

Access to Justice Scorecard Report

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1. Introduction

The Access to Justice Scorecard is an initiative of Queensland Law Society's Access to Justice and Pro Bono Law Committee.

It aims to:

- acknowledge and celebrate access to justice achievements, including those often taken for granted in a society that has a strong rule of law
- identify where improvement is necessary
- offer solutions to overcome identified access to justice barriers
- engage and promote broader legal profession and community interest in access to justice issues.

The scorecard has been compiled using the results of a survey which gauged the view of the legal profession about the state of access to justice in Queensland.

This provides an overview of:

- the operation of laws and their success in achieving fair and intended outcomes
- legal services available to those who cannot afford private representation, including facilitating access to existing services
- expanding services to provide legal help to Queenslanders when they need it and in areas of law that lack appropriate service levels.

2. Overview of survey questions asked and responses received

Launched in June 2013, the survey sought responses to 12 questions relating to:

- the operation of laws in Queensland as well as federal laws
- access to forums for the quick, fair and cost-effective resolution of disputes
- legal assistance offered across private, government, publicly-funded and pro bono services.

The open-ended nature of the questions (rather than questions framed around multiple-choice responses or responses within a specified range) invited survey respondents to give direct and descriptive feedback about the state of access to justice in Queensland as they have experienced it.

Queensland Law Society's Access to Justice and Pro Bono Law Committee distributed the survey to:

- Queensland Law Society members
- other Queensland Law Society committees
- Queensland Association of Independent Legal Services (QPILCH) and its members
- District law associations.

The survey was circulated directly to members by publication in the June 2013 edition of Queensland Law Society's *Proctor* magazine and also published on Queensland Law Society's website (qls.com.au). Throughout June and July 2013, members were invited to complete the survey in the weekly e-newsletter, *QLS Update*.

The Access to Justice Scorecard survey received 38 responses from a wide variety of legal profession sectors including private practice lawyers, community legal centres and government, as well as anonymous respondents.

The report that follows below summarises the responses received from participants. It reflects the views of the respondents and not necessarily the views of Queensland Law Society.

3. Laws that are fair

3.1. Examples of good laws in operation

The majority of survey respondents considered that employment, family, consumer, criminal (particularly laws relating to issues such as the right to silence and the burden of proof) and personal injuries laws generally operate in a fair manner and strike a balance between the competing interests of those the legislation affects. However, while these laws may be fair, a number of respondents considered that the application of, or access to, such laws did not always operate in a fair manner (for example, where there are difficulties in accessing funding for legal representation).

A number of survey respondents considered that, as an overarching piece of legislation in respect to civil litigation, the *Uniform Civil Procedure Rules 1999*, achieves its philosophy which is articulated in Rule 5.¹

In the state sector, a number of survey respondents see the Queensland Civil and Administrative Tribunal and access to early conciliation/alternative dispute resolution, as fair in facilitating access to justice.

3.2. Examples of laws which operate unfairly

While survey respondents identified a broad range of areas in which they consider laws operate fairly, 82% of survey respondents had experienced a law that they considered operated unfairly. The overwhelming majority of these experiences were in the criminal and family law spheres.

Examples in the criminal arena included:

- the Moynihan reforms denying a defendant a right of cross-examination at the committal stage and thereby possibly delaying the disposal of cases without merit
- the subjective nature of some police powers, such as those attaching to public nuisance and obstructing police offences
- mandatory sentencing/mandatory disqualification laws
- cross-examination of vulnerable witnesses by a self-represented accused
- the imposition of the offender levy
- legislation in respect to dangerous prisoners and/or sexual offenders.

Although generally striking a balance, some survey respondents consider that family law legislation is still lagging behind with respect to domestic violence. The responses elicited a real tension between a victim proving domestic violence on the one hand and, on the other, an accused acquiescing to an allegation and the use of such an acquiescence in subsequent family law proceedings.

One interesting response pertained to what is considered expansive and archaic legislation in respect to charities in Queensland. A survey respondent considered it essential that the legislature review the laws to streamline it and bring it in line with contemporary issues.

