

1 March 2018

Our ref: KB-ODLC

Committee Secretary  
Senate Legal and Constitutional Affairs Legislation Committee  
Department of the Senate  
PO Box 6100  
Parliament House  
Canberra Act 2600

By email: [seniorclerk.committees.sen@aph.gov.au](mailto:seniorclerk.committees.sen@aph.gov.au)

Dear Committee Secretary

**Judiciary Amendment (Commonwealth Model Litigant Obligations) Bill 2017**

Thank you for the opportunity to provide a response on the Judiciary Amendment (Commonwealth Model Litigant Obligations) Bill 2017 (the Bill).

The Queensland Law Society (the Society) is the peak professional body for the State's legal practitioners. We represent and promote nearly 12,000 legal professionals, increase community understanding of the law, help protect the rights of individuals and advise the community about the many benefits solicitors can provide. The QLS also assists the public by advising government on improvements to laws affecting Queenslanders and working to improve their access to the law.

We note that the purpose of this Bill is to provide enforceable model litigant obligations. QLS supports this concept and is also in favour of enforceable obligations being introduced at the State-level.

We consider that it is appropriate for the Commonwealth Ombudsman to deal with complaints about contraventions of model litigant provisions, at first instance, providing that adequate resources are directed to the Ombudsman for this purpose.

Considering the issue of whether a court should be able to stay a proceeding, or make other orders, if a party who is a "Commonwealth litigant"<sup>1</sup>, contravenes its model litigant obligations, QLS is of the view that the court should have this discretion.

As to the specific drafting, we have some concerns proposed sections 55ZGA and 55GB. In our view section 55GB(2) achieves the intent of sections 55ZGA and 55GB. We propose that if the Committee considers that a court should have this specific power, the section read:

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<sup>1</sup> As defined in the *Judiciary Act 1903*

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*If, in a proceeding to which the applicant and the Commonwealth litigant are party, the court is satisfied, on the application of the applicant, that the Commonwealth litigant or person acting for the Commonwealth litigant contravened the model litigant obligations as referred to in the complaint, the court may make any order it considers appropriate.*

We do not consider that it is appropriate to seek an order of the court based on a “likely” contravention of a provision.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Senior Policy Solicitor, Kate Brodnik by phone on (07) 3842 5851 or by email to [K.Brodnik@qls.com.au](mailto:K.Brodnik@qls.com.au).

Yours faithfully

A handwritten signature in black ink, appearing to read 'Ken Taylor', with a long horizontal flourish extending to the right.

Ken Taylor  
**President**