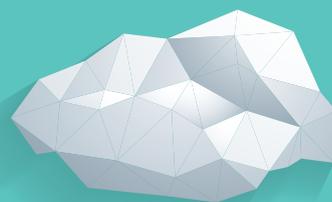


2019
ACCESS TO JUSTICE

Access to Justice Scorecard

Evaluating access to justice in Queensland



2018 Data analysis and report



Queensland
Law Society[®]

Introduction

In its sixth year, the Access to Justice Scorecard has sought to gauge the views of the legal profession in Queensland about the state of access to justice. The Scorecard is an initiative of the Queensland Law Society's Access to Justice and Pro Bono Law Committee.

The Scorecard acknowledges and celebrates achievements in improving access to justice, identifies where improvements are necessary and proposes solutions to overcome barriers to accessing justice.

The Scorecard assesses whether laws achieve fair and intended outcomes in Queensland. This year, the Scorecard adopted the 2017 multiple choice format to create a comparable timeline of access to justice across the years. It focuses on access to legal assistance services, issues in resolving disputes through courts and tribunals, and the role of technology in the law. The report provides a platform to assist Queensland Law Society in advocating for improvements to access to justice in Queensland.

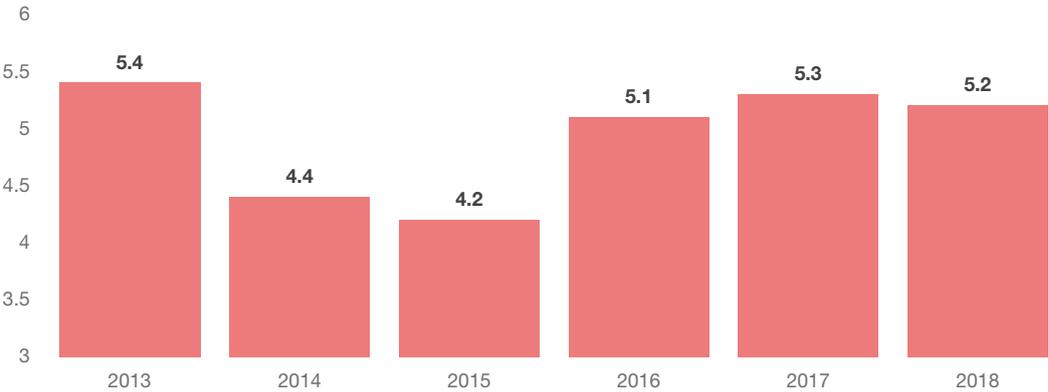
In 2018, we received our largest response to the survey yet. The survey yielded similar results to the 2017 survey with an overall score of 5.2 out of 10. This score is indicative of the vast improvements left to be made to improve access to justice for all Queenslanders.

