

2019
ACCESS TO JUSTICE

Access to Justice Scorecard

Evaluating access to justice in Queensland



2019 Data analysis and report

 Queensland
Law Society®

Introduction

In its seventh year, Queensland Law Society's Access to Justice Scorecard has sought to assess the views of the legal profession in Queensland about Queenslanders' access to justice. The Scorecard is an initiative of the Queensland Law Society's Access to Justice and Pro Bono Law Committee, which is comprised of expert legal practitioners who have a thorough understanding of the issues relating to these important issues.

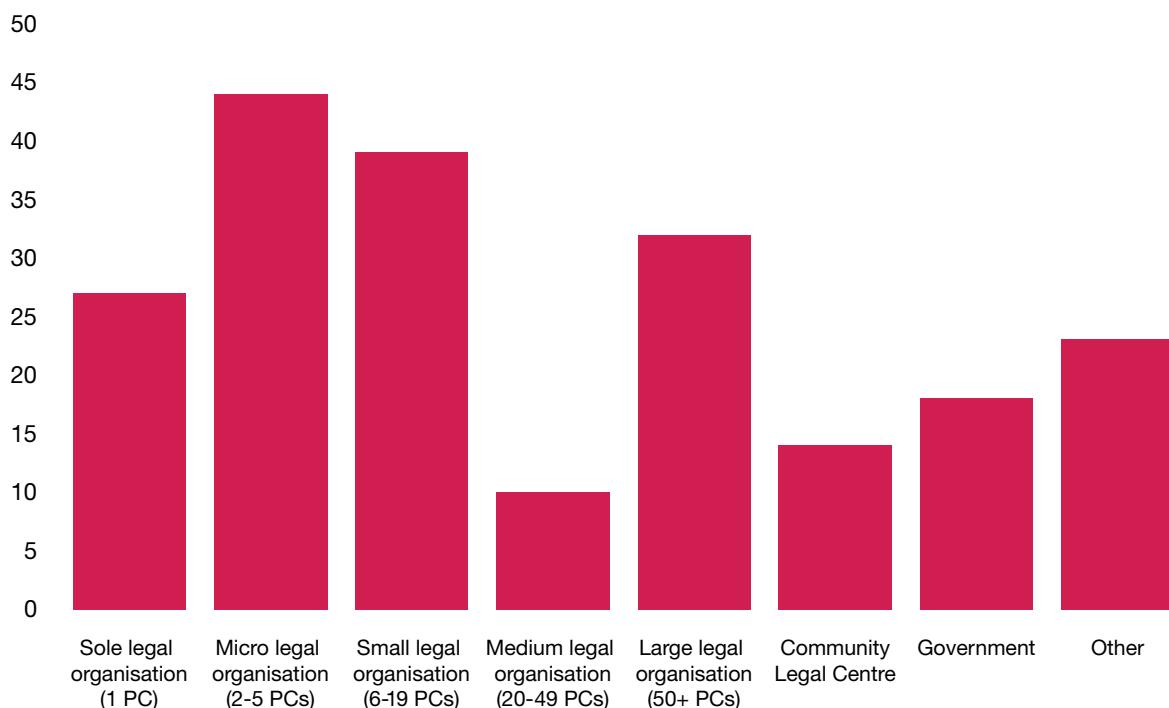
The Scorecard acknowledges and celebrates achievements in approving access to justice, identifies where improvements are necessary and proposes solutions to overcome barriers to accessing justice. The report provides a platform to assist Queensland Law Society in advocating for better access to justice in Queensland.

The Scorecard assesses whether laws achieve fair and intended outcomes in Queensland. The survey yielded similar results to the 2018 survey with an overall score of 5 out of 10. This score demonstrates there are considerable improvements to be made if all Queenslanders are to have equal access to justice.

Methodology

This year, the Scorecard again adopted the 2017 multiple choice format to create a comparable timeline of the access to justice experience 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.

