalgamation of the Office of the Public Advocate and the Office of the Adult Guardian

In 2009 the Labor Queensland Government commissioned a review on the efficiency of government bodies, the Weller Review. The review recommended the amalgamation of the Public Advocate with the Adult Guardian, with the office of Public Advocate to be abolished. The then-Queensland Government supported this recommendation.

We wrote to and met with the then-Attorney-General regarding our concerns with the amalgamation of these two offices.

The Labor Government announced in early 2012 that the Office of Public Advocate and the Office of the Adult Guardian would remain separate. The LNP Government has made the same pledge.

# Equalising opportunities in the law

## Aboriginal and Torres Strait Islander issues

The Australian Government established an Expert Panel on Constitutional Recognition of Indigenous People to provide recommendations on formally recognising Aboriginal and Torres Strait Islander people in the Constitution.

We wrote to the Law Council of Australia highlighting that Preamble change alone is not effective (as has been experienced in Queensland). We also called for adequate funding to resource any meaningful reforms that may stem from constitutional change eg housing, education, health and crime programs.

The QLS submission was quoted in the Law Council of Australia submission to the Expert Panel. The final report of the panel has been released and we continue to monitor national discussion on this issue.

## Consolidation of anti-discrimination laws

As part of Australia's Human Rights Framework, the Commonwealth Government announced the consolidation of all federal anti-discrimination laws (currently spread across five different pieces of legislation). The government issued a discussion paper and sought feedback on this reform.

We wrote to the Law Council of Australia in December 2011 and March 2012 with recommendations for consolidating the anti-discrimination regime. We also met with the Commonwealth Attorney-General and other stakeholders to discuss Queensland-specific issues.

We were substantially quoted in the LCA submissions to the Attorney-General. We will continue to be involved in contributing to this important federal law reform issue.

# Family law

## Domestic and Family Violence Protection Bill

The Labor Queensland Government released an issues paper and draft Domestic and Family Violence Protection Bill.

We provided detailed submissions to the then-Queensland Attorney-General and the Queensland Parliament's Community Affairs Committee recommending several amendments to the Bill.

The Bill was passed in February 2012 with the then-Minister for Community Services and Housing publicly acknowledging QLS for its work in preparing submissions.

## Contact centre review

QLS was invited to make submissions to a review of children's contact centres under family law.

We made detailed submissions, providing recommendations for improving children's contact centre services, including better supervision of changeovers, appropriate employee levels and the establishment of standard protocols.

We continue to monitor this issue.

## Amendments to the *Acts Interpretation Act*

The Commonwealth Attorney-General sought comments on the exposure draft of the *Acts Interpretation Act 1901* (Cth).

QLS considered the proposed amendments and recommended:

- revisions to the definition of calendar month
- parliament not repeal administrative provisions that govern how Acts are repealed and commenced.

The exposure draft of the *Acts Interpretation Act 1901* (Cth) was passed in parliament and came into effect late December 2011.

## Civil Partnerships Bill

The Labor Queensland Government introduced the Civil Partnerships Bill in late October 2011 to provide a statutory recognition of a couple, regardless of gender.

QLS prepared detailed submissions and actively participated in a Parliamentary Committee Hearing. As a result of our performance at the hearing, we were also invited to make a supplementary submission on the Bill.

The then-Queensland Parliament passed the Civil Partnerships Bill in late 2011, with the Act in effect from February 2012. We were also extensively quoted in Parliament. As at May 2012, the current Attorney-General is obtaining legal advice on the effect of a repeal of this legislation.

# Franchising law

## Franchising in Queensland

In late 2010, the then-Shadow Minister David Gibson MP expressed his request in Parliament to consult on the need for franchising reform in Queensland.

QLS met with the then-Shadow Minister and prepared submissions outlining concerns should a state-based franchise code of conduct be introduced in Queensland.

We continue to monitor this issue, following the election of the new government.

## Franchising in South Australia

The South Australian Economic and Finance Committee invited submissions, by a supplementary inquiry, on how changes to the Franchising Code of Conduct addressed the committee's 2008 recommendations.

