

17 February 2020

Our ref: LP-Gen

Mr John Cattle
Acting CEO
Law Council of Australia

Attention
Mike Clayton
Senior Policy Lawyer
Policy Division

By email: [REDACTED]

Dear Mr Cattle

Development of a Law Council policy position on climate change

Thank you for your memorandum of 10 December 2019 and the opportunity to comment on the merits of the development of a Law Council policy position on climate change. The Queensland Law Society (QLS) appreciates being consulted on this important matter.

As you know, QLS is the peak professional body for the State's legal practitioners. We represent and promote over 13,000 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. QLS also assists the public by advising government on improvements to laws affecting Queenslanders and working to improve their access to the law.

This response has been compiled with the assistance of volunteers from a range of our policy committees, together with solicitors from other stakeholder groups within the Queensland legal community. QLS also consulted its members via our emailed newsletter, QLS Update.

This submission has the support of the QLS Council 2020.

With respect to the Law Council memorandum, QLS responds as follows:

- the Law Council should develop a legal profession policy statement on climate change
- the statement should recognise the scientific consensus that the climate is changing in a way that is detrimental to human society and that human activity is a causative factor in that change as assessed by the Intergovernmental Panel on Climate Change (IPCC)
- the statement should address legal issues relevant to both the mitigation of climate change and adaptation to a changing climate;
- the statement should also confirm that the Law Council and its constituent bodies will encourage Australian lawyers to conduct their business in an environmentally sustainable manner.

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Support for a policy statement

QLS supports the development by the Law Council of a legal profession policy statement (**the statement**) on climate change.

Climate change presents challenges for society and its impacts will be increasingly detrimental for human health and wellbeing, as well as for Australia's economy, government and legal system.¹

QLS advocates for good laws and the public good. As governments address the challenges associated with climate change, the legal profession has a role to provide advice. Accordingly, we consider climate change an appropriate matter upon which the legal profession, like other professions, should comment. The range of legal problems that flow from climate change are addressed further below.

Recognising climate change

In accordance with our commitment to evidence-based policy, QLS recognises the scientific consensus that the climate is changing as a result of human activity. According to the IPCC and the CSIRO, the climate is warming due to the emission of greenhouse gases.

The statement should recognise the scientific consensus, the significant challenges presented by a changing climate and the role of the IPCC in assessing the state of scientific knowledge on the subject.²

First Nations recognition and perspective

QLS is committed to reconciliation and to recognising the perspectives of First Nations Australians, including First Nations Lawyers. The statement should recognise First Nations people as the original custodians of Australia and the impact that climate change is having on land that has been cared for, managed by and connected with First Nations people for over 60,000 years. The statement should support genuine and meaningful consultation with First Nations communities.

Impact of climate change

The statement must recognise the impact of climate change on human existence and particularly on vulnerable and disadvantaged communities and that climate change will increase legal need.

¹ <https://www.csiro.au/en/Research/OandA/Areas/Oceans-and-climate/Climate-change-information>
https://report.ipcc.ch/sr15/pdf/sr15_spm_final.pdf

² https://www.ipcc.ch/site/assets/uploads/2018/02/AR5_SYR_FINAL_SPM.pdf

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Legal assistance sector

We **enclose** an article by Monica Taylor published in the December edition of Proctor.³ QLS endorses Ms Taylor's observations regarding the risk of climate change increasing legal need for those who will be impacted due to income, changes in income, age, health status, location, and housing status.

In the past, the legal assistance sector has responded to discrete extreme weather events, despite significant challenges and chronic underfunding. However, as climate change is expected to result in natural disasters shifting from being discrete events to frequent, ongoing events, the ability of the legal assistance sector to absorb the increased workload will be stretched.

We encourage the Law Council to continue its advocacy on legal assistance sector funding as a climate change adaptation measure in light of these new challenges. In addition, we advocate for a properly funded national framework within which both private lawyers, community and government can work to improve access to justice and achieve improved outcomes for those affected by climate change.

Human rights

Climate change has significant consequences for human rights, including those now explicitly recognised in the new *Human Rights Act 2019* (Qld) and international instruments. These include the right to life, the right to privacy, family and home, the rights of children, and cultural rights. The obligation to protect human rights ought to be recognised in the statement.

The rights of Australians to take personal action in relation to climate change must also be considered. QLS supports the right to peaceful protest. The Law Council and constituent bodies must continue to protect the right to peaceful protest, as well as the rights of property owners and business operators in conducting their lawful enterprises.

The role of law reform in climate change mitigation

Law and policy enacted by all levels of government can influence Australia's contribution to climate change. QLS supports the Law Council's Policy on Sustainable Development as it relates to legal issues that may positively impact climate change.

