

Federal Election

2019 Call to
Parties Statement

15 March 2019

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Queensland Law Society represents over 13,000 solicitors across the state and is the peak professional membership body for solicitors. We advocate for good law and support good lawyers in Queensland.

On behalf of Queensland solicitors, Queensland Law Society is calling on Queensland Federal parliamentarians in 2019 to consider and respond to the following priority issues identified by our members.

1. Make justice more accessible

The Australian Government is dedicated to making the federal justice system more accessible. This means ensuring the community receives appropriate advice and assistance, no matter how they enter the justice system.

Queensland Law Society calls for a commitment to:

- a. increase the level of per capita of federal government Legal Aid and legal assistance sector funding to restore equality between the State and Commonwealth shares of funding by the 2020 – 2021 financial year
- b. ensure certain, predictable, long-term and sustainable funding for the legal assistance sector
- c. ensure that funding for the legal assistance service sector is decided and announced at the time of the 2019 Federal Budget given that the current National Partnership Agreement expires in mid-2020
- d. the use of justice impact statements upon the introduction of a bill to detail what “cost” will be imposed on the justice system and the direct linking of these costs for funding for the court and legal assistance sector
- e. ensure there are appropriate resources directed to the legal assistance sector to meet unexpected increases in demand for legal help as a result of the introduction of new policies or legislation
- f. change legislation to permit money seized from proceeds of crime to be an additional ongoing funding source for legal assistance service providers
- g. provide increased legal assistance funding to support vulnerable persons with a disability attempting to enter the National Disability Insurance Scheme (NDIS) system and include the provision of appropriate legal assistance in the approved Support Categories which successful recipients of NDIS funding may choose to purchase with their funding
- h. removal of gag clauses in federal government contracts that restrict the ability of the community legal assistance sector to engage in systemic law reform, policy and advocacy work and to refrain from imposing such restrictions in future contracts.

2. Resource federal courts, tribunals and commissions

In order to promote access to, and the administration of justice, federal courts, commissions and tribunals must be appropriately funded and resourced.

Queensland Law Society calls for a commitment to:

- a. appropriately resource the Federal Court of Australia, the Federal Circuit Court, the Family Court of Australia, the Administrative Appeals Tribunal and commissions such as the Fair Work Commission which includes:
 - i. appointing sufficient numbers of judges and members to hear matters expeditiously
 - ii. promptly filling judicial vacancies
 - iii. adequate resources for registries, including staff and technology upgrades
 - iv. appropriate infrastructure, including hearing and interview rooms, and separate waiting areas for matters involving children and domestic and family violence
 - v. properly resourcing courts and court services in rural, regional and remote areas
- b. allow legal representation as of right in federal commissions and tribunals, which benefits all parties appearing and helps matters to proceed as expeditiously as possible.

3. First Nations People advancement

Real and tangible progress is now critically needed to close the gap in all areas of inequality and to remove the entrenched levels of disadvantage for First Nations people and communities within the context of legal and justice outcomes.

Queensland Law Society calls for a commitment to:

- a. meaningful and evidence based strategies to address the disparate imprisonment rates and the rates of violence against First Nations people, particularly having regard to the key recommendations of the Australian Law Reform Commission Report into Reducing Indigenous Incarceration:
 - i. the establishment of a justice reinvestment body
 - ii. review of police complaints handling policies and practices
 - iii. consideration of systemic and cultural factors affecting Indigenous Australians in bail and sentencing decisions
 - iv. abolition of imprisonment in lieu of, or as a result of, unpaid fines
 - v. national criminal justice targets to reduce the incarceration of, and violence against, First Nations people.
- b. The adoption of Justice Targets, particularly:
 - i. closing the gap in the rates of imprisonment between First Nations people and non-Indigenous people by 2040
 - ii. closing the gap in the disproportionate rates of violence against First Nations people by 2040, with priority strategies for women and children
 - iii. reduction in the number of First Nations people deaths in custody
 - iv. reduction of occasions of excessive force being used by police toward Indigenous Australians
 - v. targeted and organised efforts in providing legal knowledge to First Nations communities so that people may better understand their rights.

