



# Access to Justice Scorecard

Evaluating access to justice in Queensland

2016 Data Analysis and Report



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# Introduction

Since 2013, the Queensland Law Society (through its Access to Justice and Pro Bono Law Committee) has conducted an annual survey of lawyers to gauge their views about the state of access to justice in Queensland.

Known as the Access to Justice Scorecard, the survey asks a series of questions about lawyers' perceptions of how fair Queensland laws are and whether the laws achieve their intended purpose.

The Scorecard aims to produce an annual snapshot of the state of play of access to justice from the perspective of lawyers who are well acquainted with Queensland laws, legal processes and dispute resolution forums, and whose clients seek swift and fair resolution of their legal problems. The survey also 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 improvements are necessary;
- Offer solutions to overcome identified access to justice barriers; and
- Engage with and promote to the broader legal profession and community, interest in access to justice issues.

This report details the findings of the 2016 Scorecard. In addition to analysing the 2016 data, it also makes some cross-year findings to reveal an emerging longitudinal picture of Queensland lawyers' perceptions of access to justice in their state.

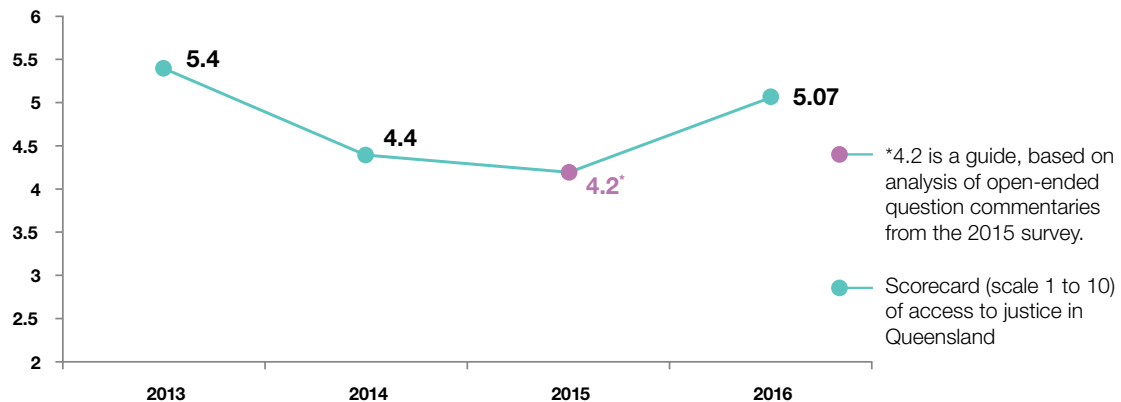
The Queensland Law Society, through its Access to Justice and Pro Bono Law Committee, hopes to use the results of this survey to inform its advocacy and lobbying on access to justice issues, and lead meaningful change to increase Queenslanders' access to justice.

The Queensland Law Society thanks the lawyers who took the time to respond to the 2016 survey. The Society would also like to thank members of the Access to Justice and Pro Bono Law Committee for their dedication in raising the profile of access to justice concerns in Queensland.

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# Executive summary

Each year the survey asks respondents to individually rate (on an increasing scale from 1 to 10) the state of access to justice in Queensland. In 2016, the scorecard was 5.07, a marginal increase from 4.4 in 2014 and a slight decrease from 5.4 in 2013. In 2015 a numerical score was not generated. For the purpose of a longitudinal view, a score of 4.2 was assigned through analysis of the details given in the open-ended question replies from the 2015 survey. The emerging longitudinal picture of lawyers' scorecard on access to justice in Queensland is visually represented in graph 1:



The findings of the 2016 survey revealed a number of overarching themes, some of which are consistent with previous years. In 2016 these included:

## Lack of funding

A persistent call for more funding from federal and state governments for all pillars of the legal assistance sector;

- Legal Aid
- Aboriginal and Torres Strait Islander Services
- Family Violence Prevention Legal Services
- Community Legal Centres.

This view was expressed across the demographic spectrum of respondents including young and senior practitioners, lawyers from small and large workplaces, and those from rural and regional areas of Queensland, as well as Brisbane-based practitioners. It is a finding that aligns with every Scorecard survey to date.

## Specific access to justice concerns in regional Queensland

Numerous concerns about the lack of availability of legal services outside Brisbane and criticisms of a 'one size fits all' approach that fails to meet the particular needs of rural and remote locations were particularly apparent.

## Technology

A number of sentiments in the 2016 survey expressed concern that courts are not keeping abreast of developments in modern technology, and that more could be done to embrace innovations like videoconferencing facilities to generate cost-savings for all parties.