Number of Respondents 2019

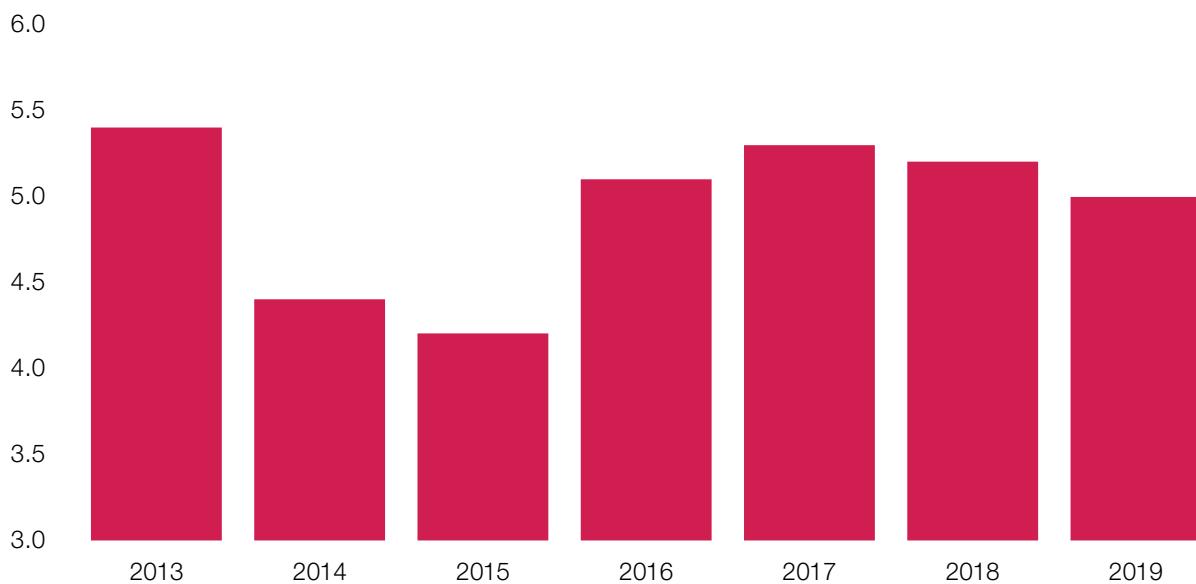


Survey Findings

Access to justice overall

Using a scale 1-10, with 1 being very poor and 10 being very good, how would you score access to justice in Queensland?

