

# State election issues 2015

## QLS Call to Parties Labor and LNP responses

In light of the upcoming state election, Queensland Law Society last year invited the Australian Labor Party and Liberal National Party (LNP) to respond to our Call to Parties document, which presents nine priority legal, social justice and democratic issues that affect the legal profession and community, including access to justice, judicial appointments, criminal law and children's law.

# 1. Queensland's law reform processes

The government is responsible for making laws for the peace, welfare and good government of Queensland. This mandate extends to the creation of good laws and policies that:

- are grounded in cogent evidence
- are the result of proper consultation processes (such as those employed by the Australian Productivity Commission)
- serve the long term interests of the Queensland community.

## Queensland Law Society calls for a commitment:

- to evidence-based policy-making
- to implement a comprehensive consultation process for the formation of legislation. This process should include a one month consultation period prior to the introduction of a Bill in Parliament, with any departures from the process documented and tabled in Parliament
- to the use of justice impact statements upon the introduction of a Bill to detail what 'cost' will be imposed on the justice system
- to remove existing clauses in community legal centre contracts that restrict engagement in advocacy activities and to refrain from imposing such restrictions in future contracts.

## Labor

- The Australian Labor Party is committed to evidence-based policy-making.
- The Queensland Cabinet Handbook provides that *'Consultation is a fundamental and mandatory part of the development of all Cabinet submissions.... The importance of effective consultation during the development of (a) Cabinet submission cannot be over-emphasised. Ineffective consultation frequently leads to delays in Cabinet's consideration of proposals.'* Notwithstanding, it is sometimes the responsibility of a Parliament to respond legislatively to urgent emergent issues, and prior consultation may not always be possible. The committee system within the Queensland Parliament should provide a further opportunity for consultation when such a situation arises.
- At present, the Cabinet Handbook requires all Cabinet submissions to include various matters, including a Rural and Regional Impact Statement, an Employment and Skills Development Impact Statement, and a Statement of Financial Considerations. Additionally, the recent Report 82 of the LACSC recommended that *'any legislation developed by the government that creates a new offence, alters the penalty for an existing offence, or otherwise proposes to impact imprisonment incorporates an appropriate Corrections Impact Statement outlining associated imprisonment costs and savings'*. A future Labor Government will review the Cabinet Handbook with a view to including a requirement for an Institutional Impact Statement, which will outline the impact on all State government institutions likely to be impacted by the legislation.
- A future Labor Government will immediately act to remove existing clauses in community legal centre contracts that restrict engagement in advocacy activities and to refrain from imposing such restrictions in future contracts.

## LNP

Wherever possible, the Newman LNP Government ensures that relevant stakeholders, including the Queensland Law Society, are provided with the opportunity to comment on government policy and legislation before its introduction or during the Parliamentary committee process. This includes the opportunity to comment on any impact on the justice system, including cost.

The Newman LNP Government recognises the valuable contribution that community legal centres (CLCs) make to ensuring vulnerable Queenslanders are provided with access to justice and has always been a strong advocate of CLCs. For this reason we committed more than \$100 million to these organisations across Queensland over the next three years in the latest State Budget. For the first time, CLCs will not have the uncertainty of living year to year. Their funding is now allocated in three year intervals which allows them to plan and grow.

The Newman LNP Government's view is that the funding should be dedicated to where it's needed most, which is frontline assistance for vulnerable Queenslanders. CLCs will continue to be consulted in relation to future reforms, as appropriate, as their input is valued.

## 2. Queensland’s judicial appointments process

Maintaining an independent judiciary is one of the pillars of our democracy and is central to the separation of powers. The integrity of judicial appointments is a fundamental tenet of our democratic system. To maintain public confidence in the administration of justice, all processes surrounding the judicial system should be open, transparent and independent.

**Queensland Law Society calls for a commitment:**

- to establish a protocol for judicial appointments in Queensland, by reviewing current processes and consulting with stakeholders.

### Labor

- Labor recognises that, whilst courts should exercise their powers independently of the other arms of Government, it is the role, in fact it is the duty, of Executive Government to appoint the judiciary. This arises from the duty of the executive to promote the rule of law through the appointment of a highly skilled and independent judiciary. A Labor Government will review the current processes for the appointment of judicial officers in Queensland, and then consult extensively with stakeholders in the development of a protocol as to how judicial appointments ought to be made.