QLS participated in the supplementary inquiry, observing that most of the recommendations, particularly recommendations of major relevance, have been sufficiently addressed by the recent amendments to the Franchising Code of Conduct. We concluded by noting that all federal and state-based Franchising Inquiries unequivocally acknowledged and accepted the need for a uniform regulatory scheme to apply.

We continue to monitor this issue, particularly following the passing of the *Small Business Commissioner Act (SA)*.

## Franchising in Western Australia

Within three weeks of the Franchising Bill 2010 being defeated in the West Australian Parliament, a near identical bill Franchise Agreements Bill 2011 was introduced in November.

QLS wrote to the West Australian Minister for Finance, Commerce and Small Business, repeating our concerns about introducing a further Code to govern and regulate franchising matters at a State level.

The West Australian Minister wrote to us, reaffirming the West Australian Government's position to oppose state-based reforms in franchising. The Minister also acknowledged, with appreciation, our views on this issue.

## Franchising in New Zealand

The Auckland District Law Society advertised its intention to publish a standard franchise agreement.

QLS wrote to the Auckland District Law Society cautioning against these types of agreements.

We are awaiting a formal response from the Auckland District Law Society.

## Small Business Commissioner Bill (SA)

The Small Business Commissioner Bill 2011 was introduced into the South Australian Parliament.

QLS wrote to the South Australian Project Team and the South Australian Minister for Small Business and Mineral Resources Development raising concerns that the Bill was an attempt to regulate franchising at a state level.

The Bill was amended, prior to passing, requiring stakeholder consultation before proposing amendments to the franchising code at a state level. We wrote to the Minister asking to be considered as a stakeholder.

## Small business disputes – ADR in franchising

The Commonwealth Small Business Minister invited the Society to make submissions on the *Options Paper: Resolution of small business disputes*.

We provided detailed submissions, supporting the proposal for a nationalised, centralised dispute resolution process but advised against instituting a National Small Business Tribunal as it would duplicate existing State and Territory tribunals and result in unnecessary costs and delays.

We are awaiting a formal response from the Minister and continue to monitor this issue.

# Intellectual property

## IP laws amendment Bills

The Federal Government invited submissions and comments on the draft IP Amendment (Raising the Bar) Bill 2011 that aimed to address issues in Australian patent laws.

QLS produced two detailed technical submissions on the Bill primarily concerned with international influence on Australian intellectual property and made recommendations for proper domestic protections.

The Society's submissions were welcomed by the Federal Government and the Bill passed and assented in April 2012.

## The GITC Review

The Queensland Government Chief Procurement Officer invited QLS to make submissions on the GITC (Government Information Technology Communications) Framework Review that aimed to assess streamlining and simplifying the GITC process.

We made detailed technical submissions in response to the Framework Review supporting streamlining processes, revising access thresholds and condensing, where appropriate, relevant terms and conditions.

QLS continues to monitor this issue.

## Collaborations between public and private sectors

The Advisory Council on Intellectual Property (ACIP) invited submissions on collaborations between public and private sectors and the role of intellectual property.

QLS detailed to the government the complex relationships that arise from collaboration, and the code of conduct and analysing the mechanisms for reasonable remuneration for the parties.

We are awaiting a formal response from ACIP and further developments in this area.

# International law

## International issues

QLS is supportive of establishing and maintaining mutually beneficially relationships with legal professional organisations in other countries. We advocate on various issues that impact on fundamental legal issues, such as the rule of law.

In 2011/12 we wrote to:

- Malaysian Bar Council in August 2011 to support it in light of the police reaction to the Bersih rallies. In December 2011, we followed up by expressing our concerns with the introduction of the Peaceful Assembly Bill 2011
- Daini Tokyo Bar Association in relation to the earthquake and tsunami tragedies
- President of Iran calling for the fair and proper treatment of Iranian lawyers
- Department of Attorney-General and Justice regarding the Strongim Gavman Program in Papua New Guinea.

We continue to closely monitor and comment on these important issues.

## Migration issues

The Society has a strong interest in, and has long advocated for, the rights of refugees and asylum seekers.