## Family Law System

A considerable number of respondents highlighted problems with the operation of the Federal Circuit Court, with particular implications for access to justice faced by people in the family law system. This issue garnered more attention in 2016 than in previous years, and is suggestive of heightened concern by lawyers who practise in this area.

# Survey overview

## Methodology

The survey was open for a period of seven weeks, from Wednesday 15 June to Friday 29 July. The Queensland Law Society promoted the survey through *QLS Update*, *Proctor*, on Facebook and via its website homepage. The survey was also distributed among the Society's committees. In total, 106 lawyers took the survey with a final completion rate of 52%, which is consistent with 2015 (54%) and greater than 2014 (16%).

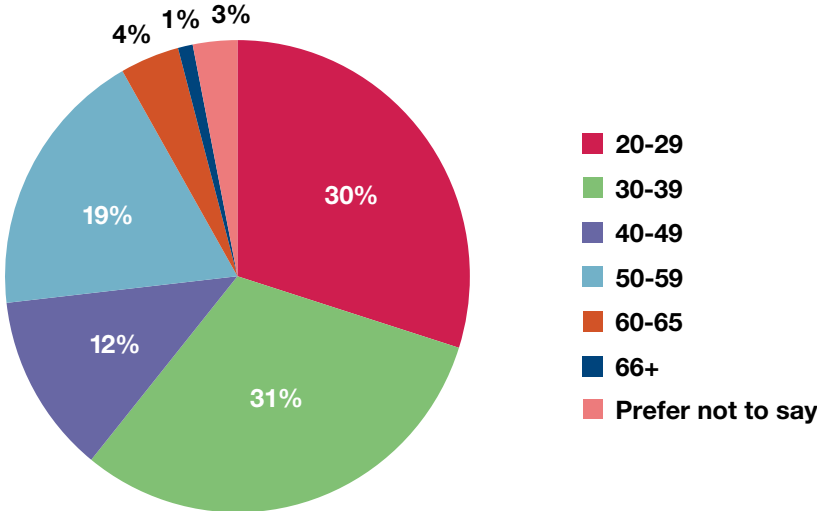
In 2016, the Queensland Law Society engaged the University of Queensland (TC Beirne School of Law and the Australian Institute for Business and Economics) to administer the survey and analyse the results. Institutional Human Research Ethics Approval to conduct the study was granted in May 2016. UQ researchers used the software program *Qualtrics* to conduct survey delivery and analysis. Survey respondents were reminded that their participation in the survey was confidential and entirely voluntary, and they could withdraw at any time.

## Respondent demographics

### Age and Gender

Almost two thirds (61%) of survey respondents were women, with 36% men. A small number of respondents (3%) preferred not to disclose their gender.

2016 was the first time that survey respondents were asked to provide their age. 60% of lawyers who responded to the survey were under 40 years of age. A handful of senior practitioners aged 60 years and above participated (5%, n=5), and the remaining respondents fell into the 40-59 year age bracket. The views of younger practitioners were generally well represented in this year's survey.



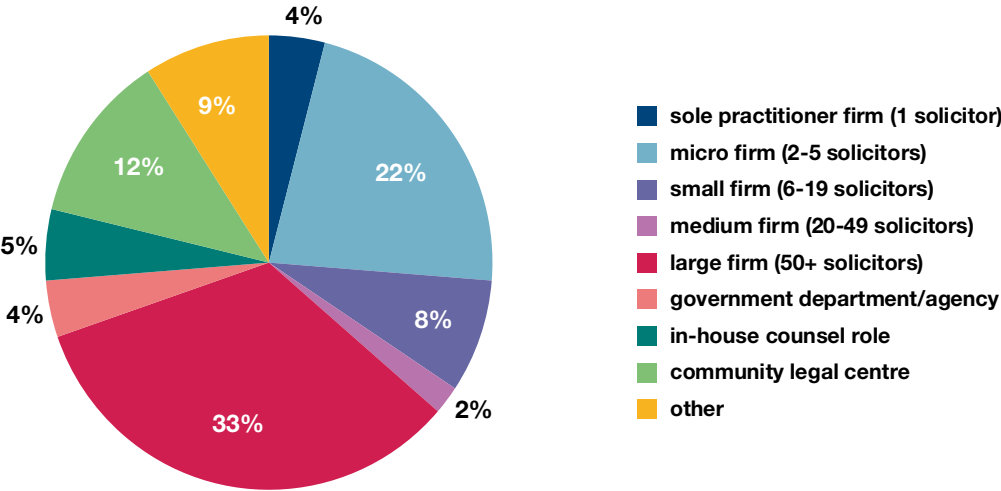
# Respondent demographics (continued)

## Professional experience

The younger demographic breakdown of survey respondents largely correlated to Post-Admission Experience (PAE). Just under half of survey respondents (42%, n=41) had 0-5 years PAE. Senior practitioners were well represented, with 23% reporting more than 21 years PAE. Compared to previous years, there was a higher response rate from early career lawyers.