### LNP

There are long established traditions around the selection of candidates for appointment to judicial office in Queensland. The judiciary exercises significant power over the rights of citizens and it falls on the Attorney-General and the elected government to ensure that the public can have confidence in those appointed to the bench.

The criteria for appointment to judicial office include legal expertise, decision-making skills, integrity and impartiality and capacity to inspire respect and confidence. Broad consultation is also important for identifying the most suitable candidates. Those entities and officers who are consulted include the Bar Association of Queensland, the Queensland Law Society and the relevant heads of jurisdiction.

Taking all this into consideration the Newman LNP Government will continue to make merit-based appointments as it has done since assuming office.

I am satisfied current processes serve Queensland well and the Newman LNP Government has no plans to alter the current arrangements for appointment to judicial office in Queensland.

### 3. Access to justice in Queensland courts and tribunals

Effective access to justice means that all people are able to bring and respond to court proceedings, regardless of their financial, social or geographic status. All Queenslanders should be able to rely on a sustainably funded legal aid system and well-resourced courts and tribunals.

#### Queensland Law Society calls for a commitment:

- to increase the level of state government Legal Aid Queensland funding so that Queenslanders have a similar level of access to state-funded legal assistance services as is available in the rest of Australia
- to allow legal representation as of right in the Queensland Civil and Administrative Tribunal
- to undertake a comprehensive audit of all Queensland courts and tribunals with a view to providing in each courthouse:
  - at least one soundproof interview room
  - access for mobility impaired persons
  - facilities to assist persons with disabilities
  - videoconferencing facilities
  - e-filing
  - easy access to interpreter services.

#### Labor

- Labor recognises that the funding for Legal Aid has reduced in real terms over many years. Labor recognised that the traditional method of funding Legal Aid and the Community Legal Centres through LPITAF could no longer meet the demands placed on the service, which has worsened in light of increasing mandatory penalties and increasing incarceration rates. A Labor Government will review the available funding sources for Legal Aid with a view to increasing, over time, the funding provided for state-funded legal assistance legal services to a level that is at least equal to the national average per capita.
- A Labor Government will not commit to allowing legal representation as of right in the Queensland Civil and Administrative Tribunal (QCAT). QCAT was established as a low-cost jurisdiction to allow persons to resolve legal disputes in a timely and cost efficient manner. Labor believes the existing provisions for legal representation in QCAT are adequate to allow legal representation in appropriate matters.
- Labor will commit to undertaking a comprehensive audit of all Queensland courts and tribunals with a view to providing appropriate resourcing of courthouses. Such an audit will include the existing provision of:
  - A soundproof interview room;
  - Access for mobility impaired persons;
  - Facilities to assist persons with disabilities;
  - Videoconferencing facilities; and
  - E-filing.
- Such an audit will inform the future allocation of capital and maintenance expenditure in the DJAG budget.
- A Labor Government will consult with stakeholders to ascertain how access to interpreter services in the justice system could be improved.

#### LNP

Funds from the State Budget and Legal Practitioner Interest on Trust Accounts Fund (LPITAF) directed to legal assistance services per head of population is proportionate when compared with the budget and trust monies invested by other states and territories.

Decisions about investment in legal assistance services are made in the context of all other state priorities. However, the Newman LNP Government is committed to providing access to justice for those most in need. For example, in 2013-14, Legal Aid Queensland was able to increase its service delivery for the third year in a row. Also, as a result of the review of the LPITAF, it is estimated that 6,000 additional legal services will be provided to Queenslanders.

The issue of as of right legal representation in the Queensland Civil and Administrative Tribunal is one of many being considered as part of the ongoing statutory review of the QCAT Act. The Newman LNP Government's response to this issue will be tabled in due course.