In 2011/12, we made submissions to the:

- Law Council of Australia in relation to the:
  - Immigration Detention Network
  - Australian Malaysian Asylum Seeker Agreement
  - Migration Amendment (Strengthening the Character Test and Other Provisions) Bill 2011
- Senate Committee on Legal and Constitutional Affairs concerning the:
  - Deterring People Smuggling Bill 2011
  - Migration Amendment (Detention Reform and Procedural Fairness) Bill 2010.

Many of our recommendations and policy positions have been adopted by the LCA in its advocacy on these issues. The Federal Government continues to consult with us on its migration legislative reform agenda. The High Court of Australia struck down the Federal Government's Malaysian Asylum Seeker Agreement.

## Autonomous Sanctions Bill

The Second Reading Speech delivered in the Federal Parliament for the Autonomous Sanctions Bill 2010 states that autonomous sanctions are, "highly targeted measures intended to apply pressure on regimes to end the repression of human rights, to end the repression of democratic freedoms, or to end regionally or internationally destabilising actions."

QLS sent two submissions to the Senate Foreign Affairs, Defence and Trade Committee raising our concerns with the creation of offences, and the lack of preservation of the separation of powers and privilege against self-incrimination in the Autonomous Sanctions Bill 2010.

We were recognised as a relevant stakeholder and invited to attend a Department of Foreign Affairs briefing on the topic of autonomous sanctions. Our submissions were quoted significantly in the Foreign Affairs, Defence and Trade Legislation Committee's report on the Bill in early 2011. We continue to advocate on this issue on behalf of our members.



Advocacy is one of the most important services Queensland Law Society offers the legal profession and general community. At its core, the Society's advocacy is about bringing our members' opinions to the attention of government, the judiciary and the public.

Queensland Law Society Annual Report 2010/11

# Legal costs

## Increasing legal fees in the Queensland Courts

Without consultation, the then-Government provided three business days' notice of an increase of civil filing fees in the Queensland Courts.

QLS quickly sent two submissions to the then-Attorney-General outlining serious concerns about the lack of consultation and the impact the increase would have to access to justice in Queensland Courts. We provided a comparison of fees in comparable jurisdictions throughout Australia, noting that Queensland fees were the highest and called for a suspension of the fee increase, pending a full and thorough review.

We did not receive a response from the then-government and continue to monitor this issue.

# Civil litigation

## New Federal Court Rules

Throughout 2011, QLS was invited to make further submissions on the draft Federal Court Rules.

Following the informative Federal Court seminar, we wrote to Justice Lander, outlining further areas for consideration.

The submissions were well received by Lander J, who adopted our further recommendations which included updates to the Federal Court forms to facilitate witnessing, as well as an amendment to the rules to recognise solicitors and allowing solicitors to file a notice of change of solicitor when the party fails to.

## Updates to the UCPR bulletin

QLS received feedback from its members calling for more guidance on personal service on corporations.

We wrote to the Supreme Court Librarian advocating for amendments to the Uniform Civil Procedure Rules (UCPR) bulletin to include case law examples for r107 of the *Uniform Civil Procedure Rules 1999*.

Following our advocacy on this issue, the UCPR bulletin was amended to include case law examples, which can be accessed at [sclqld.org.au](http://sclqld.org.au) > Qld Judgments > UCPR Bulletin > Rule 107 – Personal service – corporations.

## Uniform model proportionate liability law

The Standing Committee of Attorneys-General (SCAG) Secretariat invited QLS to make submissions on the proposal for a uniform model proportionate liability law.

We wrote to the SCAG Secretariat supporting the proposals for a general prohibition of contracting out of liability as well as supporting an agreement between concurrent wrongdoers regarding the payment of damages.

We are awaiting a formal response from the SCAG Secretariat and continue to monitor this issue.

## Pilot case management practice in the Federal Court

The Federal Court District Registrar wrote to QLS, inviting us to comment on the pilot case management practice for administrative law matters.

In our submissions we called for further clarity as to whether the Docket Judge or the Administrative Law List Judge would be managing administrative law matters, as this had caused some uncertainty for our members in their practices.

We are awaiting a response from the Federal Court.

## Legal Services Commission draft Regulatory Guide on Itemised Bills

QLS has raised concerns with the Legal Services Commission (LSC) about the conflict between the *Legal Profession Act 2004* (Qld) (LPA) and Australian Consumer Law, following the LSC's release of its draft Itemised Bills Regulatory Guide.