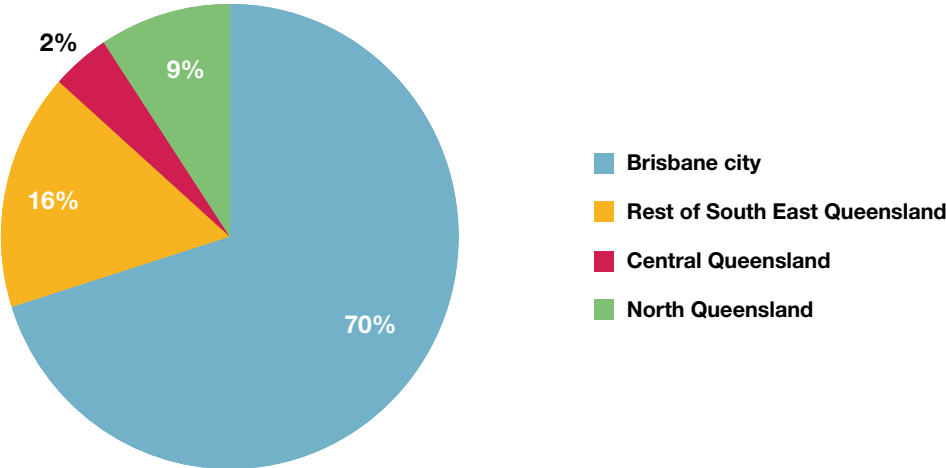
## Law firm size

The largest cohort of respondents (33%) were lawyers from large firms (50+ solicitors), with just over one third of respondents from this practice area. Lawyers working in sole, micro or small firms also comprised about one third of total respondents. A larger proportion of community legal centre lawyers (12%, n=12) completed the survey.



## Geographic location

A clear majority of survey respondents (70%, n=68) were from Brisbane city, and 16% respondents stated their practice was located in South-East Queensland. A small percentage of legal practitioners from Central Queensland (4%, n=4) responded, and lawyers from North Queensland were statistically well represented (9%, n=9).



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# 2016 Survey findings

## How accessible is justice in Queensland?

*“Access is there, if you can afford it.”*

Respondents were asked at the outset whether they thought the general public has adequate access to legal information, legal help, forums for dispute resolution and legal remedies. Of the four categories, legal help and legal remedies were viewed as the most inaccessible. These categories of assistance are examined separately and in more detail below.

## Barriers to accessing justice in Queensland

Respondents were asked to indicate the extent to which they agreed with certain factors being a barrier to accessing justice in Queensland. General themes emerged across the four identified areas of legal help, legal information, forums for dispute resolution and legal remedies. Almost half of the comments related to court and legal process being complicated and confusing, and not lending themselves to the needs of self-represented litigants:

*“...The court system fails those who can't afford to obtain legal representation because self-represented litigants don't fully understand the technical and complex rules of evidence and need to prove all elements of a cause of action to succeed and therefore find it difficult to prove their case.”*

Restrictions on eligibility for legal aid and levels of rates paid for legal aid work were the second most frequently commented barrier – 55% of respondents strongly agreed and 17% moderately agreed that restrictions on eligibility for legal aid were a barrier to accessing justice in Queensland.

Other factors included city-centricity and lack of effective technology that alienates rural litigants and increases the cost of procuring witnesses to give evidence. The needs and voices of rural and regional Queenslanders came through in much of the commentary. A lack of investment in community legal education and preventative legal work also emerged as a strong thematic barrier:

*“... A lack of attention on and funding for preventative and early intervention work, including systemic advocacy and law reform and community legal education. [Improvements have been made in the areas of] training, information and partnerships between lawyers and other professionals, such as health professionals, health justice partnerships and QPILCH Legal Health Check, but more is required.”*