The Newman LNP Government continues to examine the availability of private interview rooms, access for mobility impaired persons and facilities to assist persons with disabilities within our courts. Recent projects have included acoustic upgrades to the Caboolture interview rooms. Similar projects are scheduled in 2014/15 for Kingaroy, Nanango, Ipswich, Southport, Cairns and Townsville. Queensland Courts have over 180 videoconferencing systems across the state, including recent installations across Cape York and the Gulf country. Queensland Courts are now preparing a detailed plan on how to extend electronic filing across QCAT as well as the Magistrates, District and Supreme Courts.

Queensland Courts will continue to provide interpreters for criminal hearings when an order has been made by the court. Agencies such as Legal Aid continue to pursue partnerships which result in increased access to interpreter services, including the current arrangement with the Refugee and Immigration Legal Service.

## 4. Criminal law in Queensland

Criminal law outcomes have significant impacts on Queenslanders. Criminal law reform must be carefully considered.

### Queensland Law Society calls for a commitment:

- to refrain from the creation of new mandatory sentencing regimes and to evaluate the current mandatory sentencing regimes
- to repeal anti-association legislation
- to make a referral to the Queensland Law Reform Commission to investigate alternatives to incarceration, including but not limited to justice reinvestment and court-ordered parole
- to amend the *Crime and Corruption Act 2001* so that all Commissioner appointments require bipartisan support and that the offices of Chief Executive Officer and Commissioner cannot be filled by the same person
- to reinstate Queensland's specialist courts, in particular the Murri Court, the Special Circumstances Court and the Drug Court.

### Labor

- Labor is opposed to mandatory sentencing. Labor has confidence in the ability of the Courts to impose appropriate penalties having regard to the particular circumstances of each case. There are adequate appeal mechanisms to appropriately deal with those rare situations where the court may err.
- Labor has committed to repealing the current anti-association legislation, and replacing the 'bikie laws' with legislation that will specifically target all organised criminal activity, not just by motorcycle clubs. Under Labor's laws, people will be punished for what they do, and not with whom they associate.
- Incarceration rates in Queensland have been rising, and have reached unacceptable levels particularly within Indigenous communities. The recent LACSC Report has recommended that the Queensland Government commit to a justice reinvestment trial. Labor in government will investigate options to reduce incarceration, and will make a referral to the Queensland Law Reform Commission to investigate alternatives to incarceration, including but not limited to justice reinvestment and court-ordered parole.
- A future Labor Government will make a number of changes to the *Crime and Corruption Act 2001*, including by introducing amendments to ensure that the Chief Executive Officer is not a Commissioner under the Act, and to ensure that the appointment of the CEO must require the bipartisan support of the Parliamentary Crime and Corruption Committee.
- A future Labor Government will reinstate the Murri Court, the Special Circumstances Court and the Drug Court. Labor is committed to diversionary courts and will reinstate them to pre-abolition strength as soon as fiscally practicable.

### LNP

In general, the Newman LNP Government is opposed to the creation of mandatory sentences except in limited circumstances when they may be appropriate to ensure the adequate protection of the community.

These laws are designed to ensure it is no longer beneficial to be part of a criminal motorcycle gang or other organised crime group. The Newman LNP Government's strong stance against organised crime, including the introduction of anti-association legislation, has been fair and effective and has been upheld by the High Court. The laws have had a significant impact on criminal activity. Since October 2013 more than 1,500 gang members or associates have been arrested on nearly 4,200 charges and the reported crime rate across Queensland has dropped dramatically.

I note that in the Inquiry on strategies to prevent and reduce criminal activity in Queensland Report, the Legal Affairs and Community Safety Committee has made several recommendations in relation to alternatives to incarceration. A response to this report will be tabled after the report has been considered by the government.

The Newman LNP Government made a decision to restore the requirement for bi-partisan support for Commissioners appointed to the Crime and Corruption Commission. The creation of the position of Chief Executive Officer, which does not require bi-partisan support, arose from the need to overcome the dysfunction that crippled the former CMC in early 2013 and is a distinct appointment to the Commission.

The decision to cease funding for these former courts was made as a consequence of a lack of evidence that these specialist courts were effectively reducing recidivism. Magistrates retain the discretion to take into account the input of indigenous elders via the Indigenous Sentencing List (ISL) and are able to refer offenders to other services, including drug and alcohol services, via the Queensland Courts Referral (QCR). Magistrates can also order defendants, as part of their bail conditions, to attend services outside of the criminal justice system.