Annual Score



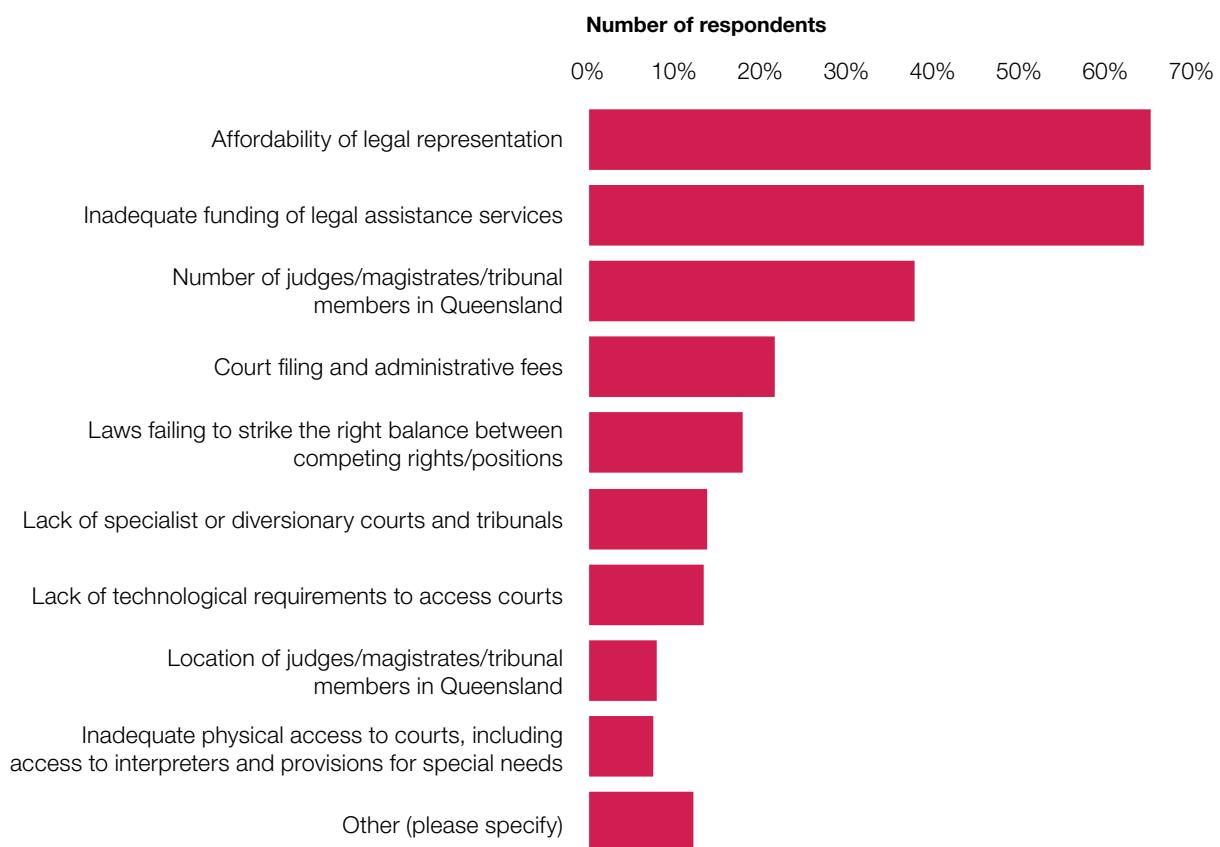
On a scale from 1 to 10, survey respondents were asked to score access to justice in Queensland. The average score was 5, which is down from an average score of 5.2 in 2018 and 5.3 in 2017.

Many respondents cited the lack of funding for the legal assistance sector (community legal centres), Legal Aid Queensland, the Aboriginal and Torres Strait Islander Legal Service and Queensland Indigenous Family Violence Legal Service as the primary reason for their low score. The Society has highlighted the need to increase the level of per capita funding for these organisations in successive QLS Call to Parties Statements. Despite these calls, these vital legal services remain woefully underfunded by both the State and Federal governments.

Access to legal services in rural, regional and remote areas of Queensland were also of particular concern, as well as the need to provide additional funding for civil legal services, including family law matters.