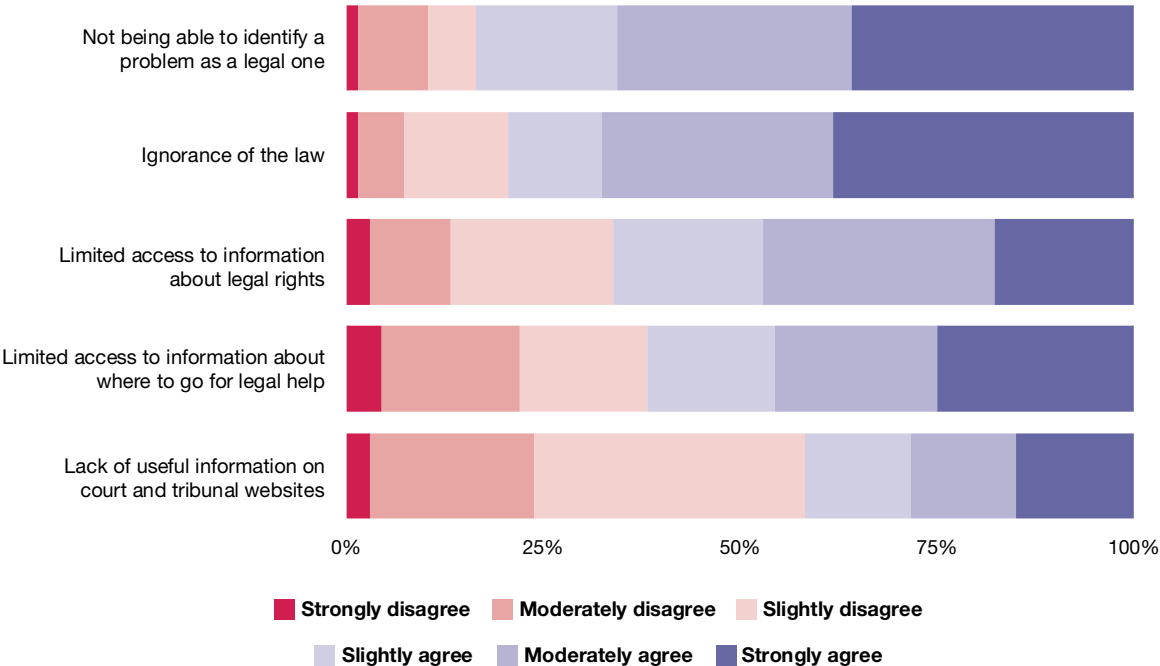
# Barriers to accessing justice in Queensland (continued)

## Legal information

Just over half the respondents (52%) thought that access to legal information was adequate. Many described the availability of free online information and accessibility to legal fact sheets and resources produced by Legal Aid Queensland and community legal centres. However, some remarked that even though information is freely available, knowing where to look and being able to find relevant information is a skill exercisable only by some. Access to legal information is more difficult for people with special needs and from rural areas where internet connectivity is poor:

*“Legal information is there for members of the public who know where to look for it, but taking advantage of the information requires skill and judgment and some strategic thinking that requires legal advice which is not so readily available.”*

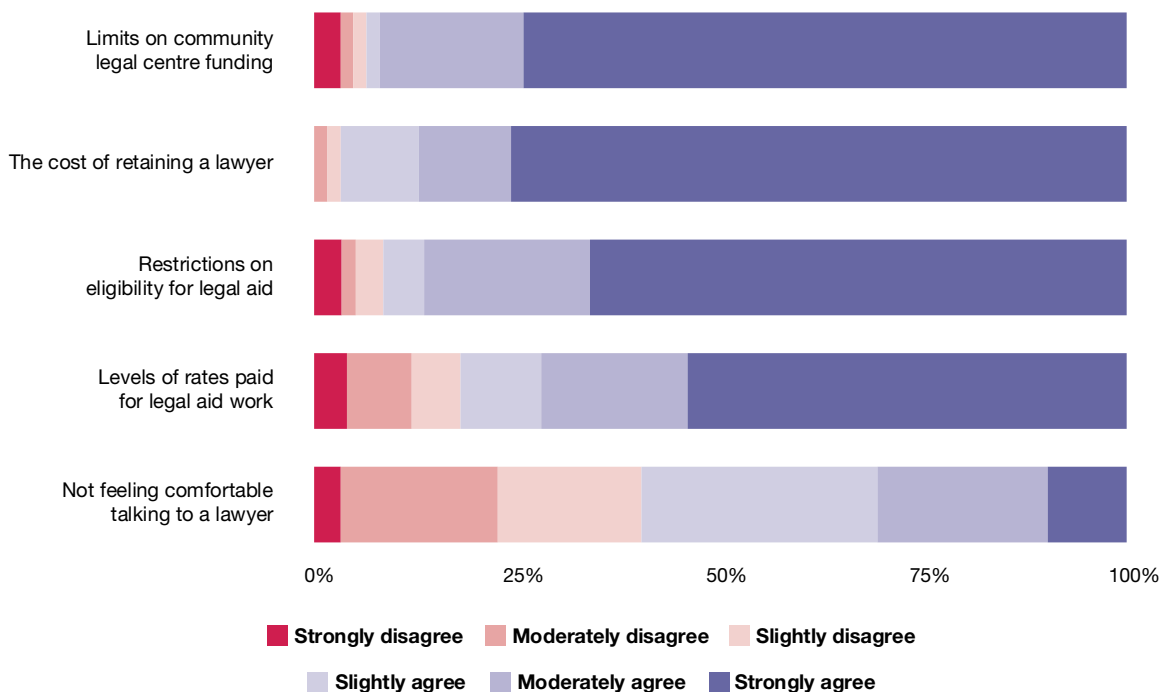
Ignorance of the law, and the inability to identify a problem as a legal one were also strongly identified as two key barriers to accessing justice using available legal information. One respondent stated, “[t]here is a lot of information available for the public to access, but this is not balanced by sufficient resources to help the public understand and use the information effectively.” Interestingly, respondents did not think the lack of useful information on court and tribunal websites was a barrier to accessing justice.