Survey Findings

Access to Justice overall

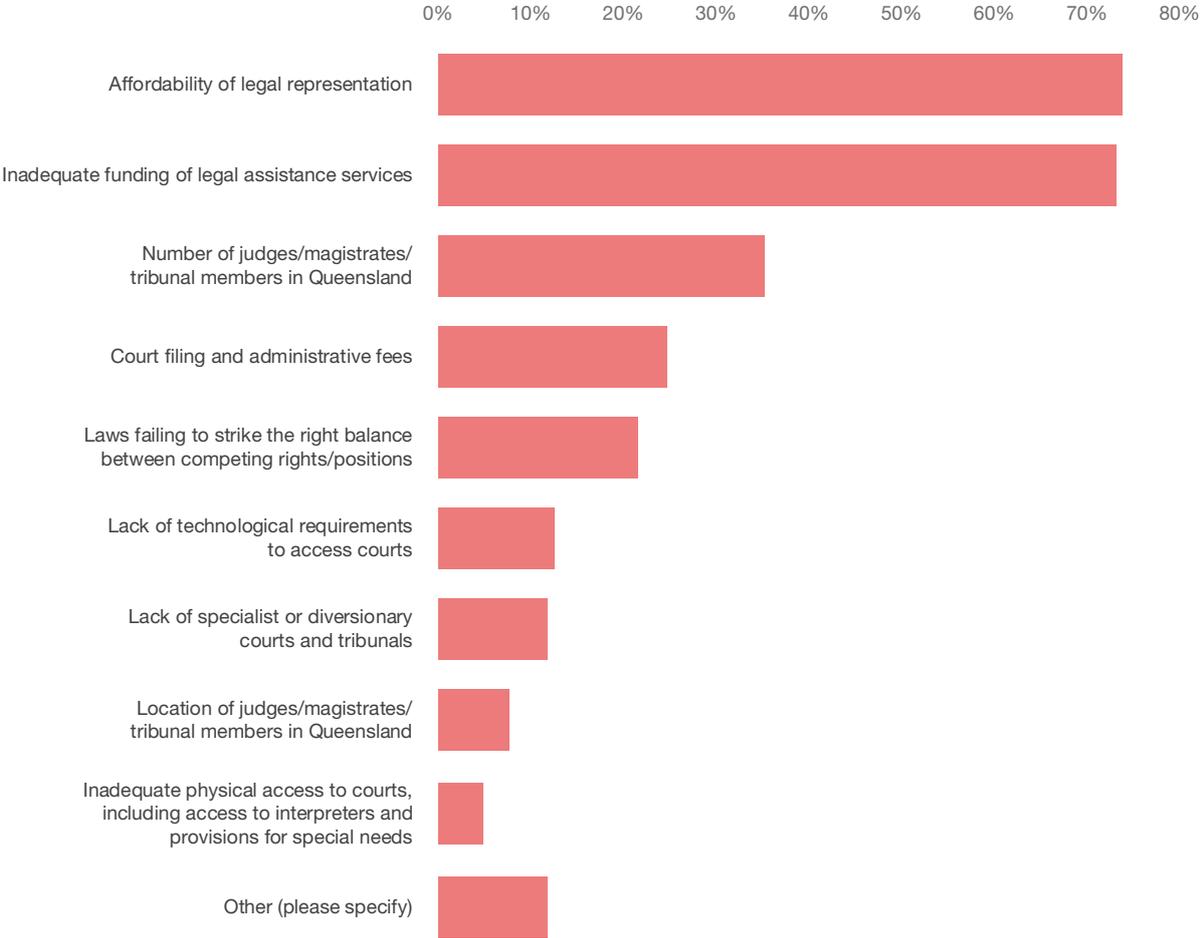
On a scale from 1 to 10, survey respondents were asked to score access to justice in Queensland. The average score was 5.2, which is down from an average score of 5.33 in 2017.

Average score across years



Most significant barriers to accessing justice in Queensland

Question
 In previous years, the following were identified as barriers to access to justice. From the list below, please select up to three issues you believe are the most significant barriers to accessing justice in Queensland.



Survey respondents remain highly concerned about the affordability of legal representation and inadequate funding of legal assistance services. The affordability of legal representation in more complex matters, particularly involving litigation, is of particular concern. Overall, 74% of survey respondents identified the affordability of legal representation as one of the top three barriers inhibiting access to justice. Closely following this, 73% of respondents identified inadequate legal assistance funding as a key barrier to access to justice. The number of judicial officers in Queensland was also of concern to 35% of respondents.