Most significant barriers to accessing justice in Queensland

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



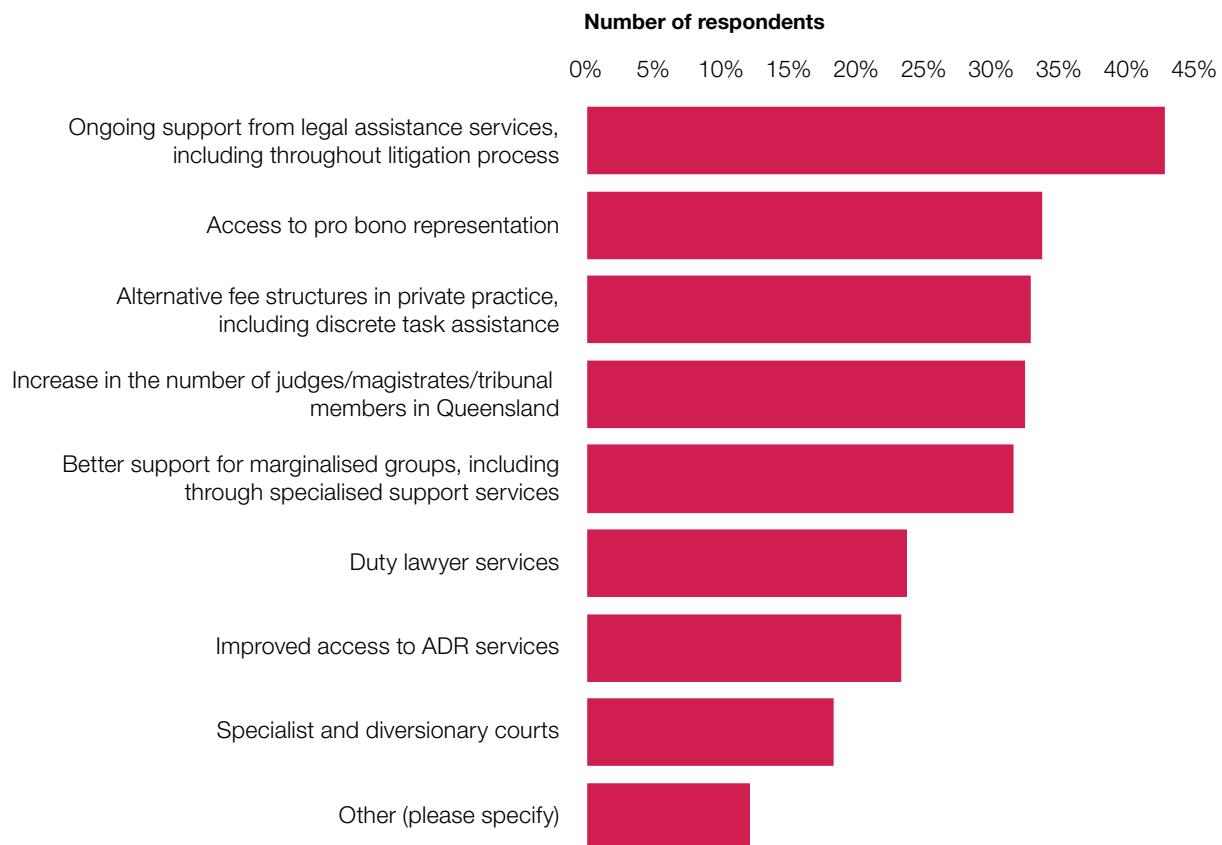
For the last three years, the top three barriers to accessing justice have remained static.

In 2019, as in 2018, respondents highlighted the ‘affordability of legal representation’ as the number one issue. Also consistent with the 2018 findings is the 2019 respondents’ highlighting of ‘inadequate funding of legal assistance services’, and the number of judicial officers respectively, as key barriers to accessing justice in Queensland. These all featured as the top three barriers to accessing justice in 2017, although the 2017 responses identified inadequate funding of legal assistance services as the foremost barrier.

Of the ‘other’ responses, survey respondents highlighted concern with the absence of contributions from Aboriginal and Torres Strait Islander people. Consistent with the 2018 survey, respondents highlighted the need for alternative pathways for dispute resolution before, and during, the court process in an attempt to avoid the ongoing costs of litigation. A consistent theme in the 2019 survey responses is that procedural aspects of the court process, particularly for those who are self-represented, is a key barrier to accessing justice. The complexity of the procedural aspects of court was also reflected in responses as a key barrier to accessing justice in the 2016, 2017 and 2018 surveys.

Improving access to justice in Queensland

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.