## Barriers to accessing justice in Queensland (continued)

### Legal help

Legal help was regarded as the least accessible form of assistance, with 79% respondents saying there was inadequate access. This is a 10% increase from 2015, and 18% increase from 2014. It is perhaps unsurprising given that access to legal help and remedies requires more substantive intervention than merely accessing legal information.



67% of respondents strongly agreed the cost of retaining a lawyer to obtain legal representation is a barrier to accessing justice in Queensland. Limits on community legal centre funding, restrictions on eligibility for Legal Aid and levels of rates paid for legal aid work were also factors that many respondents felt impeded access to legal help. Not feeling comfortable talking to a lawyer was the only factor that respondents felt did not particularly impact on access to legal help.

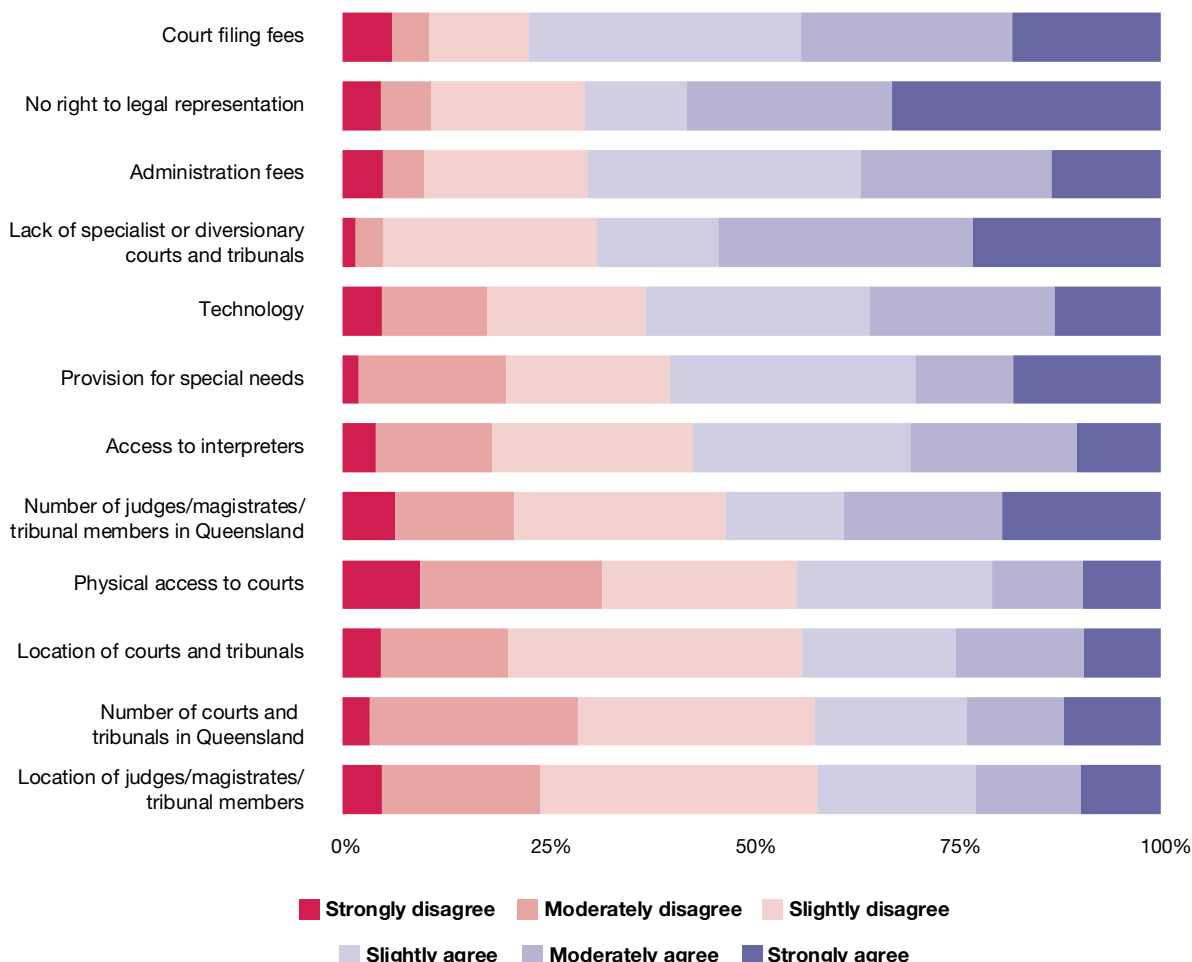
*“There are services available to assist disadvantaged people trying to access justice, but the funding of the bodies providing the services is unstable, and a great deal of time and effort is required to ensure continued funding, time and effort which would be better utilised in providing the required legal services.”*