## 5. Children's law in Queensland

Queensland Law Society has advocated for better treatment of children and young people in our legal system through our submission work and our policy position paper on children and young people's issues. In contrast to other states and territories, Queensland is the only state where 17 year olds are subject to the adult criminal justice system and where children's law matters are not heard in a stand-alone Children's Court building.

### Queensland Law Society calls for a commitment:

- to remove 17 year old offenders from Queensland's adult correctional facilities and place these young people within the jurisdiction of the *Youth Justice Act 1992*
- to repeal recent amendments to the *Youth Justice Act 1992* so that:
  - there is no publication of repeat offenders' identifying information, other than in exceptional circumstances and at the court's discretion
  - breach of bail is no longer an offence
  - all children's law matters are held in closed court
  - childhood findings of guilt for which no conviction was recorded are inadmissible in court when sentencing a person for an adult offence
  - the principle of detention as a last resort is reinstated
  - 17 year olds who have six months or more left to serve in detention are not automatically transferred from detention to adult corrective services facilities
- to review the Youth Boot Camps model, with the review to involve collecting objective empirical data, consulting with stakeholders and examining similar systems in other jurisdictions
- to publish and implement the findings of the review.

### Labor

- The Member for Rockhampton outlined Labor's policy on 18 March 2014:

*The presence of 17-year-olds in adult prisons has been a controversial topic in Queensland for many years.*

*The opposition acknowledges the concerns raised by various groups through the committee process... we are examining ways for a future Labor government to resolve this issue and bring Queensland into line with the rest of the country.*

*... The presence of 17-year-olds in adult prisons is highly controversial, and Labor will be moving from that position over time.*

- A Labor Government will repeal the amendments made to the *Youth Justice Act 1992* so that:
  - repeat offenders' identifying information cannot be published, other than in exceptional circumstances and at the court's discretion
  - breach of bail is no longer an offence
  - all children's law matters are held in closed court
  - childhood findings of guilt for which no conviction was recorded are inadmissible in relation to adult offences
  - the principle of detention as a last resort is reinstated
  - 17-year-olds who have six months or more left to serve in detention are not automatically transferred from detention to adult corrective services facilities.
- A Labor Government will conduct an independent review of the boot camps model based on the collection of objective, empirical data, consultation with stakeholders, and an analysis of the effectiveness of similar systems operating.
- Labor will publish the findings of that review, providing a government response which will identify those recommendations that are supported, and provide reasons for any recommendation not supported.

### LNP

The Newman LNP Government recognises that young people should be diverted away from the justice system and placed on the path to rehabilitation as early as possible. However, successive governments have considered that 17 year olds are of sufficient maturity to be held accountable for their actions. This includes being treated as adults when charged with an offence or being held in an adult correctional facility when sentenced to a custodial sentence.

The recent amendments to the *Youth Justice Act 1992* were introduced in response to clear community calls for government to provide more effective responses to youth crime which hold repeat young offenders accountable for their actions and which deter future offending. These reforms are particularly focused on that small cohort of chronic repeat offenders who are responsible for the majority of youth offending, and do not significantly impact on those young offenders who engage with the significant opportunities available to them to avoid becoming entrenched in a lifetime of offending. The impact and effectiveness of these reforms is being closely monitored by the Newman LNP Government.

Early indications are that the youth boot camp program, a 2012 election commitment, is being effective in reducing participating children's behavioural problems, increasing their resilience and engagement with education, increasing parental involvement and improving parental monitoring and discipline. The boot camp program will be independently evaluated in late 2015/early 2016.

# 6. Public administration decisions that impact elderly Queenslanders

The Australian Bureau of Statistics predicts that by 2056, one quarter of Australia’s resident population will be aged 65 years and over. It is important to ensure there is adequate resourcing for those government agencies associated with service delivery for this growing demographic.

**Queensland Law Society calls for a commitment:**

- to increase funding for the Office of the Public Guardian each year by at least 3% or CPI (whichever is the greater) in light of its new and expanded statutory powers.