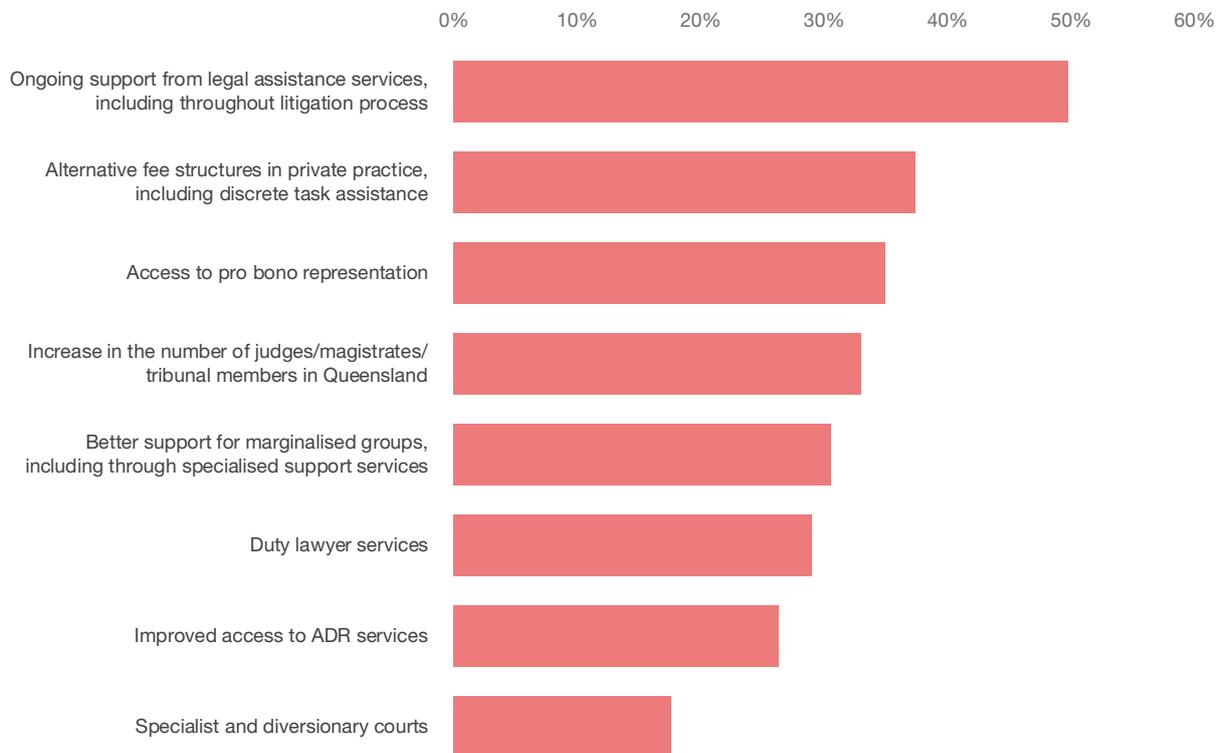
The top three responses mirror the survey findings from 2017.

The factors which go into the affordability of legal representation in complex matters, often involving litigation, are varied and often beyond the control of the legal practitioner. These factors can include documentary requirements of the courts, external costs such as counsel and reports from experts, availability of parties and courts to progress matters, conduct of opposing parties and client directions. In response to these structured costs of litigation alternative dispute resolution procedures such as mediation, conciliation and arbitration are becoming more popular, however these options rely upon the willingness of the parties to want to reach a mutually agreeable outcome to the dispute. Many law firms are also engaging heavily with technology and machine learning to reduce costs associated with repetitive and transactional elements of legal work and permitting them to focus more heavily on providing strategic and tailored legal advice and representation.

Improving access to justice in Queensland

Question

In previous years, the following were identified as ways to improve access to justice. From the list below, please select up to three factors which you believe would most significantly improve access to justice in Queensland.



Respondents overwhelmingly indicated that ongoing support from legal assistance services, including throughout the litigation process, would most significantly improve access to justice in Queensland. Legal assistance providers frequently offer initial advice but have little capacity to assist clients through to resolution of the matter due solely to a lack of funding. Alternative fee structures in private practice, including discrete task assistance and access to pro bono representation, were also identified as key factors to improving access to justice.