## Barriers to accessing justice in Queensland (continued)

### Forums for dispute resolution

Respondents provided an even spread of views about barriers to accessing forums for dispute resolution. 30% of respondents strongly agreed that the lack of right to legal representation was a barrier to accessing justice in this way.



Comments about the reasons underlying lack of access to forums for dispute resolution included:

- The difficulty experienced by self-represented litigants in dealing with court processes;
- Limitations on funding for Legal Aid and community legal centres;
- Insufficient numbers of judges in all courts;
- Delays in court hearings being resolved (one respondent noted that Supreme Court matters are currently taking 12 months to resolve, and Family Court and Federal Circuit Court (FCC) matters take even longer);
- A suggestion that the jurisdiction of QCAT be expanded to include a broader range of low value civil law matters.

A failure by the federal government to appoint sufficient numbers of FCC and Family Court judges was particularly noted. Respondents stated the FCC is ‘dramatically understaffed’ and the situation is ‘beyond crisis level’. Another respondent noted, *“These days, we tell our family law clients that they will probably have to wait two years or more to get to a judicial final decision in the Federal Circuit Court. This strongly discourages potential litigants from asserting their legal rights.”*

## Legal remedies

*“In my experience, the general public has reasonable access to pro bono advice at community legal centres for minor matters and to private lawyers for more complex matters. I think the system falls down in terms of legal remedies.”*

The 2016 Survey asked respondents to consider barriers to accessing legal remedies in Queensland. A number of respondents provided specific examples of statutory schemes that fail to deliver adequate legal remedies. The *Workers Compensation and Rehabilitation Act 2003* was criticised for failing to enable some injured workers to seek costs unless they proceed to a hearing and obtain a judgment greater than their final offer. Personal injuries proceedings were also highlighted: “In medical negligence matters a complaint can be lodged with the Office of the Health Ombudsman, however even if all parties agree to participate in conciliation, [the Ombudsman has a policy that] any monetary compensation is restricted to out-of-pocket expenses.” More than half of respondents also strongly agreed that ‘court processes take too long’ (56%) and over a third also strongly agreed that, ‘court processes are too complex.’

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# Fair and unfair laws and practices

## Examples of fair laws, legal processes or services in Queensland

Positive sentiments were expressed about a range of dispute resolution forums in Queensland. The Planning and Environment Court, Fair Work Commission and the Anti-Discrimination Commission of Queensland (ADCQ) were each mentioned as good examples of forums that operate in a way that is fair and achieves a good balance of the rights of all parties. The non-adversarial nature of the ADCQ complaint process was praised as it “fairly supports complainants, and... a resolution can be achieved very quickly.”

Several respondents mentioned QCAT as an effective forum for resolving civil disputes. QCAT was described as a “very user-friendly and cost-effective way to resolve various types of civil disputes.” One respondent thought QCAT in Brisbane operates well; “I have assisted many clients to represent themselves with good results including guardianship/administration orders, public housing eviction, consumer, debt and small building claims.”

Since the survey’s inception in 2013, QCAT has consistently attracted positive feedback through the Scorecard, and QCAT is widely regarded as a positive contributor to facilitating access to justice in Queensland. However, the views of legal practitioners towards QCAT are not universally complimentary. In 2016, QCAT did attract a degree of criticism, particularly from lawyers whose practices are outside the Brisbane registry.