QLS also emphasises the importance of proper consultation with communities and groups at risk by climate change in the development of policies.

QLS notes the international commitments made by Australia as a signatory to the Paris Agreement and recognises that a reduction in emissions is required.

The legal system is a critical tool for both state and federal governments in reducing emissions. QLS emphasises the need for an evidence-based legislative framework. The framework must:

- be clear, consistent and comply with the principles of good law

³ Ms Taylor is the Director of the UQ Pro Bono Centre and a member of the QLS Access to Justice and Pro Bono Law Committee.

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- be industry neutral to the extent possible and be developed with a clear understanding of its benefits and impacts, including the steps that must be taken to mitigate negative impacts on industries and communities
- involve measurable targets, consistent reporting, independent monitoring and proper cooperation and integration between states and territories and the Commonwealth
- provide certainty regarding how activities impacting on Australia's emissions will be assessed and regulated so as to provide industry, regulators and the courts with clear bounds within which to act.

QLS supports evidence-based reforms aimed at removing barriers to a low carbon economy and harnessing the opportunities presented by innovations intended to slow climate change and remediate the environment.

QLS acknowledges that reducing greenhouse gas emissions will impact those directly involved in high carbon industries and those who are indirectly dependent on income generated by those industries. Government revenues from these industries will also be impacted.

QLS recognises that change will not be sustainable if it is not inclusive and does not appropriately addresses the needs of those directly and indirectly relying on carbon intensive industries. The statement should commit to advocating for research into transitioning industries, communities and all people impacted by climate change.

Environmental sustainability and the business of law


Climate change is a complex issue. The statement should encourage lawyers to reduce their carbon footprint and other environmental impacts of their businesses. The Law Council and constituent bodies also have the opportunity to encourage lawyers to reduce the impact of their businesses and recognise their efforts, for example through a rating or award scheme.

There is a role for legal profession peak bodies to educate their members in relation to black letter law issues relevant to climate change such as director's duties, insurance law and other legal risks.

Finally, QLS would encourage the Law Council to engage with the peak bodies of other professions in relation to advocacy, community preparedness and adaptation to climate change. Particularly in relation to the health and psychosocial support professions.

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



Luke Murphy
President

Why we must be climate conscious

How legal needs are changing

BY MONICA TAYLOR



As global calls for action on climate change grow resoundingly louder, the profession must also consider how it conceptualises the impact of climate change in daily legal practice.

Four years ago, the Land and Environment Court of New South Wales Chief Judge, Justice Brian Preston SC, called for lawyers to adopt a climate-conscious approach. Addressing an audience of legal ethicists, his Honour said:

"Climate change is often seen as a global problem, one that is remote and removed from the daily practice of lawyers and courts. But in fact climate change is a multi-scalar problem. It is as much a small scale, local and immediate issue as it is a global issue...

"Recognising that addressing climate change depends on responses on a small scale and that any legal action which involves climate change issues will impact on climate change policy gives rise to a responsibility on lawyers to be aware of climate change issues in daily legal practice. It calls for a *climate-conscious approach* rather than a climate-blind approach."¹ (*emphasis added*)

Lawyers working across the spectrum of commercial law in fields as varied as insurance, property, corporate governance, energy and finance are already addressing

the tangible legal, risk and reputational issues that climate change poses for their clients.

But what does a climate-conscious approach mean for lawyers who work in the legal assistance sector? What is the connection between climate change and legal need? This article attempts to address these questions through a brief demographic scan of Queenslanders who typically experience multiple and intersecting legal problems.

Climate change and legal need

As our summers become longer and hotter, they carry increased risks of bushfire and drought (and also paradoxically, increased risks of extreme rainfall and flooding). Life will become more uncomfortable and unpleasant for those without access to air-conditioning, proximity to council facilities or cooling breezes, which includes population cohorts who typically fit the publicly-funded legal service client profile.

These clients are most vulnerable to the impacts of climate change because people who experience poverty and inequality generally have the least capacity to cope, adapt, move on and recover from climate change events.²

A scan of Queenslanders who experience legal need shows how climate change is set to become a 'fundamental legal disruptor' or 'whole of legal system' problem.³ Vulnerable Queenslanders include the elderly and people with chronic disease, with these

demographics expected to experience poorer health outcomes due to climate change.

