

2 September 2013

The Queensland Plan Project Team
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Dear Project Team

The Queensland Plan – Queensland’s Questions

Queensland Law Society welcomes the opportunity to comment on the Queensland Plan by addressing the six state-wide questions.

We make the following comments in response to the questions posed for your consideration. Our responses are limited to those questions which concern the legal profession and its impact on the community.

In the context of living in the community, how do we move our focus from me to we?

We consider that a focus from the individual to the community is founded upon leadership which is inclusive and deals with the most disadvantaged and marginalised in our community with respect and dignity. There are a number of relevant high watermark issues which would demonstrate that inclusive leadership to the community.

Providing adequate and sustainable legal assistance for disadvantaged persons in areas of State law where fundamental human rights are at stake.

The Society considers that that adequate legal assistance means that legal aid should always be available for:

- individuals who are at risk of serving a term of imprisonment of any duration
- separate representatives for children in child protection matters
- parents in child protection matters
- representation in the guardianship jurisdiction
- representation for individuals with mental health issues
- the payment of interpreters.

We also note that adequate and sustainable legal services should be provided to eliminate regional differences in the availability of legal assistance.

Sustainable legal assistance requires:

- resilience building for the legal assistance sector in response to specific events and natural disasters
- fair levels of remuneration for legal practitioners undertaking State legal aid assignments
- recurrent and reliable funding commitments to community legal centres that currently receive non-recurrent funding
- addressing unmet needs in civil law matters such as consumer protection, debt management, tenancy, employment and other areas of civil law.

Improving treatment of people suffering from mental health issues and impaired decision-making capacity in the criminal justice system

The implementation of processes and programs to identify mental health issues and impaired decision-making capacity in people accused of criminal offences at an early stage, including court diversion programs aimed at addressing the underlying causes of a person’s offending behaviour will assist in improving the treatment of people suffering from mental health issues and impaired decision-making capacity in the criminal justice system.

We also consider this can be achieved by providing:

- assistance for the accused and their family through court processes
- assistance for the accused and their family to access existing mental health services and treatment facilities in order to reduce rates of recidivism
- raising awareness of:
 - mental health issues in the community
 - the various processes within the criminal justice system to deal appropriately with people suffering from mental illness.

We note that the laws of Queensland currently make no provision for the determination of the question of fitness to plead to summary criminal offences. We consider law reform is vital in this area.

Increasing the focus on reducing recidivism and ensuring incarceration is a last resort in the criminal justice system

We consider that this can be achieved by:

- increasing funding for correctional facilities, including by providing improved access to and more places in:
 - programs which will positively affect rates of recidivism, or
 - programs which are prerequisites to parole

- appropriate post-release support and funding for prisoners to ensure they do not re-enter the criminal justice system
- increase in the use of alternative dispute resolution in the criminal justice system.

Protecting and dealing appropriately with children and young people in the legal system.

The removal of 17 year old offenders from Queensland’s adult correctional facilities and the placement of these young people within the jurisdiction of the *Youth Justice Act 1992* will assist in achieving this. Queensland is the only state or territory in Australia where 17 year olds are treated as adults, not children, in the criminal justice system and are incarcerated in adult correctional facilities. This is also contrary to Australia’s international treaty obligations.

Further, in the criminal justice context we support protection for young people from the full force of the criminal law due to their inherent vulnerabilities and the difference between adult and child cognitive development. In particular, we support the use of non-custodial sentencing options for children and young people. In our view, it is imperative to maintain the principle that detention should be used as a last resort. Research suggests that detaining young people is the most significant factor that could result in recidivism, and as such we consider diversionary programs are an important tool to stop reoffending and address underlying behavioural issues.

Addressing elder abuse in Queensland.

There are gaps in Queensland law with respect to elder abuse and the lack of compensation an elderly person may apply for if injured.

Presently, elderly Queenslanders may not apply for exemplary, punitive or aggravated damages if they are injured as a result of international acts of neglect.

If elderly Queenslanders are injured and not in paid employment, they are limited to applying for general damages only (as they have no claim for economic loss). Elderly Queenslanders are also limited to the amount of legal costs they can recover as a result of personal injury caused by neglect.

QLS recommends:

- introducing stronger civil remedies for parties subject to elder abuse (as a result of intentional neglect)
- raising awareness of elder abuse in the community
- creating a dedicated unit within the Queensland Police Service to investigate and deal with reports of criminal acts of elder abuse.

How do we structure our economy to ensure our children inherit a resilient future?

One key aspect to ensuring the Queensland economy is resilient into the future is to ensure that Queensland has well-drafted, clear, proportionate and effective laws.

The Queensland Plan – Queensland’s Questions

In achieving this goal, the Society advocates for a move to ensure that evidence based policy underpins legislative reform. We consider any legislation, program or service should be informed by evidence. This ensures that policy focused on addressing and targeting specific issues that arise for the Government’s consideration are addressed in a cost-effective way with a focus on long-term results driven data. Legislative reform that is focused in this way is likely to have positive benefits and outcomes for the future.

Importantly we note that a fundamental part of legislative reform should include ensuring there is sufficient community consultation on legislative reform. This provides a breadth of opinion, and the opportunity for review and feedback by stakeholders who are aware of the impact policy decisions will have on specific sectors within the community.

Thank you again for providing the opportunity to provide these views.

Yours faithfully

A handwritten signature in black ink, consisting of several fluid, overlapping strokes that form a stylized representation of the name 'Annette Bradfield'.

Annette Bradfield
President