The Legal Aid First Advice Contact Team and its family and criminal law duty lawyer services, QPILCH and community legal centres were all singled out for providing excellent service to clients. It was also noted that having qualified practitioners in these agencies resulted in good client outcomes; “The work of sensible lawyers negotiating and settling matters for clients cost-effectively is invaluable. Representation by experienced lawyers adds immense value to the lives and businesses of their clients.”

## Examples of unfair laws, legal process or services in Queensland

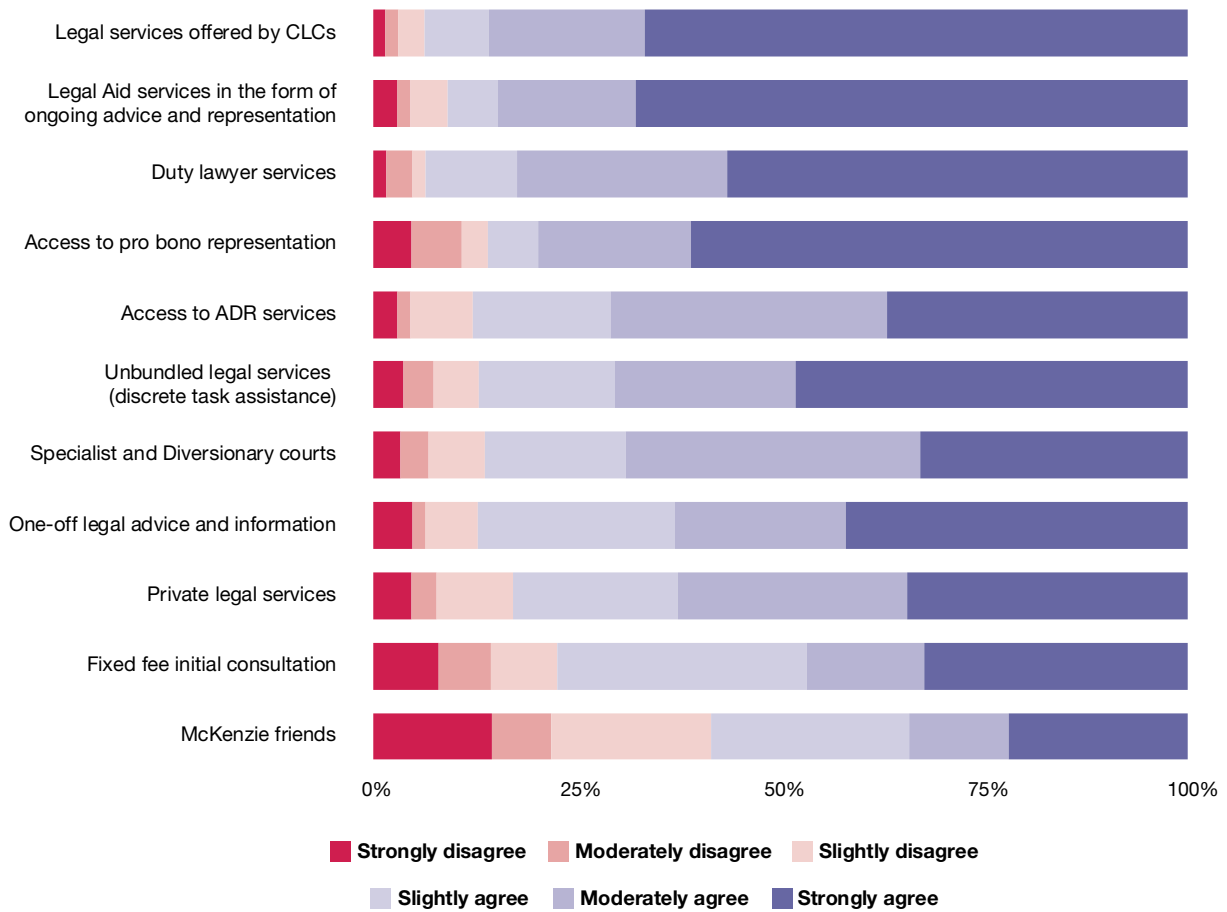
In 2016, few respondents complained directly about actual laws that were unfair. The lack of negative commentary on unfair laws stands in contrast to previous years (particularly 2014) where several laws were highlighted as being unfair. In 2016, comments about unfair laws included:

- Police move-on powers and public nuisance laws which disproportionately affect homeless persons;
- Unjust laws that do not accord with human rights;
- Bokie laws;
- Laws that define 17 year olds as adults within the adult criminal justice system;
- While comments were positive in relation to the definition of domestic violence in the newly amended legislation, concern was expressed by one respondent about the practical implications of trying to disprove allegations.