## Labor

- Labor recognises it is difficult in opposition to make funding commitments to that level of detail before an election and without access to the financial and budgetary information available to government. Labor is committed to assisting vulnerable Queenslanders and recognises the important role that the Office of the Public Guardian plays in protecting elderly Queenslanders. Labor will ensure budget resources are allocated fairly and appropriately.

## LNP

The Newman LNP Government is committed to building a better child protection system for Queensland and delivering a brighter future for Queensland children. As part of this plan to protect vulnerable Queenslanders, the Newman LNP Government established the Queensland Child Protection Commission of Inquiry. Out of this came the decision to combine the Child Guardian and the Adult Guardian into the new statutory body of the Office of the Public Guardian, an office with expanded powers to safeguard the rights of vulnerable Queenslanders.

Combining the two areas means the Office of the Public Guardian will be able to share resources and improve efficiencies to better protect the rights and wellbeing of vulnerable Queenslanders of all ages.

The Office of the Public Guardian commenced operations on 1 July 2014 and has been adequately funded with existing funding for the Office of the Adult Guardian and the transferred community visiting portion of the budget for the Commission for Children and Young People and Child Guardian. The Public Guardian has a budget of \$24 million and more than 300 state-wide staff to address some of the systemic failures identified by the Child Protection Commission of Inquiry. Requests for additional financial support will be considered at the appropriate time.

## 7. Access to fair injuries compensation

Queensland Law Society supports access to fully funded, accessible and fair common law compensation schemes.

### Queensland Law Society calls for a commitment:

- to repeal the impairment threshold for access to workers' compensation claims
- to introduce a right of appeal to a court from decisions of the Medical Assessment Tribunal
- to guarantee that the introduction of the National Injury Insurance Scheme in Queensland will not result in the removal or reduction of existing common law claims entitlements.

### Labor

- Labor in government will repeal the impairment threshold for access to common-law claims arising out of workplace injuries, which denies up to 60 per cent of claimants access to their legal rights, even if their injury prevents them from returning to their pre-injury employment, and even if their injury was caused by the negligence of their employer.
- Once the impairment threshold has been removed, Labor sees no need to introduce such a right of appeal.
- The National Injury Insurance Scheme is a national scheme for catastrophic injury caused by various types of accident, which is to be implemented on a statewide basis. The Queensland Government has agreed in-principle with the NIIS minimum benchmarks for MVAs, and has undertaken to determine the feasibility of extending Queensland's fault-based CTP scheme to meet these benchmarks. Actuarial analysis published by the Federal Government has indicated that a net average increase to CTP premiums of \$81 per registered motor vehicle would be needed to extend Queensland's CTP scheme to meet the NIIS minimum benchmarks. A future Labor Government will consult extensively with all stakeholders in developing a response while determining the extent to which, if at all, the current fault-based CTP scheme should be modified to meet the NIIS minimum benchmarks.

### LNP

The Newman LNP Government is committed to delivering Australia's best performing workers' compensation scheme. The viability of the scheme is protected through reducing duplication, simplifying regulatory processes and ensuring that compensation is available and accessible to help injured workers get back on their feet as quickly as possible. Injured workers have access to a generous statutory compensation scheme with Queensland being the only state to cover all workers who are injured while travelling to and from work. Rehabilitation is a major feature of our scheme – our return-to-work rate of over 96% is one of the best in the country. Queenslanders continue to have access to generous, sustainable workers' compensation that focuses on injury prevention, rehabilitation and workers' safety.

The Newman LNP Government does not support providing an avenue of appeal for decisions made by the scheme's Medical Assessment Tribunals (MAT). This has been the case since MATs were introduced in the 1960s. Fresh medical evidence may be considered by a review panel of the tribunal. An injured worker can already dispute their original notice of assessment and request their degree of impairment be assessed again by a doctor.

The Newman LNP Government supports the implementation of both the National Disability Insurance Scheme and the National Injury Insurance Scheme (NIIS). In 2011 the Productivity Commission recommended that common law rights to sue for long-term care and support should be removed as this support will be provided by NIIS at no cost to the worker. The Commission also recommended that access to damages for pecuniary, economic loss and general damages should remain. The Newman LNP Government has not yet considered this matter and will await the findings of the Commonwealth consultation process.