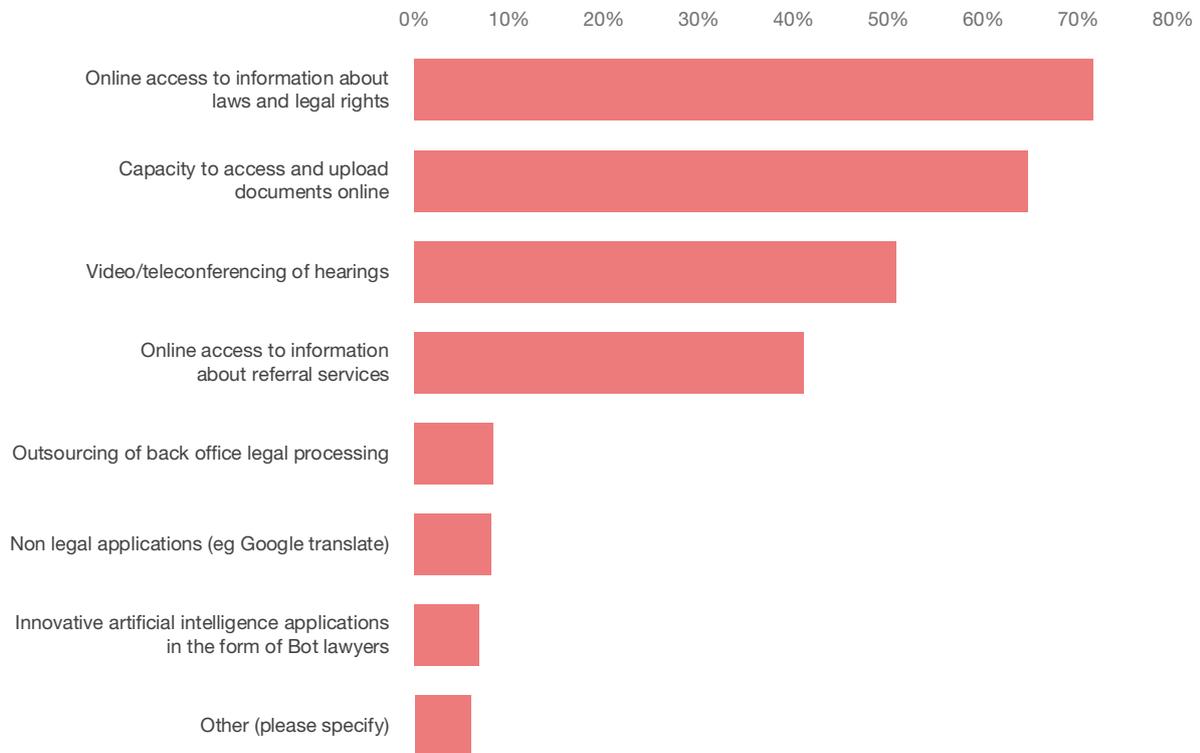
Over a third of respondents also believe an increase in the number of judicial officers would improve access to justice.

There was significant decrease in the number of respondents who identified extending duty lawyer services as a key factor compared with the 2017 survey responses.

Technology and access to justice

Question

Technology has been identified as having an important role in access to justice. From the list below, please select up to three technological advancements which you believe will most significantly improve access to justice in Queensland.