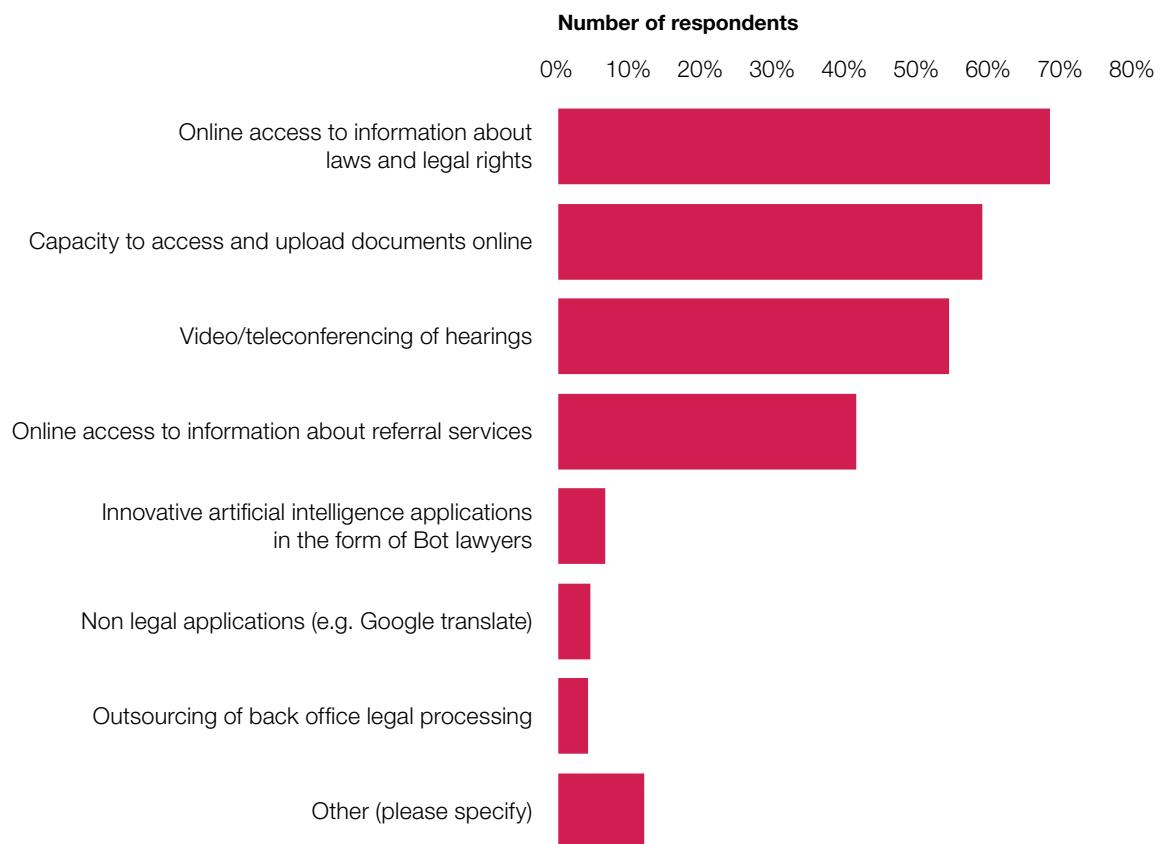
Consistent with responses from previous years, ongoing support for legal assistance services remained the key way in which access to justice could be improved. It is clear this is a multifaceted strategy and a number of ‘other’ responses identified increased funding (for both Legal Aid Queensland and community legal centres) as a critical step. The importance of this funding is supported by access to pro bono representation coming in as the second most important method.

It remains the case that legal assistance providers commonly offer initial advice, but lack the capacity and resources to assist clients through to a resolution. To potentially fill the gap left by deficits in funding needs, a third of respondents continue to view alternative fee structures as a way to improve access to justice.

Support for marginalised groups also continues to be a top five suggestion, with ‘other’ responses particularly identifying support for Aboriginal and Torres Strait Islander people and those in remote and rural communities as vital.

Technology and access to justice

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 have most significantly improved access to justice in Queensland.