In our submissions, we outlined concerns that there are conflicting timeframes under state and federal law for the disclosure of itemised bills. We also noted that while the ambiguity between the operation of the LPA and the *Fair Trading Act 1989* (Qld) has been resolved with section 55 of *Fair Trading Act 1989* (Qld), the ambiguity remains with the Australian Consumer Law, as a mirroring clause does not appear.

The Legal Services Commission released a draft Regulatory Guide on Australian Consumer Law. We will be meeting with the Commissioner on this issue.

## *Federal Judicial Review Act*

The LCA invited QLS to make submissions in relation to the inquiry into the *Federal Judicial Review Act*.

We made detailed submissions to the LCA on discrete issues in relation to the review, offering overall support for ongoing consultation of judicial review and the scope for reform.

QLS continues to monitor this draft legislation.

# Planning and environment law

## Infrastructure charges disputes

The Queensland Government's Infrastructure Charges Taskforce was critical of the way disputes about infrastructure charges were being handled by the Planning and Environment Court, and proposed consideration of the Victorian tribunal process. The taskforce's report also proposed that consideration be given to infrastructure charges being collected at the point of settlement of sale of developed property.

QLS was an active participant in this issue, providing submissions to the Infrastructure Charges Taskforce and the government following release of the report. On the proposal to collect charges at the point of settlement, we cautioned against adding further complexity to the conveyancing process without a detailed and proper analysis. In doing so we were keen to point out that buyers would require some mechanism to obtain comfort that any necessary charges had, in fact, been paid.

In relation to the criticism of the Planning and Environment Court, we defended the court, noting that its heavy use of ADR at an early stage was a successful ground breaking initiative. We were of the view that the Court's active management of appeals was exemplary and noted that it achieved a 124.5% clearance rate of matters in 2010/11. We also noted that in Victoria there are calls for the establishment of a Queensland-style Planning and Environment Court.

The then-Queensland Government was attentive to QLS' concerns and took our views into account in its further development of policy following the taskforce's report. The issues we raised with respect to the payment at settlement of infrastructure charges was acknowledged as an important issue and prompted consideration of other mechanisms to achieve the overall desired policy result.

We will continue to be vigilant on these issues.

## Greentape reduction

The Queensland Government formed a greentape reduction project to better streamline the handling of resources and environmental approvals and other matters.

The Society was a significant contributor to this policy initiative and provided submissions at an early stage of policy development, attended meetings and finally submitted on the Bill tabled in Parliament when it came before a Parliamentary portfolio committee.

In numerous submissions we generally supported greentape reduction and streamlining, but could not support any measures which reduced transparency, accountability or access to justice. In particular we did not support any reduction in the jurisdiction of the Planning and Environment Court. We offered a number of practical solutions to reduce greentape, through better training of government officers on the sound drafting of conditions, improving existing forms and providing better access to information through websites. We also proposed that regulation changes to requirements such as evidencing State resource entitlements could be of significant benefit.

We are broadly supportive of the Greentape Reduction Bill, but noted that there were many drafting errors and unintended consequences which arose from the draft. Ultimately, the Bill was not progressed by the government prior to the State election and it lapsed.

## Planning reforms

The Queensland Government introduced a Bill into Parliament in October 2011 to make amendments to the *Sustainable Planning Act 2009* in a number of areas, in particular dealing with urban encroachment and repealing the legislation which dealt particularly with the Milton brewery and also with the Ministerial call-in of development applications.

QLS' submission to the Parliamentary Transport and Local Government Committee on the legislation raised a number of drafting issues with the Bill. These concerns included drawing attention to the wide Ministerial discretion about the re-starting point following a call-in, the onerously restricted period for submissions to be lodged in a call-in (five days) and that the Minister could ignore the normal assessment and decision provisions on a matter called in. We also commented on the urban encroachment provisions, noting that they would have been improved by some public consultation and would in many respects not achieve their stated purpose given the drafting employed.

Our recommendations were noted by the relevant committee and acknowledged in its report. They were not adopted at this stage but we will continue to advocate for reform of the current planning system.