The link between climate change and physical health impacts is conclusive, with climate change likely to increase heat-related illnesses and deaths, worsening asthma and allergies, diseases spread by food, water and insects, increased incidence of infectious diseases and mental health impacts, and increased suicide risk.⁴

It is estimated that Queensland will have an additional 300,000 older people by 2026, prompting an increase in legal need across health law, elder law, succession law and conceivably also elder abuse issues. Additionally, including for the younger cohort of the population, mental health problems such as the recently coined 'eco-anxiety',⁵ depression and stress are on the rise, with foreseeable flow-on effects in family violence law, employment, and credit and debt issues.⁶

In an Australian study, researchers found that there is a positive correlation between mean annual maximum temperature and suicide rates.⁷ From a service design perspective, resourcing to upscale health justice partnerships across Queensland will become more important.

The impact of climate change will be most directly felt by Queensland's regional, rural and remote (RRR) population groups. In 2016, more than one third of the Queensland population lived outside major metropolitan areas.

Community Legal Centres Queensland expects that climate crises will disproportionately impact people living in RRR communities through exacerbating existing social and financial pressures.⁸ The downstreaming of social and legal problems by this cohort will likely include property law, employment, bankruptcy, family and disputes about water allocation.

Some 17% of Queensland families are single-parent families, many of whom rent rather than own their own home. More than one in three Queenslanders live in rental accommodation. Disputes with landlords about repairs and maintenance issues that arise from climate events are also likely to become a common feature of every day legal need. Tenants' rights to access to air-conditioning and disputes between tenants and landlords regarding solar energy schemes inputs may also increase.

This quick scan demonstrates the extent to which climate change is infiltrating everyday legal practice.⁹ Many additional client groups such as climate refugees and people with disabilities whose legal problems also intersect with climate change events will face specific barriers to accessing justice. A climate-conscious approach to lawyering in the legal assistance sector requires us to embed climate change consequences into the legal support and advice we provide to our clients.

Conclusion

We must understand that climate change and the legal work it generates is no longer solely the preserve of specialist environmental lawyers. In the access to justice sector, a climate-conscious mindset to legal practice is clearly needed; one that conceptualises climate change in all aspects of our work.

We can expect the intersectionality of clients' legal problems to be constantly shaped by climate change events. With the support of the Society, the Queensland legal profession, and particularly the legal assistance sector, must adopt a climate-conscious approach. In doing so it must also build its own adaptive capacity, resilience and responsiveness to climate change.

This article appears courtesy of the QLS Access to Justice Pro Bono Committee. Monica Taylor is the Director of the UQ Pro Bono Centre and a member of the committee. This QLS policy committee brings together practitioners working full time in the access to justice sector, and private practitioners who have an interest in access to justice including pro bono practice, legal aid work and/or innovative models of providing legal services to fill the justice gap. If you are interested in the work of the committee, contact Chair Elizabeth Shearer via elizabeth.shearer@shearerdoyle.com.au.

Notes

- ¹ Preston, B, 'Implementing a climate conscious approach in daily legal practice', Australian & New Zealand Legal Ethics Colloquium Fifth Bi-Annual Meeting: Sustainable Legal Ethics as part of the public symposium 'Should Lawyers Challenge Emitters?', 4 December 2015, Monash University Law Chambers, Melbourne.
- ² Australian Council of Social Services, 2013, 'Adapting the Community Sector to Climate Change', 13.
- ³ Advocates for International Development (AFID) and King's College London, 'What lawyers can do about climate change', kcl.ac.uk/law/research/centres/climate-law-and-governance/docs/what-lawyers-can-do-about-climate-change-briefing-paper.pdf (accessed 8 October 2019).
- ⁴ Australian Medical Association, Climate Change and Human Health, position statement revised 2015, ama.com.au/position-statement/ama-position-statement-climate-change-and-human-health-2004-revised-2015 (accessed 7 October 2019); Ying Zhang, Paul Beggs, Hillary Bambrick, et al, 'The MJA-Lancet Countdown on health and climate change: Australian policy inaction threatens lives' (2018) 209(11) *Medical Journal of Australia* – *Lancet* 474.e18.
- ⁵ 'Eco-anxiety' How to spot it and what to do about it, bbc.co.uk/bbcthree/article/b2e7ee32-ad28-4ec4-89aa-a8b8c98f95a5 (accessed 7 October 2019).
- ⁶ American Psychological Association et al, March 2017, 'Mental Health and Our Changing Climate: Impacts, Implications, and Guidance'.
- ⁷ Ying Zhang, Paul Beggs, Hillary Bambrick, et al, above n4.
- ⁸ Community Legal Centres Queensland, 'Evidence & Analysis of Legal Need', August 2019. The number of people living outside of major cities in Queensland was 1,733,514 in 2016, representing 37% of the total population, see p30.
- ⁹ AFID and King's College London, above n3.



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