Over 70% of respondents identified online access to legal information about laws and legal rights as the key advancement in improving access to justice. In 2017, the Scorecard reported on the importance of these, with case studies including LawRight's 'Legalpedia' and Caxton Legal Centre's 'Queensland Law Handbook'. Resources like these continue to be highlighted in other responses as valuable tools. As one respondent succinctly noted:

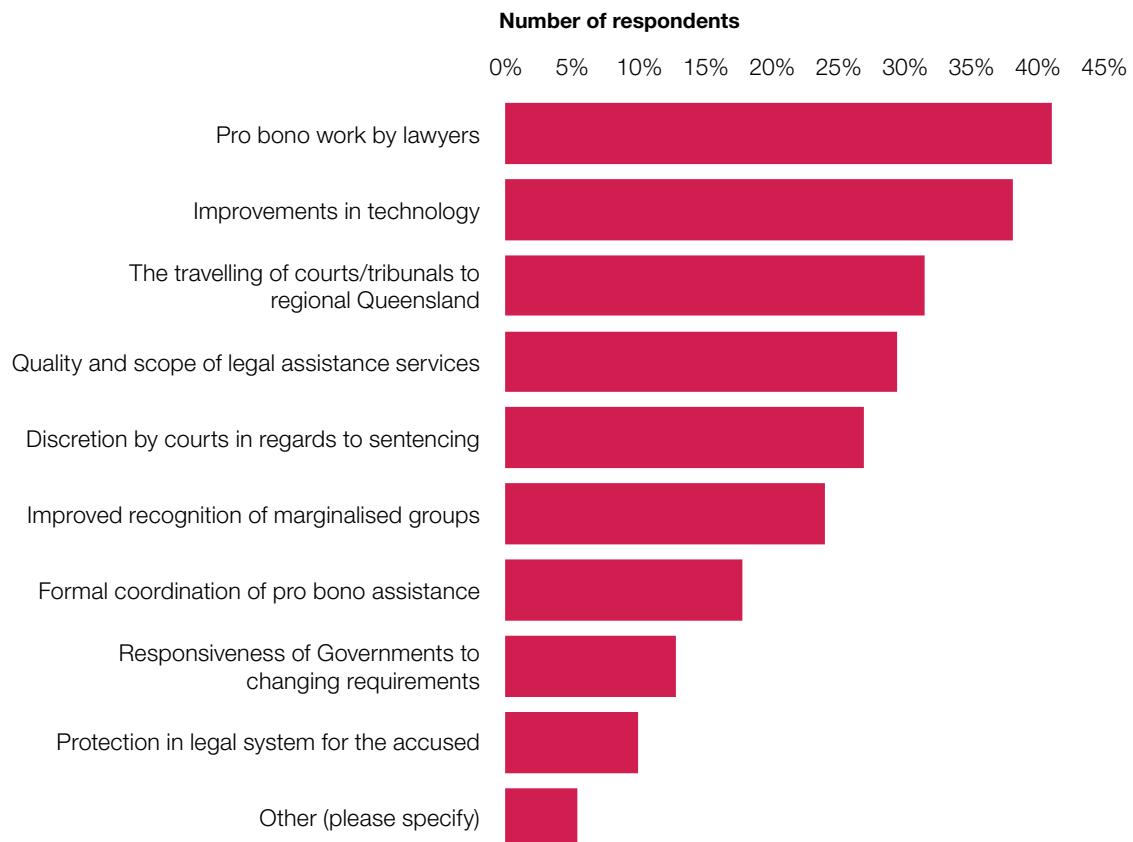
'The law is an exclusive club...find ways to demystify information, so that people don't feel so afraid to tackle injustice on their own.'

Capacity to access and upload documents online, as well as video/teleconferencing of hearings, continue to rank second and third respectively, with the proportion of responses for the latter increasing by 10% since 2016. This is particularly important for regional and remote clients and practitioners.

Interestingly, the importance of innovative artificial intelligence has remained low, since dropping from 22% in 2016.

What is working well

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.



Pro bono work by lawyers continues to be a leading response for best supporting access to justice in Queensland.

In an upward trend, improvements in technology has increased year on year since 2016, showing a continued focus on, and interest in, the role of technology.

Conversely, quality and scope of legal assistance services has decreased as an area best supporting access to justice, dropping from 55% in 2016 (the top ranked response) to only 32% in 2019. Formal coordination of pro bono assistance has similarly fallen by 15% since 2016. These decreases could, of course, be explained by a strong need for such improvements in 2015 and 2016 (following the lowest ever overall results on access to justice in Queensland), rather than a decline in the actual quality and scope of legal assistance services or coordination of pro bono assistance.