## Strategic cropping land

With the advent of exploration for coal seam gas and geothermal energy in agricultural land, the Queensland Government embarked upon an initiative to identify and preserve strategic cropping land. QLS was a significant stakeholder in the initial parts of the process but as the political debate on the issue intensified, input of external stakeholders was wound back. The government hastily tabled the resultant Bill and the Parliamentary Environment, Agriculture, Resources and Energy Committee could only provide five business days for public submissions.

We prepared, with some note of concern at the expedited timeframes, a submission on the Strategic Cropping Land Bill 2011. We could not provide a view on the underlying policy of the Bill but provided comment on the drafting issues, unintended consequences and compliance with fundamental legislative principles. We raised concern about matters including the trigger mapping approach to the definition of 'strategic cropping land', the handling of potential strategic cropping land and the nature of the definitions of 'permanent impact' and 'temporary impact' being contrary to the ordinary understanding of those terms.

The resultant Bill was passed by parliament, subject to a number of errors we identified as requiring amendment. We will continue to advocate for clarity and certainty in legislation on this substantive issue.

# Property law

## Suspension of Time Clause

During the flood and cyclone events of early 2011 there were a number of distressing circumstances reported to the Society relating to residential property sales. We were advised of circumstances where parties had taken advantage of the disruption caused to benefit their own positions. In declining extensions or terminating agreements, parties were usually always within their legal rights but perhaps not within the spirit of the times.

Arising from the disruption caused to residential property sales, we thought it appropriate that a limited suspension of time clause should be added to the standard REIQ conveyancing contracts. We advocated for and drafted such a clause that was set to operate only in cases of natural calamity – not to deal with the damage to a property for sale, but rather to provide a suspension of time until the external disruption was overcome.

After a process of some revision and negotiation with the Real Estate Institute of Queensland, the limited suspension of time clause was released in the updated versions of the standard conveyancing contracts made available in early December 2011.

## Land Sales Act reform

QLS has actively sought a review of the *Land Sales Act 1984* for some time, noting that elements of the disclosure requirements and procedural requirements are now significantly outdated.

We made a number of submissions and attended consultation sessions with the government on reform of the Act, including taking part in a stakeholder group on the subject. We sought a number of revisions to make it more accessible and complementary with other legislation. In particular we raised the issue of a loophole in the sunset provisions for providing a registrable instrument to a prospective purchaser in an off-the-plan development.

Work on the revision of the *Land Sales Act 1984* is ongoing and we will continue to strongly advocate for appropriate reform of this legislation. The issue of the loophole in the sunset provisions was amended by the government, in the terms we proposed, in a late amendment to the Sustainable Planning and Other Legislation Amendment Bill 2011 passed by Parliament on 15 February 2012.

## Body corporate reforms – two-lot schemes

As a part of the legislation to amend lot entitlements in body corporates passed by parliament in early 2011, provisions were also included to facilitate a two-lot scheme. The government took some time developing the two-lot module to accompany these provisions.

QLS was consulted on the module to give effect to the two-lot scheme provisions and also the forms to accompany the instrument. We raised a number of concerns with elements of the proposal noting that there were many complexities in coming to an evidencing agreements and financial management when there were only two parties forming a body corporate and generally they do not have the assistance of a body corporate manager. Additionally, we raised concerns about the issue of notices and information certificates in such schemes.

Following consultation on the module and meetings with department officers, a number of changes were made to the module which was made by regulation at the end of December 2011. There were, however, some important issues we raised which were not adopted and we will continue to advocate for further refinement in this area.

## Split of the *Property Agents and Motor Dealers Act 2000*

The Queensland Government was intent on passing legislation to split the *Property Agents and Motor Dealers Act 2000* into its constituent parts in apprehension of the national licensing reform of real estate agents. Legislation was tabled in parliament and referred to the Parliamentary Legal Affairs, Police, Corrective Services and Emergency Services Committee.

QLS made a submission to the committee review of the Bills, accepting their limited objective but calling for some reconsideration of the provisions which regulated the formation of residential property sales contracts. These provisions had been amended in 2010 on our advice, but we were of the view that those reforms had not dealt with the necessary issues, such as providing certainty around options to purchase, the need to provide sales disclosure to corporations or other sophisticated parties and the lack of requirement for a vendor to return the contract to a buyer after signing to trigger the cooling off period.