Footnote:

¹ **5 Philosophy—overriding obligations of parties and court**

(1) The purpose of these rules is to facilitate the just and expeditious resolution of the real issues in civil proceedings at a minimum of expense.

(2) Accordingly, these rules are to be applied by the courts with the objective of avoiding undue delay, expense and technicality and facilitating the purpose of these rules.

(3) In a proceeding in a court, a party impliedly undertakes to the court and to the other parties to proceed in an expeditious way.

(4) The court may impose appropriate sanctions if a party does not comply with these rules or an order of the court.

Example—

The court may dismiss a proceeding or impose a sanction as to costs, if, in breach of the implied undertaking, a plaintiff fails to proceed as required by these rules or an order of the court.

The following issues were also identified by stand-alone respondents:

- adequate protection not being afforded for residents and consumers falling within the ambit of the *Retirement Villages Act 1999* and *Manufactured Homes (Residential Parks) Act 2003*
- legislation in respect to debt recovery being inadequate and unfair, with largely unregulated debt collectors often commencing proceedings in jurisdictions as a matter of convenience and which bear no association with the debt (effectively forum shopping). This respondent considers that the Queensland legislature needs to look to its Victorian counterpart to address this inadequacy
- the rules pertaining to security for costs often operate to deny an individual access to justice
- the *Native Title Act 1993* serving to enlarge, rather than narrow, the scope of issues an applicant faces
- inconsistency in the operation of the supervised case list in the Supreme Court in comparison to its Federal Court equivalent.

3.3. Summary

Survey respondents consider that laws generally operate fairly, yet it was felt that there are aspects of various laws which are yet to strike the right balance. Perhaps most telling was the experience of a number of survey respondents that, no matter how fair a law is, the application of the law and access to advice in respect to the law and/or justice was left wanting for those without sustainable financial means.

“There are aspects of various laws which are yet to strike the right balance.”

4. Access to dispute resolution

4.1. Do Queenslanders have access to appropriate forums?

Survey respondents were fairly evenly split on the issue of whether people in our state have access to dispute resolution when they need it. The survey found that 47% of respondents considered that there is access to appropriate ways to resolve disputes, with 53% disagreeing.

4.2. Are there any dispute resolution initiatives working particularly well?

Many respondents generally identified the Queensland Civil and Administrative Tribunal (QCAT) as a strength of the Queensland justice system.

The other feature of our system that was positively regarded is access to alternative dispute resolution across a broad spectrum of legal problems including:

- family dispute resolution
- the dispute resolution program of the Department of Justice and Attorney-General for civil matters
- the pro bono mediation program offered by QPILCH
- case conferencing in criminal law proceedings (although there were mixed views on the success of this)
- the body corporate mediation scheme
- youth justice conferencing
- justice mediation
- compulsory conferences in personal injuries cases
- conciliation and mediation that is part of other court and tribunal processes.

4.3. Are there any gaps in access to dispute resolution?

Some survey respondents identified that specialist courts such as the Murri Court had played an important role, and that closing those courts had created a gap. Survey respondents highlighted that recent restrictions in the ability to access youth justice conferencing may be creating some gaps.

It was observed that for the court system, filing fees and complying with court procedures imposed a barrier for many. Similarly, costs can impose a barrier on access to mediation.

4.4. Summary

Lawyers see QCAT and alternatives to the traditional court system as positives that enhance access to justice. However, there continue to be cost and process barriers for people who need to access the courts.

5. Access to legal help

5.1. Do Queenslanders have reasonable access to legal help when needed?

“74% of survey respondents believed that Queenslanders do not have reasonable access to legal help when they need it, and 89% identified gaps in access.”

Almost three quarters (74%) of survey respondents believed that Queenslanders do not have reasonable access to legal help when they need it, and 89% identified gaps in access. While 71% of respondents are able to point to initiatives that are working well to provide access to legal services, 95% also identified barriers to access.