Respondents expressed general comments about the difficulties Indigenous clients face with a justice system that does not meet their needs and which misunderstands cultural and communication styles. Specific grievances were levelled at a range of agencies including SPER (unfair application of laws), the Federal Circuit Court (high caseloads leading to delays for hearing and judgment and issues with the docket system) and QCAT.

Many respondents described problems with the fee structure of Legal Aid. One lawyer complained that the flat fee rate for standard guilty pleas does not sufficiently cover the amount of legal work needed to properly defend contested sentences or restitution hearings. Finally, the use of technology in courts was criticised as not being progressive. It was noted there is a need to seriously consider “...how technology can be used to reduce costs for both parties.”

# Ideas to improve access to justice



Respondents put forward a diverse array of ideas to improve access to justice. Suggestions by survey respondents are clustered thematically and are outlined below.

## Technological initiatives to improve complex and time-consuming court processes

- Courts should look at ways to use technology that benefit all parties to proceedings, and reflect the way business is currently done in Australia. This could include embracing new technologies available and encouraging both parties to use videoconferencing facilities. This could mitigate delays and costs relating to witnesses appearing in person.
- Technology could also help provide greater access to justice in rural communities.
- Embracing technologies that use lawyer robotics may increase outcomes for clients whose matters are small and not cost-effective for a lawyer to take on.

## Law reform and policy initiatives

- Disadvantaged people should be given loaded Go-cards to prevent them from incurring fare evasion fines.
- Move-on and public nuisance laws should be repealed.
- Adopting a civil law code approach rather than an adversarial system to resolve family and civil law disputes.

### **Community legal education**

- Greater public awareness, education and short-term advertising campaigns.
- Better utilisation of social media to improve community legal education and to advertise avenues for legal help.
- Communicate the message that all demographics have access to legal advice, particularly children, elderly and people with a disability.

### **Remodelling existing practices**

- Preferred supplier status should be accorded to private practitioners who provide quality or generous legal aid services.
- Expand the role of duty lawyers to include committal hearings and trials.

*“The legal profession needs to think beyond pro bono and come up with better ways to meet the everyday legal needs of ordinary people. One component of this is to create a specialisation in general practice designed around common legal needs of ordinary people – the “general counsel” role played by lawyers in small practices for individuals and small businesses has disappeared with increasing specialisation, and it would be of great value to the community and to lawyers who enjoy general practice to re-invigorate this role of first port of call with a legal problem.”*

Survey participants also made numerous suggestions for key agencies to expand or diversify their current practices. Many of these suggestions could be achieved with minimal additional funding. Suggestions are outlined below.

### **Queensland Civil and Administrative Tribunal**

Educate applicants on evidence rules and procedural fairness; dismiss inappropriate applications prior to hearings more regularly; scrutinise and hold accountable the conduct of statutory decision makers.

### **Legal Aid Queensland**

Legal Aid used to have a Brief Services Unit which was disbanded. It was under the umbrella of its First Advice Contact Team and it provided a great service helping clients fill in documentation.

### **Universities**

There is an opportunity for universities in their legal practice courses to involve lawyers-in-training to make a pro bono contribution. Regional areas in Queensland already collaborate with the local legal professionals, legal practice course providers and postgraduate law students to assist in filling the void in pro bono services.

### **Queensland Law Society**

Expand the volunteer practising certificate regime to experienced solicitors (who due to personal circumstances may not have a full PC e.g maternity leave or retirement etc.), to assist community legal centres provide pro bono assistance.

### **Bar Association of Queensland**

The Association should consider issuing voluntary practising certificates. If a barrister is on maternity leave or decides to retire, they must maintain a full practising certificate with insurance. This is expensive and a disincentive to practice. It also impacts on women remaining in practice.

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## Overall scorecard

In 2016, the overall scorecard on the state of access to justice in Queensland was 5.07. This is a marginal increase from 4.4 in 2014 but a decrease from 5.4 in 2013. It reveals a largely static picture of lawyers' perceptions of how well the general public in Queensland is able to access legal help, legal information, dispute resolution forums and legal remedies. The 2016 scorecard result may represent the start of a modest upwards trend away from the poorer results in 2014 and 2015, but whether future scorecard findings will eclipse the 2013 result of 5.4 remains to be seen.

*"...everyone holds a responsibility for improving access to justice in Queensland. The lawyers should drive this process but it really should involve corporations and the public sector as well. Whether the contributions are legal or financial, we all owe a duty to ensure the most disadvantaged members of our society are engaged..."*



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