We appeared as the first witness at the first public inquiry held by the committee to press this case.

The committee acknowledged our concerns in its report and agreed that some further consideration of the formation of residential sales contracts was needed. The report informed the LNP's policy on the reform of residential conveyancing which was subsequently translated into an election commitment. We will continue to pursue appropriate reform in this area with the LNP Government.

## Neighbourhood disputes legislation

Following consultation about issues which caused the greatest conflict between neighbours, the Queensland Government announced that it would legislate to replace the *Dividing Fences Act 1953* and deal with obligations and disputes about trees.

QLS committed to the process of forming the Neighbourhood Disputes Resolution Bill 2011 and provided submissions to the government and the Opposition about issues with the draft. In particular, we raised concerns about:

- liability when the legislation obliges a former owner to enter a property to conduct work
- the inability of a failure of disclosure about a tree order or application to remedy once a sale contract on a property has been signed
- how a party who is legislatively joined to a tree application in QCAT by signing a contract to buy a property withdraws if they do not proceed to settlement.

The issues we raised were included in parliamentary debate. Additionally, we have continued to advocate for both improvement of the Act and appropriate levels of resources being dedicated to processing search applications for tree orders. We advocated to the former government for resources to be applied to permit searches to be effected by the QCAT registry in a timely way, or preferably for that information to be available through a facility comparable to the State Courts' e-courts website.

## Development of electronic conveyancing

For some years now an electronic national system for effecting a property settlement has been progressed. The Society has been an active participant on this issue on behalf of members since 2005. In 2010 National Electronic Conveyancing Development Limited (NECDL) was formed to build the new national system and the Australian Registrar's National Electronic Conveyancing Council (ARNECC) was established to be the regulator of the new industry.

We have continued to be an active and important stakeholder for the development of an electronic settlement system and welcomed the announcement of the name of the new system, PEXA (Property Exchange Australia). We have also been active at a policy level on the development of requirements for client identification and who should have access and rights to electronically sign documents in the new system.

Our submissions were welcomed by NECDL on consultation issues and were relied upon in work on a client identification standard for users of the new system. On our recommendation, proposed requirements for the cross-checking of Australian Government identity documents with government databases was not progressed as this would have placed too great an impost on the resources of legal practices for very little fraud reduction outcome. Additionally, we were successful in settling a position for the legal profession that only solicitors should be empowered to electronically sign documents in the new system. This position was adopted by the Queensland Titles Registry.

In 2011 over 94% of  
Queensland Solicitors  
were members of  
Queensland Law Society.

# Revenue law

## Aggregation of dutiable transactions

Members have expressed concern about the complexity of aggregation rules for property transactions as well as how duty is apportioned when a collection of unrelated party aggregated transactions are submitted for Commissioner assessment at the one time.

We continued to liaise on a regular and ongoing basis with the Office of State Revenue (OSR) on issues of concern to members. Compliance with aggregation rules were discussed widely with the OSR as one of the most pressing issues for self-assessors arising from audit activities. We have called for greater assistance for members and reliable advisory material to help them manage these transactions.

We have also provided submissions on the processing of unrelated party aggregated transactions to ensure that there is an equitable division of payable duty between all parties.

The OSR responded positively to our concerns and published significant aggregation materials and assistance tools on its website members which include an interactive decision tree. The decision tree permits solicitors to answer a series of questions relating to their transaction and ultimately provides advice on the treatment of the transaction in a form which can be retained and subsequently relied upon.

In addition, the OSR acknowledged our concerns about the apportionment of duty in unrelated party aggregated transactions and is working on a new process to approach these circumstances differently to ensure a more predictable result.

## OSR information notice request

The Society became aware of notices issued by the OSR to a number of firms, requesting information under section 87 of the *Taxation Administration Act 2001*. The notice provided firms with approximately 14 days to provide information about unit trusts operating businesses in Queensland who had engaged the firm to act for them.