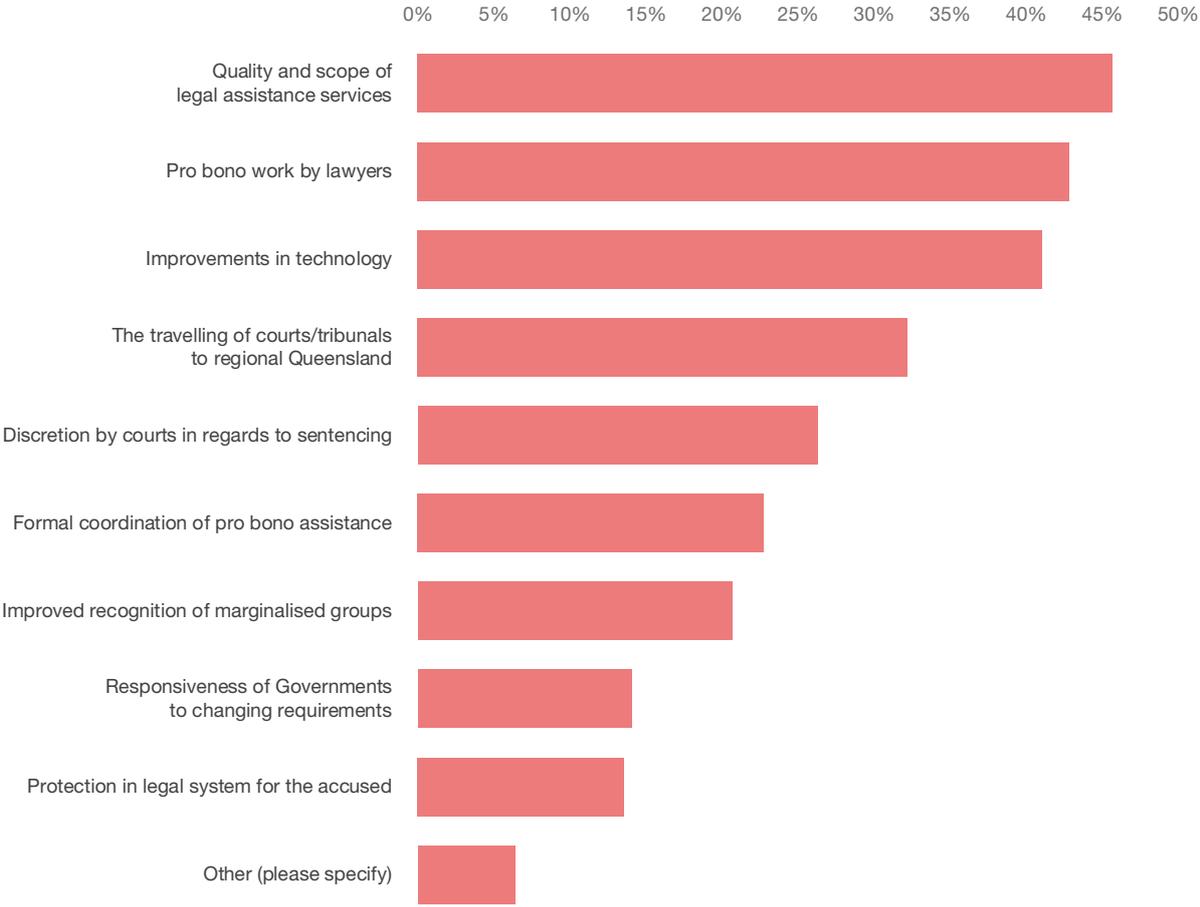
Online access to information about law and legal rights continues to be the most beneficial improvement to assist access to justice. 65% of respondents indicated that capacity to access and upload documents online to be a significant way that technology can improve access to justice.

Significantly, over half of respondents indicated video/teleconference of hearings to be an important factor, and to be more important than online access to information about referral services, identified as important in the 2017 survey.

There was a notable decrease in the number of respondents who believe innovative artificial intelligence applications in the form of bot lawyers to be an important factor, from 22% in 2017 to only 7% in 2018.

What is working well

Question
 In previous years the following were identified as aspects of the law that are working well for access to justice. From the list below, please select up to three areas which you believe best support access to justice in Queensland.



The quality and scope of legal assistance sector funding was again identified as the aspect of the law which best supports access to justice in Queensland. This was closely followed by pro bono work undertaken by lawyers in Queensland, which was selected by 43% of respondents. Again, in reflection of 2017 results, responsiveness of government and protections for the accused in the legal system received the lowest responses.

The benefits from improvements in technology, however, increased from 33% to 41%.

Actions in response to survey findings

Queensland Law Society believes that everyone should have access to legal services. Limited or no access to legal services can have a serious impact on a person's ability to obtain a just outcome from a legal process. Queensland Law Society, and its members, have undertaken action in a range of areas in response to findings in the Access to Justice Scorecard in previous years.

Advocacy

Queensland Law Society has 26 standing legal policy committees and one working group. Their dedicated expert members work to further the Society's advocacy to encourage government to draft and amend legislation and policy to increase the positive impact on both the legal profession and the community. Queensland Law Society values its relationship with government, and is regularly consulted on the development of policy positions and proposed legislative amendments, leading to better outcomes and responsive legislation. Queensland Law Society engage with courts on procedural reform and practical issues affecting court users, including consultation on draft practice directions.