## 8. Public education about the Queensland justice system

Educating the community about Queensland law, justice matters and the legal system is an important feature of responsible government. Misinformation and misunderstandings can lead to community fears and assumptions that are simply not supported by the facts.

### Queensland Law Society calls for a commitment:

- to establish and fund an independent statistical research body (or develop a partnership with an existing organisation) to publish regular analysis of Queensland crime and sentencing data
- to fund and implement a public education campaign to promote understanding and awareness of the Queensland legal system.

### Labor

- Labor places great importance on the availability of independent and reliable crime and sentencing statistics. In Government, Labor will establish an independent crime statistical body which will publish independent crime statistics for all criminal offending across Queensland. This reliable, independent statistical information will then be available for any research conducted by universities, or other government agencies, departments or statutory authorities. Labor has already committed to the reestablishment of the Sentencing Advisory Council. The Council will collate statistical information relating to sentencing, and undertake research into the effectiveness of various sentencing practices in reducing crime. Labor will undertake a comprehensive analysis of the various bodies conducting research into crime, criminal statistics and recidivism in Queensland to determine whether there are any gaps in these research areas.
- One of the important roles of the re-established Sentencing Advisory Council will be to conduct education programs in relation to the justice system, particularly as it operates in respect of the sentencing of offenders.

### LNP

The Sentencing Advisory Council was abolished in August 2012 as the main focus of the Council's work had been to provide advice to the Attorney-General on sentencing matters. This function effectively duplicated the law review functions of the Queensland Law Reform Commission and the Department of Justice and Attorney General. Dissolving the Council enabled a more efficient use of public resources by the rationalisation of law review functions across government. Justice related agencies across the public sector have been working together on an Integrated Criminal Justice (ICJ) initiative. ICJ is a one stop shop of expertise, advice, support and guidance on cross justice sector information exchange and management initiatives. As such, ICJ is an integral participant in the Newman LNP Government's public sector reform agenda with a view to better information sharing and communications, reducing red tape across the justice sector and, importantly, improving service delivery to the community.

It is not proposed to provide additional funds for a public education campaign beyond that which is already provided to support events such as Law Week. However, the opening up of the Children's Court and publication of repeat child offender's identifying information in certain circumstances is an example of an initiative of the Newman LNP Government designed to promote understanding and awareness of the Queensland justice system. At the same time the Newman LNP Government is keenly supporting the efforts of the Chief Justice to extend the reach of videoconferencing throughout the courts system to open up the courts themselves and make them more accessible to the public.

## 9. Appointments to key public service positions

In order to achieve a respected and functioning government, it is essential for the public to have trust and confidence in the people appointed to key positions in the public service, and for these appointments to be made following a transparent, merit-based recruitment process.

### Queensland Law Society calls for a commitment:

- to fill key public service positions and statutory appointments (such as the Public Trustee and Public Guardian) within three months following merit-based selection processes.

### Labor

- Labor has found the delay in filling key public service positions and statutory appointments in the Justice and Attorney-General portfolio to be nothing short of scandalous. The position of Public Trustee has remained vacant since March 2014. The short-list presentation took place on 15 April, and the position has still not been filled. Queensland was left without a functioning Law Reform Commission from December 2013 until August 2014. The Privacy Commissioner's position has been vacant since November 2011. The Legal Aid Queensland Board was left with only two members, insufficient for a quorum, from 16 July until the new board was announced on 16 October. Labor is committed to following merit-based selection processes for all key public service positions and statutory appointments (such as the Public Trustee and Public Guardian). Labor is further committed to filling those positions in a timely fashion. Unavoidable situations sometimes arise. If there is some reason for a delay in the appointment to a particular position, Labor will provide the reason for that delay.

### LNP

The Newman LNP Government is committed to restoring accountability in government. This includes ensuring that the most appropriate and suitably qualified candidates are appointed to key positions within the public service and statutory bodies. The Newman LNP Government will not be rushed in its rigorous selection and appointment process or held to arbitrary deadlines. The selection of the most appropriately qualified candidate is the cornerstone of such appointments – not adherence to an artificial time frame.

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