4. Fairly resolve family law disputes

The Queensland Law Society supports family law reforms, which promote better outcomes for families. Family law is a complex and emotional area of law. The family law courts are chronically overburdened, which creates delays and exacerbates frustration and conflict.

Queensland Law Society calls for a commitment to:

- a. simplification of the family law system including the creation of a single specialist family court, with a single set of rules and single set of forms
 - b. appointment of judicial officers with specialist family law experience, noting that family law is a highly specialised jurisdiction and the proper determination of family law disputes requires considerable expertise
 - c. additional funding to the legal assistance sector to improve accessibility to the family law system. Access to legal advice and representation is key to the resolution of matters and helps to ensure litigants are properly informed and understand legal matters
 - d. amendments to the *Family Law Act 1975* which reflect the diversity of family structures and backgrounds of Australians and promotes the welfare of all children, without reference to their family structure
 - e. simplification of Part VII of the *Family Law Act 1975*, including the 'legislative pathway' currently provided
 - f. amendments to family law which improve the accessibility of the system for vulnerable and disadvantaged groups including Aboriginal and Torres Strait Islander people, people from culturally and linguistically diverse backgrounds and people with disability
 - g. national status of children legislation which creates a consistent approach to parentage
 - h. maintaining the principle that the child's best interest is the paramount consideration. Importantly, provisions around parenting should not prioritise or favour any particular parenting arrangement as this gives artificial weight to a particular outcome in contraction to the paramountcy principle
 - i. measures which protect vulnerable litigants from systems abuse
 - j. improved collaboration and information sharing between the family courts and state and territory child protection and family violence systems
 - k. improving children's experience of court proceedings and ensuring children's views are heard and understood through the provision of additional funding for appropriate experts including Independent Children's Lawyers and family consultants
 - l. ongoing training of family law professionals, including judicial officers, on relevant matters including family violence, child development, post-separation family dynamics, diverse family structures and cultural awareness.
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5. Consumer protection and protection for employees

Queensland Law Society is committed to working with the federal government to protect the rights of consumers and the rights of employees.

Queensland Law Society calls for a commitment to:

- a. adequately resource regulators, particularly the Australian Competition and Consumer Commission to enable its enforcement program to be carried out, which includes the ability to take action against *Australian Consumer Law* and other consumer law breaches
- b. work towards consistent regulation of credit products and unify e-disclosure across the National Credit Code, the *Corporations Act 2001* and the E-payments Code
- c. require credit-repair organisations to become members of the Australian Financial Complaints Authority
- d. restore the resources previously provided to the Fair Work Ombudsman, and maintain appropriate funding, so that it is able to investigate claims and assist workers.

6. Strong and sustainable compensation schemes

Queensland Law Society is concerned that Comcare does not achieve the same outcomes for injured workers as State and Territory schemes. Further, the migration of new workplaces into Comcare undermines safety, as State and Territory schemes employ many more workplace safety inspectors per worker than Comcare.

Queensland Law Society calls for a commitment to:

- a. not lower the entry threshold to the Comcare scheme as this will reduce benefits for injured workers, increase premiums for businesses in State and Territory schemes and adversely affect workplace safety
- b. not to reduce the current entitlements under the Comcare scheme.

7. Assist businesses, including law firms

Queensland law firms advise business and are businesses themselves. Focusing regulation and reducing both red-tape and financial pressure on business is much needed in difficult economic conditions.

Queensland Law Society calls for a commitment to:

- a. review the *Environment Protection and Biodiversity Conservation Act 1999* to achieve a balanced, clear and effective issues-focused environmental assessment and approvals framework
 - b. harmonisation of data and revenue collection responsibilities for legal practitioners by the federal and state agencies, including adequate time frames for consultation and the introduction of new measures.
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8. Develop our region and our profession

Law is the language of trade and a strong legal profession is a foundation stone of the rule of law locally and throughout our region. The Queensland legal profession has a role to play in developing strong legal infrastructure in the Pacific.