Following some initial communication, we wrote to the Commissioner for State Revenue in December 2011 expressing our concern about the very broad scope of the notice and our members' inability to comply fully given the volume of information required. It was noted that after contacting senior officers at the OSR, we were assured of a willingness to negotiate a response for subject firms, such as provision of an extension of time to comply, or reduction in scope. While grateful for this assistance, we doubted whether this approach would truly overcome concerns about validity, compliance and client confidentiality issues.

Accordingly, we called for compliance with the notice to be formally held in abeyance pending a meeting between representatives of the Society and the OSR Complex Investigations and Enforcement Unit to identify the exact nature of information which is sought and a reasonable and effective request to enable compliance. Ultimately, we submitted that the best way forward would be for the previous notices to be withdrawn and a new notice substituted, after negotiation with the profession.

Following this submission, representatives of the Society met with the Commissioner for State Revenue, his Deputy Commissioner and the Director of the Complex Investigations Unit. At the meeting, the OSR indicated again that they were willing to negotiate directly with any concerned firms about compliance with the notice.

The substance of the meeting with the OSR was relayed to the profession and members were reminded that obligations as to client confidentiality are set out in rule 3 of the *Legal Profession (Solicitors) Rule 2007* which provides that confidential information must never be disclosed unless authorised by the client or permitted or compelled by law to be disclosed. Disclosure would only be permitted where a valid and lawful notice compels such disclosure. Regard should also be had to safeguarding client legal professional privilege.

We continued to negotiate with the OSR on the terms of the notice and also raised the issue with the Treasurer following the State election. Many firms were able to reach a negotiated position with the OSR which enabled them to comply with the terms of an amended request.

# Legal practice

## Pre-admission practical legal training

QLS identified that:

- There is a growing perception among principals of legal practices that newly admitted solicitors are not prepared for legal practice. Many smaller and regional firms find themselves unable to provide the required post-admission practical legal training required by newly admitted solicitors and consequently choose only to engage already experienced practitioners.
- There is a significant trend of recently admitted solicitors leaving the profession within a short period following commencing legal practice. The Society believes this is, in part, symptomatic of newly admitted solicitors not being prepared for legal practice.

We compiled a substantive and strong submission to the Australasian Professional Legal Education Council (APLEC) for consideration in their review of practical legal training course competencies.

We continue to advocate for and practically support junior solicitors to ensure they are provided with the skills and competencies to successfully deal with legal practice.

# Succession law

## Probate delays

QLS has observed increased delays in relation to probate applications.

Following concerns from our members, we made submissions to the Chief Justice of the Supreme Court of Queensland outlining concerns following probate delays and the impact on the legal profession and the wider community.

We received a detailed response from the Chief Justice and have been working with the Probate Department to reduce the turnaround times for Probate.

## Public Trustee unclaimed monies searches

The Public Trustee of Queensland website removed the online unclaimed monies search facility requiring parties to conduct services on-site.

Following concerns from our Northern Queensland members, we wrote to the Public Trustee calling for a reinstatement of the online unclaimed monies search facility, noting the difficulties it poses to rural and regional practitioners.

As a result of our advocacy, the online unclaimed monies search facility was reinstated on the Public Trustee website.

## Review of the Justice of the Peace framework

The Hon. Mark Ryan MP invited the Society to undertake a review of the Justice of the Peace framework.

We provided detailed submissions outlining concerns about the witnessing and identification requirements and supporting the Queensland Law Reform Commission's (QLRC) call for reform in this area. In particular that JPs (qualified) and the Commissioner for Declarations (Cdecs) not be authorised to witness enduring powers of attorney and advance health directives.

With the election of the new government, we continue to monitor this issue.

# Advocacy relationships

## The courts

QLS has worked to build a strong link between the courts and the Queensland legal profession.

Throughout 2011 and 2012, we continued our participation in Court User Reference Group meetings and supported the continuance of the Supreme Court Access Cards program for Queensland legal practitioners. We have also provided commentary to the courts on the Future Courts Program and streamlining court processes.

Following promotion in QLS publications, the courts have received an overwhelming number of applications for the court access cards. As a result, the pilot trial has become a permanent feature in the courts, allowing our members ease of access to the District and Supreme Courts of Queensland in Brisbane.

## The judiciary

QLS seeks to foster a strong relationship between the judiciary and the Queensland legal profession.