In the 2017-18 financial year, Queensland Law Society made a total of 212 submissions, many of which aimed to improve access to justice for Queenslanders. Some of the most significant submissions were:

- Reviews of the National Partnership Agreement of Legal Assistance Services and Indigenous Legal Assistance Program
- Fair Work (Protecting Vulnerable Workers) Bill 2017
- Youth Criminal Histories
- Family Law Amendment (Family Violence and Cross-examination of Parties) Bill 2017
- Access to legal representation in Queensland Correctional Facilities
- Child Protection Reform Amendment Bill 2017
- Queensland Courts technology review
- Social Services Legislation Amendment (Cashless Debit Card) Bill 2017
- Legal Aid Representation for people seeking Asylum
- Fair Work pro bono Scheme
- Family Law Amendment (Family Violence and Other Measures) Bill 2018
- Review of termination of pregnancy laws in Queensland
- Review of the Australian Charities and Not-for-Profit Commission Act
- Births, Deaths and Marriages Registration Amendment Bill 2018
- Clarification, simplification and modernisation of the consumer guarantee framework
- Review of the Family Law System
- Review of consent in Queensland Criminal Law
- Children's Court Expert Assistance Pilot
- Response to the Australian Government's proposal regarding the establishment of the Federal Circuit and Family Court of Australia

Recognising the concerns around funding for legal assistance services outlined in this and previous Scorecard reports, QLS has raised this issue at every recent State and Commonwealth election and directly with Government. The current review of the National Partnership Agreement on Legal Assistance Services is a golden opportunity to reset our national approach to assisting the most vulnerable in the community and those on lower incomes. QLS sees an increase in the level of per capita federal government Legal Aid and legal assistance sector funding to restore equality between the State and Commonwealth shares of funding as a critical starting point. QLS has engaged with key stakeholders and made submissions to this national review.

Pro Bono work

Queensland Law Society members across the state undertake an average of 20.5 hours of pro bono work each year. This totals almost 239,177 hours of pro bono work in Queensland. Pro bono work is an integral part of the legal profession. The benefits of pro bono work include improved skills and experience for practitioners, but importantly it is direct provision of legal services to people who would otherwise be unable to retain legal assistance.

The Queensland Law Society Pro Bono Scheme is managed by LawRight. This valuable initiative aims to enhance the standing of the profession and gives Queensland Law Society members a structured system in which to demonstrate practical support for their communities.

The Scheme provides a central point of contact for pro bono referrals in civil matters where legal assistance is needed and where the applicant cannot afford private legal services or obtain Legal Aid. The Scheme focuses on people experiencing hardship to maximise use of pro bono resources and covers all areas of civil law.

However, outside this Scheme, many firms give significantly to the community by providing services free or at low cost to those in need.

Discrete task services and limited scope retainers

Providing discrete task services (where a solicitor undertakes agreed tasks, rather than representing a client for the whole case) is one way of making legal services accessible to a greater number of people. This is an important way to enhance access to legal services for those who are ineligible for free legal assistance, but cannot afford the cost of a traditional full service retainer. It has been highlighted in previous Scorecard reports and identified in the Product Commissioner's review of access to justice arrangements. However, many solicitors remain somewhat cautious about providing service in this way.

Guidance Statement No.7 – Limited scope representation is dispute resolution was published by Queensland Law Society Ethics Centre in 2017, as a tool to assist practitioners. The Statement is specifically concerned with limited scope representation in the dispute resolution context.

For solicitors acting in dispute resolution, limited scope representation may mean providing advice on drafting or checking documents alone or providing discrete advice about a particular step. The Guidance Statement outlines some of the ethical principles and issues which solicitors should consider when acting on a limited scope representation retainer.

Technology and new law

Previous Scorecards have highlighted the role that technology can play in enhancing access to justice. Queensland Law Society recognises the important role of technology as an integral part of legal practice, including in relation to back office processes and in the provision of legal advice and information. Queensland Law Society aims to support the legal profession in embracing technology in the practice and delivery of legal services. Since 2011, Queensland Law Society has offered over 68 technology focused professional development events. By way of example, the 2018 Queensland Law Society Symposium included a session on how technology can improve legal practice.