Queensland Law Society calls for a commitment to:

- a. investigate promoting the Federal Court as a hub for arbitration of international disputes with Brisbane as the centre for dispute resolution in the Pacific and surrounding regions
- b. move towards a National Uniform Commercial Code, including a Uniform Arbitration Code, to promote Australia as a venue for arbitration of international disputes.

9. Engage the not-for-profit sector

The not-for-profit and charitable sector is extensive and contributes significantly to the common good and the Australian economy. Effective and focused regulation can enhance that public benefit.

Queensland Law Society calls for a commitment to:

- a. develop a consistent national model for regulating fundraising by charities and not-for-profit entities, to allow charities to fundraise in all States and Territories of Australia with consistent reporting obligations, as recommended by the Select Committee on Charity Fundraising in the 21st Century in its report of 14 February 2019. (Currently an Australian charity that wishes to raise funds online needs to consider the regulatory requirements of each State and Territory before it does so.)
- b. establish an advisory group to assist in developing the required fundraising reforms, consistent with the recommendation of the ACNC Review Panel report that an advisory group be established, comprising experts, to assist the ACNC
- c. actively consult with the not-for-profit sector on the recommendations of the Australian Charities and Not-For-Profits Commission Legislation Review 2018 with a view to progressing appropriate reforms for effective regulation of the not-for-profit and charity sectors, the reduction of red tape, and the benefit of the community.

10. Royal Commissions of Inquiry

Royal Commissions are the highest form of inquiry on matters of public importance. The recommendations and findings of Royal Commission reports can have a significant impact on the Australian community.

Queensland Law Society calls for a commitment to:

- a. implement the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse and where a recommendation is not adopted and implemented, to provide appropriate justification
 - b. the standardisation of the minimum age of criminal responsibility as per the recommendations of the Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory
 - c. consult with the legal profession on proposed legislative reforms arising from the recommendations of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry.
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11. Implement a national plan to combat elder abuse

The incidence of elder abuse and its direct impacts upon a growing cohort of the community requires urgent attention. The prevalence of elder abuse is increasingly recognised as occurring in the community and in various institutional settings such as hospitals, retirement villages and aged care facilities, and will be partially considered by the Royal Commission into Aged Care Quality and Safety.

Queensland Law Society calls for a commitment to:

- a. urgently implement key recommendations set out in the report by the Australian Law Reform Commission: 'Elder Abuse – A National Legal Response (ALRC Report 131)' including the National Plan to Combat Elder Abuse. This must be guided by timely stakeholder consultation, with a whole of government strategy focussing on prevention, education and awareness raising, collaborative frameworks, and financial elder abuse responses and redress
- b. develop national capacity assessment guidelines resulting from a multi-disciplinary approach combining input from legal practitioners, consumers, medical and health professionals, drawing upon the model utilised in the USA and developed by the American Bar Association and the American Psychological Association's 'Assessment of Capacity in Older Persons'
- c. commit to working with the states and territories to develop consistent laws which contribute to the prevention of elder abuse, including relating to enduring powers of attorney, and to incorporating the Commonwealth Supported Decision-Making framework into state and territory legislation to integrate, where appropriate, with existing substitute-decision making regimes
- d. recognise and act on the extensive evidence and research which indicate the need to take immediate action with respect to the abuses, harm and neglect occurring in residential aged care facilities, including the proper regulation, mandatory reporting and adequate training for staff, with a view to minimising and substantially reducing the use of restrictive practices in this sector, including provision of increased funding to established groups and regulatory authorities such as the Australian Aged Care Quality and Safety Commission at the Federal level, and the Office of the Public Guardian across each state and territory
- e. increase funding to community legal centres delivering services to people suffering elder abuse across varied areas, particularly regional, rural and remote.