5.2. Are there any legal help initiatives working particularly well?

There are a number of positive initiatives that assist Queenslanders to access legal help when they need it. Survey respondents pointed to collaboration between Legal Aid Queensland, community legal centres, pro bono services and the private profession that had made a real difference to access to legal help. Particular initiatives that were mentioned as working well were:

- duty lawyer services and outreach legal advice clinics
- self-representation services coordinated byQPILCH
- Aboriginal and Torres Strait Islander Women’s Legal and Advocacy Service
- the availability of online legal and court information.

5.3. Are there any barriers to access to legal help?

The key barriers to accessing legal services identified were:

- the affordability of legal help and lack of legal assistance funding, particularly for full representation
- lack of awareness in the community about legal help that is available.

“Legal aid is restricted to people of very limited means in only a few areas of law.”

Survey respondents noted that there is reasonable access to legal help in civil cases where a significant sum of money is recoverable (for example, personal injuries cases). However there are many cases where important rights are at stake (for example, child protection, guardianship, mental health and domestic violence) where no money is claimed where many people will be unable to access legal help. Defendants also have difficulty accessing legal help, even if the claim against them has no merit.

Survey respondents noted that legal aid is restricted to people of very limited means in only a few areas of law. This means that people with some means are not eligible for legal aid and cannot get legal representation, yet their financial position is such that they are not able to afford the legal costs of continuing specialist representation in court.

Restrictive legal aid guidelines also mean that there are many important legal areas where aid is not available and the merit test can be used to refuse legal aid, even where there is a clear need for legal representation (for example, complex family law cases for a parent with a mental illness).

Survey respondents noted that community legal centres provide a valuable service to many people, but their resources do not always permit them to provide in-depth assistance when it is needed.

The survey identified barriers to access to legal help for some groups who may have greater need for legal services including:

- Aboriginal and Torres Strait Islander people, particularly women or those living in remote locations
- people living in rural and remote locations where there are insufficient services
- older Queenslanders
- people with disability or illness, particularly those with a mental illness
- people from culturally and linguistically diverse backgrounds.

Several respondents noted that small business owners do not access legal help at an early stage, and that this often caused additional problems later.

It was acknowledged that self-representation is possible for many legal matters, however survey respondents noted that many people lack the skills to self-represent, or they have matters in courts with complex rules and procedures where self-representation is extremely difficult.

Some respondents identified that lawyers could assist in overcoming the access problem by addressing misunderstandings and uncertainty that clients have with respect to legal fees. Others suggested that Legal Aid Queensland should focus its activities so that more was spent on the delivery of services. Survey responses also demonstrated that service delivery for Aboriginal and Torres Strait Islander people is challenging, and that there is a need for better support in this area.

A process barrier was identified, namely the lack of a class action regime in Queensland. It was also noted that there is a significant gap in legal assistance for public interest matters including test cases and environmental protection cases.

5.4. Summary

There are significant barriers to accessing legal services, particularly representation in complex matters, class actions and matters within the protectionist jurisdiction (for example, family law, guardianship, mental health and domestic violence), where no money is being claimed but there is potentially a significant impact on a person's rights and liberties. A significant number of Queenslanders fall outside the legal aid means test, yet are unable to afford the costs of continuing specialist legal representation.

“Community legal centres provide a valuable service to many people, but their resources do not always permit in-depth assistance when it is needed.”

6. Ideas to improve access to justice

6.1. What is the one thing that could improve access to justice in Queensland?

Over 40% of survey respondents considered that the primary action that could improve access to justice in Queensland is a change in the funding of Legal Aid Queensland and community legal centres. Many survey respondents commented simply that funding needs to be increased while others also suggested that it should be more focused. A few survey respondents suggested that the nature of Legal Aid Queensland funding could be reviewed so that funds can be provided for a wider variety of matters.