Over the last few months Queensland Law Society Litigation Rules Committee has been advocating to introduce e-filing and e-litigation into all courts in Queensland. In particular, rural and regional courts are in need for such technology to improve their timely access to the courts.

Queensland Law Society Access to Justice and Pro Bono Law Committee is continuing to engage with stakeholders in the legal profession to investigate further ways in which technology can support access to justice in Queensland.

Conclusion

In 2018, survey respondents were united in their concern about the current affordability of legal representation and the serious underfunding of legal assistance services available to Queenslanders. Respondents believe that the quality and scope of legal assistance services is excellent and that additional funding for these services is crucial in improving access to justice.

Significant barriers to accessing justice continue to exist in Queensland, including:

- the capacity of many Queenslanders to afford the legal services they need;
- inadequate funding of legal assistance services such as Legal Aid;
- the perceived complexity and length of resolving legal issues through courts and tribunals;
- insufficient court resources such as the number of judicial officers presiding in Queensland;
- court filing and administrative fees; and
- the need for more online access to information about laws and legal rights.

Based on the responses, key items for continued development and reform to improve access to justice include;

- increased funding and resources for legal assistance services, courts and tribunals;
- development of alternative fee structures in private practice, including discrete task assistance; and
- expansion of online resources and file management capabilities.

The 2018 Scorecard painted a picture of access to justice over the year, as well as identifying trends from previous years. Queensland Law Society will continue to advocate for improvements to access to justice, particularly the potential solutions for issues identified within the survey that warrant consideration by government and key stakeholders.

Access to justice is fundamental to our democracy and Queensland Law Society will continue to strive for genuine equality before the law and greater accessibility to our justice system.

Overview of survey

Methodology

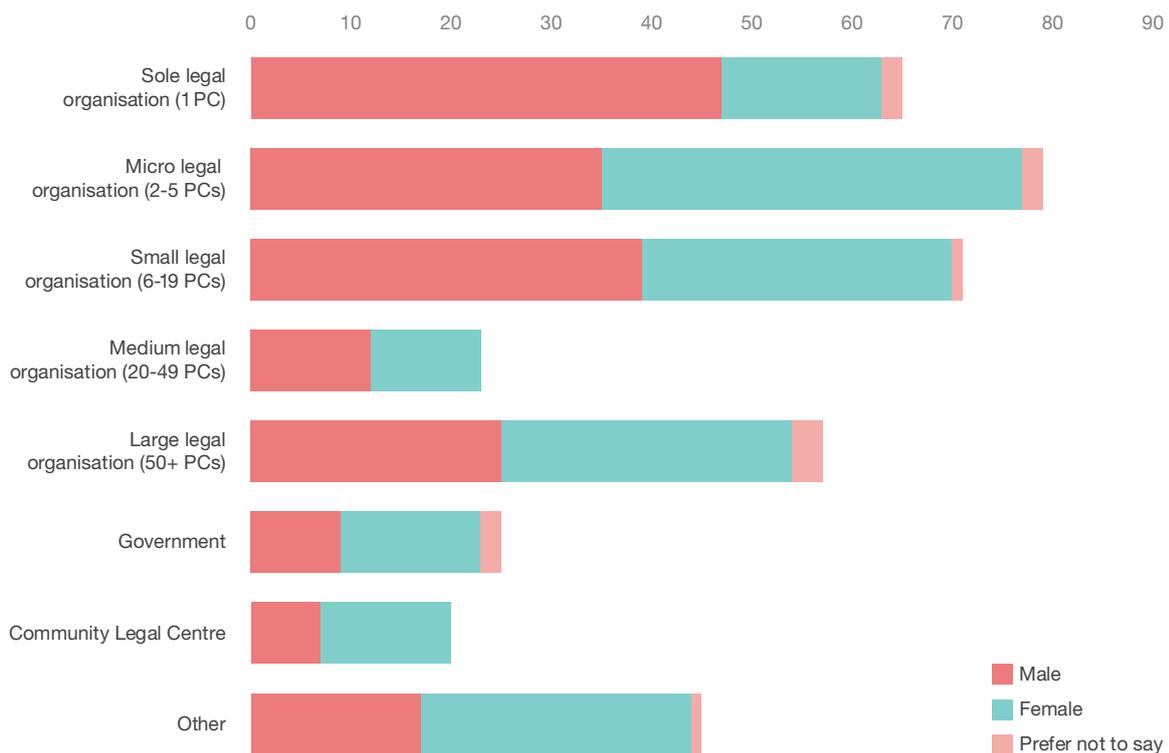
To align with last year's survey results, the 2018 survey was comprised of multiple choice questions about the state of access to justice in Queensland. The choices were the same as the 2017 survey, based upon responses from previous years. For each question, respondents could select 'Other' from the choices provided and complete their answer in the open text field.