The travelling of courts/tribunals to regional Queensland continues to support access to justice, with other responses noting the increased efficiency this brings.

Actions in response to survey findings

Advocating for better access to justice

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.

Queensland Law Society has 29 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 engages with courts on procedural reform and practical issues affecting court users, including consultation on draft practice directions.

In the 2018-19 financial year, Queensland Law Society made a total of 226 submissions, provided evidence at 17 Parliamentary Public Hearings, attended 175 stakeholder consultations, many of which aimed to improve access to justice for Queenslanders. Some of the most significant submissions were:

- Reviews of the National Partnership Agreement on Legal Assistance Services and Indigenous Legal Assistance Program
- Issues facing Queensland court users
- Australian Law Reform Commission Discussion Paper: Review of the Family Law System
- Queensland State Budget: Request for funding to enable electronic Court Filing and a Dispute Resolution Hub
- Access to legal representation in Queensland correctional facilities
- Australian Human Rights Commission inquiry – Free and equal: An Australian conversation on human rights
- Forensic disability orders
- Claims farming
- Family Law Amendment (Family Violence and Cross-examination of Parties) Bill 2018
- Industrial Relations (Tribunal) Rules 2011
- Police Powers and Other Legislation Amendment Bill 2018
- Prisoners in prolonged solitary confinement
- Queensland Sentencing Advisory Council Consultation Paper: Sentencing for criminal offences arising from the death of a child
- Inquiry into Class Action Proceedings and Third-Party Litigation Funders
- Joint Select Committee on the Royal Commission into Institutional Responses to Child Sexual Abuse – oversight of redress related recommendations
- Unfair contract terms – insurance contracts
- Telecommunications Legislation Amendment Bill 2018
- National Disability Agreement Review
- Inquiry into wage theft in Queensland
- Palliative Care Services Review
- Termination of Pregnancy Bill 2018
- Criminal Code (Non-consensual sharing of intimate images) Amendment Bill 2018

- Inquiries into: My Health Record system & My Health Records Amendment (Strengthening Privacy) Bill 2018
- Protecting the Human Rights of People Born with Variations in Sex Characteristics in the context of Medical Interventions
- Police Powers and Responsibilities (Commonwealth Games) Amendment Act 2017
- Federal Circuit and Family Court of Australia Bill 2018 and Federal Circuit and Family Court of Australia (Consequential Amendment and Transitional Provisions) Bill 2018
- Draft Charter of Aged Care Rights
- Mental Health Review Tribunal
- Stakeholder Reference Group – Five year review of the Queensland Workers’ Compensation Scheme
- Human Rights Bill 2018
- National Inquiry into Sexual Harassment in Australian Workplaces
- Justice Legislation (Links to Terrorist Activity) Amendment Bill 2018
- The Fair Work Commission’s Workplace Advice Service
- Queensland Civil and Administrative Tribunal and Other Legislation Amendment Bill 2018
- 2019-20 Pre-Budget Submission
- Australian Citizenship Amendment (Strengthening the Citizenship Loss Provisions) Bill 2018
- Discussion Paper – Industrial Manslaughter and Other Legislative Amendments for Resources Safety and Health
- Criminal Justice Report by the Royal Commission into Institutional Responses to Child Sexual Abuse
- Review of Queensland’s laws relating to civil surveillance and the protection of privacy in the context of current and emerging technologies
- Productivity Commission Inquiry into Mental Health
- QLS Federal Call to Parties Statement 2019
- Domestic and Family Violence Implementation Council
- Increased elder abuse awareness drives rise in calls to Helpline
- Children and young people being detained in watch houses
- Youth Justice and Other Legislation Amendment Bill 2019
- Queensland Sentencing Advisory Council Options Paper: Community based sentencing orders, imprisonment and parole

Pro Bono work

Queensland Law Society members across the state undertake an average of 21.78 hours (an increase from 20.5 hours in 2018) of pro bono work each year. This totals almost 300,344 (239,177 hours in 2018) 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 their communities by providing services free or at low cost to those in need.