We have held consultations with the judiciary on a number of key issues relating to litigation, court processes and practice directions. As part of our relationship-building strategy, we also hosted and attended a number of high profile functions through our professional development program as a platform for our members to meet and discuss legal issues with the judiciary.

We continue to meet and consult with the judiciary on court procedure issues that impact upon our members, the legal profession and the community.

## Regulators

QLS welcomes and strives for joint collaboration and consultation with regulators to ensure a strong link to the legal community and facilitate compliance throughout the legal profession.

We have maintained close relationships with the Office of State Revenue, the Titles Office, the Legal Services Commission, the Office of Fair Trading, the Australian Securities and Investments Commission and the State Valuer-General.

We continue to consult with the Australian Competition and Consumer Commission on relevant law. Close liaison with regulators has allowed us to be responsive to issues such as audits of self-assessors for duties purposes and trade practices concerns, and to work together for the benefit of our members and the community.

## International bodies

QLS strives to:

- build prospective and mutually beneficial relationships, both nationally and internationally
- promote the rule of law
- internationalise the Queensland legal profession
- build and maintain a positive reputation among international legal and business communities so we can better advocate for members.

To further these objectives, we have:

- liaised with international law societies and Bar associations
- facilitated and attended briefings with the Department of Foreign Affairs and Trade on the topics of consular advice and autonomous sanctions
- been actively involved in the Chinese Lawyer Exchange, an initiative of the Federal Government.

We have settled and executed a memorandum of understanding between QLS and the Law Society of Hong Kong for mutual exchange within our jurisdictions. We continue to work with LAWASIA, the Law Council of Australia and the South Pacific Lawyers' Association to build relationships with other international bodies.

## Law Council of Australia and interstate colleagues

QLS is a constituent body of the Law Council of Australia (LCA).

During the year, we actively participated in several policy lawyer teleconferences and sent a delegation to attend the inaugural LCA National Policy Lawyers Face-to-Face meeting in Sydney.

As a constituent body, we frequently contribute to LCA submissions.

Our views were adopted in a number of LCA submissions on various topics and we have been an active and integral participant on many working parties.

## Lexon risk management team

Lexon provides legal professional indemnity insurance for the majority of practising Queensland solicitors and strives to reduce the risks of liability claims. QLS is keen to help Lexon minimise claims for the benefit of all QLS members.

We have regular policy meetings with Lexon to brief them on developing issues and coming reforms which may expose the legal profession to risks of claims. We also provide information to Lexon to help assess impending risks and inform legal practitioners.

We have worked closely with Lexon to produce informative and timely risk management and practice advice to the profession.

## Aboriginal and Torres Strait Islander law students

QLS is keen to encourage Aboriginal and Torres Strait Islander law students to enter the legal profession by highlighting the variety of career options that legal practice provides.

We have continued for a number of years to coordinate the LawLink program which connects current studying Aboriginal and Torres Strait Islander law students with legal professionals through firm and court visits.

We will continue to encourage these students to see a career in the legal profession as an open, attainable and rewarding career path.

## Bar Association of Queensland

There are many issues that are mutually relevant to both barristers and solicitors.

QLS has collaborated with the Bar Association of Queensland to make joint submissions on relevant issues, mostly relating to criminal law and human rights issues, such as the *Criminal Organisation Act*.

We have a strong relationship with the association and continue to work on issues that represent the concerns of all members of the legal profession.

# Acknowledgement and thanks

Queensland Law Society is focused on protecting the welfare of the profession and community regarding current public issues, state government Bills and potential areas of law reform. Our 27 committees are the policy backbone of the organisation and the reason why we have a lengthy history of successfully influencing legislative outcomes. We appreciate the contribution of every committee member.

Society members are welcome to put themselves forward and nominate for a committee, or to raise and discuss issues that affect their practice areas with these senior specialists and representatives.

## For more information

1300 FOR QLS (1300 367 757)  
[info@qls.com.au](mailto:info@qls.com.au) | [qls.com.au](http://qls.com.au)

Queensland Law Society  
Law Society House  
179 Ann Street, Brisbane Qld 4000  
1300 FOR QLS (1300 367 757)

>> [qls.com.au](http://qls.com.au)