The survey was promoted through a number of channels such as the Queensland Law Society's newsletter, QLS Update, on 8 August and 22 August 2018 and remained open on the Queensland Law Society's website from 26 July 2018 to 27 August 2017, allowing 1 month for the survey to be completed. The survey was distributed to Queensland Law Society's legal policy committees, including members of the Access to Justice and Pro Bono Law Committee who shared the survey with colleagues and various networks. Queensland Law Society's Learning and Professional Development events, social media and website tiles were also utilised to market the survey throughout the month.

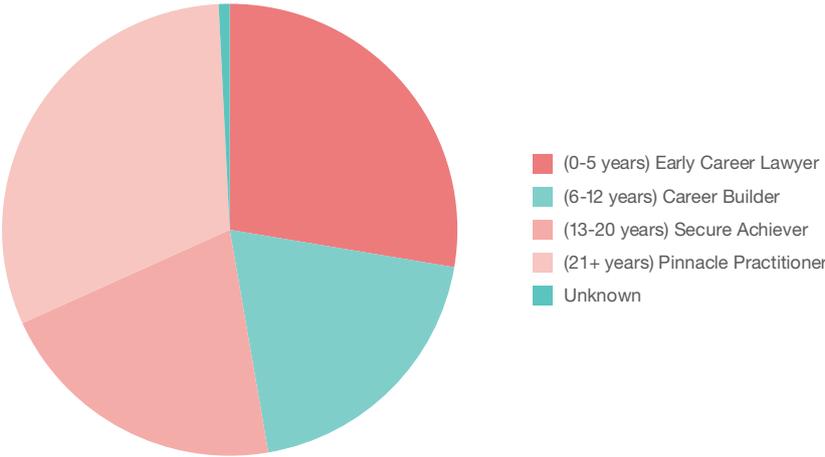
The data was collected using the Survey Monkey platform which was then analysed by Queensland Law Society's in house Data Analyst. The response rate was significantly higher than previous years, yielding the biggest response to date.

Survey respondents

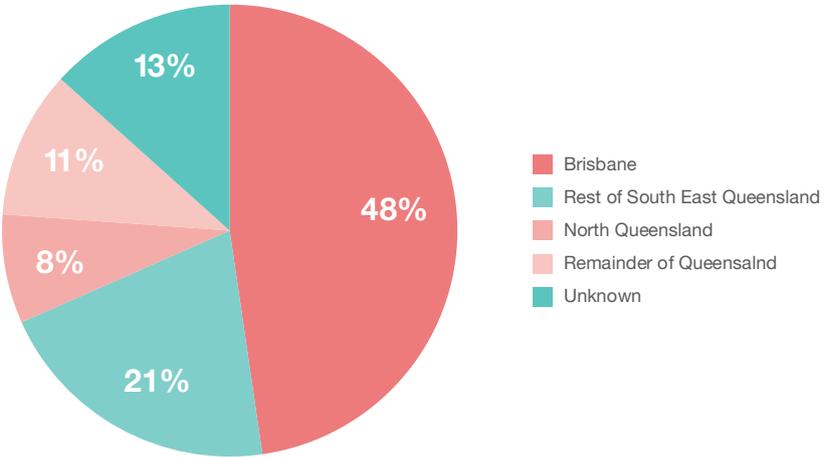
The majority of the survey responses were from private practitioners, 77%; around 56% were from private practices with less than 20 practitioners; this is a doubling of representation of this group from last year.



Post admission experience



Location





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