12. Maintain the independence of the Australian Law Reform Commission

The Australian Law Reform Commission is vital to policy and law reform in Australia.

Queensland Law Society calls for a commitment:

- a. to maintaining the independence, funding and good governance of the Australian Law Reform Commission
 - b. that the appointment of the President of the Australian Law Reform Commission will be made with bipartisan support.
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13. Commonwealth law reform processes

The Australian Government is responsible for making laws across a wide range of areas and which have effect on the lives and livelihoods of Australians. The Government should make good laws and policies that:

- Are grounded in cogent evidence
- Are clearly drafted and provide certainty to affected individuals
- Are the result of proper consultation processes (such as those employed by the Australian Productivity Commission and Australian Law Reform Commission)
- Serve the long-term interests of the Australian community.

Queensland Law Society calls for a commitment to:

- a. evidence-based policy-making
- b. implement a comprehensive consultation process for the formation of legislation. This process should include a one-month stakeholder consultation period (excluding the Christmas and New Year period) prior to the introduction of a bill in Parliament, with any departures from the process documented and tabled in Parliament
- c. all bills being referred to Parliamentary Committees and that Parliamentary Committees are allowed at least two months from the date of referral to provide their report
- d. the provision of complete Explanatory Memoranda including comprehensive justification for a bill's deviation from the fundamental principles of law, common law protections and established rules of international law and custom
- e. provide bills in tracking where bills propose amendments to existing legislation.
- f. avoid the use of omnibus bills or to ensure that omnibus bills only contain bills of similar subject matter
- g. reasonable consultation on new subordinate legislation and significant amendment to existing subordinate legislation.

14. Review of *Corporations Act 2001*

Queensland Law Society calls for a commitment to:

- a. a review of section 127 of the *Corporations Act 2001* and the *Electronic Transactions Act 1999 (Cth)* with respect to how it operates in the world of e-commerce to provide clarity about how it applies
- b. a review of the *Corporations Act 2001* generally to modernise and update the legislation in a coordinated manner
- c. a considered review of the legislation imposing obligations and liabilities on directors and officers – there is a concerning trend to include ad hoc obligations and liabilities in various individual acts rather than a centralised approach in the *Corporations Act 2001* – this approach:
 - complicates the statute book
 - makes the law inaccessible
 - introduces unnecessary inconsistency of drafting which makes interpretation and application difficult

15. Preserving the integrity of our justice system

Preservation of a strong and independent justice system is essential to maintaining public confidence in the administration of justice and the promotion of the separation of powers.

Queensland Law Society calls for a commitment to the establishment of two essential institutions:

- a. A judicial commission to enhance openness, transparency and independence of the judicial system. The role of a judicial commission is:
 - to formulate a list for the appointment of judicial officers from which the Attorney-General must choose. Any deviations from this list must be reported to Parliament
 - to organise and supervise an appropriate scheme of continuing education and training, including First Nations cultural awareness training of judicial officers
 - to examine complaints against judicial officers, including delays in delivering judgments and inappropriate or unreasonable conduct directed towards workers or persons appearing before the officer
 - to advise government on improving the efficiency of the administration of justice.
- b. A Commonwealth Integrity Commission to address allegation of corruption at a federal level. Queensland Law Society calls for a commitment:
 - that the appointments of the Chair and CEO of the Commonwealth Integrity Commission have bipartisan support
 - that the Commonwealth Integrity Commission report to a discrete committee of the Commonwealth Parliament.

16. Preserving privacy

The preservation of privacy and personal information is essential to civil society. It is necessary that the law be developed to keep pace with technological advancements.

Queensland Law Society calls for a commitment to:

- investigate the creation of a statutory framework providing greater protection of the privacy of Australians and prohibiting the invasion of privacy and the misuse of private information
 - harmonise federal and state/territory privacy laws.
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