Queensland Law Society

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Office of the President

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Our ref: KB-MC

Committee Secretary
Legal Affairs and Community Safety Committee
Parliament House
George Street
Brisbane Qld 4000

By email: [redacted]

Dear Committee Secretary

Justice and Other Legislation Amendment Bill 2019 – Supplementary submission

Thank you for the opportunity to appear before the Legal Affairs and Community Safety Committee (the **Committee**) on the Justice and Other Legislation Amendment Bill 2019 (the **Bill**) on Friday 17 January 2020.

At the hearing, the Queensland Law Society (**QLS**) sought leave of the Committee to provide further particulars of our support for the submission made by Caxton Legal Centre (**Caxton**) dated 24 December 2019 and to comment on the Department of Justice and Attorney-General (**DJAG**) response to submissions, dated 15 January 2020. We thank the Committee for granting this leave.

Before addressing these particular issues, we would like to provide further context to our answer given at the hearing about the time available to provide the submissions on the Bill.. As stated, QLS considers that the timeframes for responding to this inquiry were inadequate, particularly given the time of year and the number of acts and regulations amended by the Bill, however we wish to place on record that we were consulted by DJAG on some of the proposed amendments prior to the Bill's introduction into Parliament. This prior consultation assisted our ability to provide our response to the Committee notwithstanding the short timeframe and time of year.

Detinue claims in the Magistrates Court and QCAT

We support the objective of the amendments to the *Magistrates Court Act 1921* (***Magistrates Court Act***) as stated in the Explanatory Notes to, "*clarify the jurisdiction of the Magistrates Courts Act 1921 in relation to personal actions for the recovery of chattels*".

We agree with the submission of Caxton that the jurisdiction of the Queensland Civil and Administrative Tribunal (**QCAT**) should similarly be extended to include actions for the

recovery of personal property. We consider this will provide better access to justice for those who do not have the resources to commence a proceeding in the courts.

Caxton's submission provides drafting suggestions to assist the Bill in achieving its objectives. We agree with the suggestions, save for:

- Caxton's submission that the value of the item should not matter if only its' return is sought. We are of the view that it is appropriate and consistent for the operation of our judicial system for the jurisdictional monetary limits to apply to these proceedings.
- We do not support extending the monetary jurisdiction of QCAT to hear matters involving personal property valued at more than its jurisdictional limit (currently $25,000). Such matters should appropriately be brought in the Magistrates Court or appropriate higher courts.

These amendments should of course be accompanied by provision of appropriate additional resources for the Magistrates Court and to QCAT.

Responses from Department of Justice and Attorney-General

In its correspondence to the Committee dated 15 January 2020, DJAG stated that it would give further consideration to a number of issues raised by the submitters to this inquiry, including QLS. To our knowledge, no further correspondence has been received from DJAG. It was not clear when any further response will be provided. We consider any further information should be provided prior to the finalisation of the Committee's report.

Specifically, we ask that the Committee note DJAG's advice that it will further consider QLS's submission with respect to clause 18 of the bill, which amends section 59 of the *Civil Proceedings Act 2011*. This was dealt with at page 2 of our submission. In the absence of any comments, we simply restate our concern that potentially ambiguous provisions relating to costs could lead to: delays in the resolution of matters, further litigation and additional costs. We maintain that the definitions of "money order" and "money order debt", and the use of the word "ascertainment", require further consideration in conjunction with rules 737 and 740 of the *Uniform Civil Procedure Rules 1999* and the apparent policy intent.

We refer the Committee to our comments with respect to the *Dangerous Prisoners (Sexual Offenders) Act 2003* (**DPSOA**) (page 3 and 4 of our submission) and the *Peace and Good Behaviour Act 1982* (**PGA**) (page 5 of our submission). With regard to the amendments to the DPSOA, whilst we note DJAG's response, QLS remains concerned about the appropriateness of such legislation being utilised for a certain class of juvenile offender as a matter of general principle.

We have considered the response provided by DJAG in relation to the amendments to the PGA which states that the proposed definition 'is consistent with the intended purpose of the restricted premises scheme when it was introduced in 2016 and is also consistent with the current objectives' of the PGA. We disagree. We maintain the view that the amendments will apply to a wider range of conduct and may have unintended consequences. In this regard, we refer the Committee to our submissions at the public hearing regarding the broadened scope of 'restricted premises orders' and the potential for such orders to apply to a much wider range of conduct including to relatively minor criminal offences including for example, under the new offences related to protest activity.

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Whilst not addressed in our initial written submission, we reiterate the concerns raised in our oral submissions at the hearing in relation to proposed section 100D of the *Coroners Act* in clause 41. This section abrogates the right to maintain a claim for privilege against self-incrimination and also applies retrospectively. Both the privilege against self-incrimination and objection to retrospective legislation are cornerstone principles of our justice system which should very rarely be ignored. In our view section 100D is not justified and risks unfairness to witnesses not adequately protected by the other provisions in the *Coroners Act 2003*.

As set out in both our written and oral submissions with respect to the amendments to the *Drug Misuse Act* 1986 we query the inability for a Court to inquire into an informer's identity - where it is in the interests of justice to do so in such cases. The reason for this anomaly in these cases is unclear. Whilst we note from DJAG's response that the 'amendments do not otherwise alter the current limitations on identifying an informer', we suggest that if amendments are to be made to these provisions then they should be made consistent with other *informer* protections; see for example the court's discretion in section 151B of the *Weapons Act* 1990.

Finally, we agree with the concerns raised by the Bar Association of Queensland (**BAQ**) with respect to the proposed amendment in section 552BB of the Code which would increase the amount under the definition of 'prescribed value' in section 552BB (Excluded offences) from $30,000 to $80,000 and provide that a number of indictable offences in the Criminal Code relating to property must be dealt with summarily in a Magistrates Court. We share the concerns of the BAQ, that this increase will create difficulties for defendants to access legal assistance funding, particularly in otherwise complex matters. The inability for defendants to access Legal Aid in such matters will necessitate self-representation and cause further delay in an already overburdened jurisdiction.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via policy@qls.com.au or by phone on (07) 3842 5930.

Yours faithfully

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Luke Murphy
President