Some survey respondents also called for increased resourcing including additional appointments to the bench and better paid and qualified adjudicators in minor civil matters. Others suggested improvements in the duty lawyer system (for example, allowing public defenders to manage case loads). There were also a number of survey respondents who thought that it would be beneficial to reintroduce (or introduce more) specialist or diversionary courts and services. As well as a general call for the reintroduction of such courts and services, there was particular mention of:

- expanding the self-representation civil law service into every court in Queensland
- more women's legal services for family law issues.

Some survey respondents suggested that access to justice could be improved if all sectors (government, pro bono, community legal centres, Aboriginal and Torres Strait Islander Legal Services, Queensland Law Society and the Bar Association of Queensland) worked better together to address identified legal need in a coordinated and consultative way.

Other survey respondents referred to issues around accessibility to justice including use of plain English in all notices and documents and creating fact sheets about justice processes and the different organisations to contact for help.

6.2. Who should be responsible for doing this?

Given the focus on funding, most survey respondents suggested that the government (particularly the state government) is responsible for improving access to justice in Queensland.

6.3. Summary

The responses indicated that increased funding of Legal Aid Queensland and the community legal centre sector and resourcing of the justice system could improve access to justice in Queensland. However, such increased funding and resourcing should not be undertaken in a vacuum and steps should be taken to review the efficacy of the current schemes and to consider strategies to ensure that all sectors of the justice system are working together to effectively address unmet legal need.

7. Queensland access to justice score

7.1. Rating Queensland on a scale of 1-10

“The average score for Queensland’s access to justice was 5.4 out of 10.”

Queensland lawyers have mixed views about how well access to justice is being achieved in our state, as evidenced by these scores.

Access to justice score	Percentage of responses
7-10	37%
5-6	34%
4 or less	29%

(Scale of 1 to 10, where 10 is the most effective.)

The average score across all respondents was 5.4 out of 10.

Survey respondents identified access to continuing specialist legal help, particularly for vulnerable and low income groups, and a perception of reductions in funding of community legal services, as being considerations influencing the score. Some survey respondents identified that, in particular, disadvantaged people and people with low incomes still have little effective access to justice. On the other hand, some survey respondents acknowledged some good resources and initiatives in place in this state (while noting that there is room for improvement).

8. Conclusion

The Access to Justice Scorecard survey has identified that more than half the survey respondents consider that barriers exist to access to justice by Queenslanders. These barriers include the sometimes unfair implementation and enforcement of laws, and the costs associated with litigating rights through the court system. Unfair outcomes were reported predominantly in criminal and family law matters, including as a result of recent reforms (such as the removal of diversionary strategies including specialist courts, and the Moynihan reforms in the criminal justice system).

Survey respondents perceived that forums like the Queensland Civil and Administrative Tribunal and early conciliation and alternative dispute resolution processes have improved access to justice and allowed parties to ventilate and resolve disputes.

However, a gap remains between qualification for legal aid and the ability to access legal representation, particularly in complex matters to pursue legal rights, other than for the recovery of a sum of money (for example, to defend criminal proceedings, to resolve family law issues about children, to seek protection from violence or to defend unmeritorious civil claims).

Increased funding of Legal Aid Queensland and community legal centres to improve the range of services offered and the provision of those services to more people, was seen as necessary for improving access to justice in Queensland. Survey respondents also suggested that in tandem with increased funding, steps should be taken to ensure legal service providers are able to effectively deliver their services, including addressing the rising needs of the community.

The outcomes of the survey are intended to highlight areas for improving access to legal help. Overall, these results demonstrate that:

- Queensland solicitors embrace efficient low cost options for access to justice, through strong support for alternative dispute resolution and effective, accessible tribunals
- filling the access to justice gap requires effort from:
 - government – to adequately fund legal assistance
 - legal assistance providers – to work collaboratively to make sure that the funds are used as efficiently as possible to deliver services
 - the private profession – to continue to support low cost, efficient ways to resolve disputes
- increased collaboration is needed between government, community legal centres, private practitioners and pro bono practitioners to ensure Queenslanders make the most use of services already available.

For more information on the Access to Justice Scorecard:

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