Low Bono

Low Bono is emerging as an interesting part of the solution to bridging the access to justice gap. Low Bono can mean just accepting a discounted fee for work. It is also becoming understood to encompass:

- Unbundled or limited scope services
- Passing on the benefits of improved efficiency
- Self-help tools and emerging Artificial Intelligence (AI) solutions

In an increasing range of matters that have traditionally been handled by a solicitor from start to finish, solicitors are assisting clients with discrete tasks only, under partial or limited retainers. This can make legal services affordable and accessible for someone who could not afford to pay for full representation. Many lawyers who offer unbundled legal services think of them as “low bono” services, even though the solicitors are not necessarily lowering their prices; instead, they’re limiting the scope of their work.

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. This has been highlighted in previous Scorecard reports and identified in the Productivity Commissioner’s review of access to justice arrangements. However, many solicitors remain somewhat cautious about providing services in this way.

Guidance Statement No. 7 – Limited scope representation in 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.

The LAW Survey¹ conducted by the NSW Law and Justice Foundation found that only 51% of people with a legal problem sought formal advice. Low Bono provides an opportunity to serve those who are not currently accessing legal services. This holds benefits for community members accessing legal services and benefits for the legal profession.

¹ Found at <http://www.lawfoundation.net.au/ljf/app/&id=FC6F890AA7D0835ACA257A90008300DB>

Technology and new law

The legal landscape is changing due to developing technologies. These advances have functioned to create efficiencies in the operation of legal practice. Firms are able to operate more efficiently with fewer overheads than have been required in traditional legal practices. This means that firms can pass on some of the benefits of these efficiencies to clients and offer services at lower rates that more clients can afford.

Many legal practices provide free legal information on their firm websites, or provide links to material that can assist individuals navigate the legal system. AI can tailor the information a person using a website receives to their own circumstances, and is emerging as a significant opportunity for solicitors to engage with and provide solutions to people who could not otherwise access services.

The Scorecard data has highlighted the important 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. As a result, the Queensland Law Society Council established the Innovation Committee in February 2019.

The Innovation Committee's primary purpose is to assist members with the change associated with the future of legal services and to best position the profession to remain relevant through this disruption. The Innovation Committee is considering the skills and experience lawyers will require, the impact of tools and technology on the profession, and what business structures will support legal practice into the future.

The Society continues to advocate for electronic filing and document management in Queensland courts. Queensland is a decentralised state with the highest number of regional legal practitioners in the country. Electronic court filing is currently available in the Federal Court and in other state jurisdictions across Australia. It is not, however, available in most Queensland courts.

The inability to file documents and conduct proceedings electronically:

- introduces inefficiencies, particularly given that most business in the State is conducted electronically
- increases legal costs for clients
- increases operating costs for law firms
- adds to inefficiencies within the Courts and stretches their resources
- increases delay and uncertainty in proceedings
- discourages the use of technology in litigation generally
- dissuades business from operating in Queensland or, at least, from using Queensland services to resolve disputes
- creates access to justice issues.

The Society has maintained that court users and judicial officers should be able to use existing technology to easily and cost effectively conduct all matters in an electronic environment—both prior to and at trial stage. In this regard, our members have proposed a comprehensive end-to-end electronic court process. Ideally, this would be a seamless and entirely paperless system.

This process would need to commence with the use of electronic court files. This would require court documents to be filed electronically and also be accessible electronically. All documents could be filed as OCR PDFs via an online system with public court documents able to be easily searched on the court's website. As such, there would be no need to locate a physical file to process transactions. An electronic filing system would also require the installation of high quality connection and facilities for confidential document sharing between end points and electronic signatures for documents.

The Society will continue to advocate on these issues in pre-Budget submissions, Call to Parties Statements and in our meetings with Ministers and other relevant stakeholders.



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