

28 May 2026

Our ref: 21003137

Confidential

Ms Fran Denny
Committee Secretary,
Justice, Integrity and Community Safety Committee
Parliament House
George Street,
Brisbane Qld 4000

By email [REDACTED]

Dear Committee Secretary

Legal Profession (Strengthening Disciplinary Matters) Amendment Bill 2026

Thank you for the opportunity to provide feedback on the **Legal Profession (Strengthening Disciplinary Matters) Amendment Bill 2026 (the Bill)**. The Queensland Law Society (**the Society**) appreciates being consulted on this important piece of legislation.

The Society is the peak professional body for the State's legal practitioners. We represent and promote over 14,000 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 Society also assists the public by advising government on improvements to laws affecting Queenslanders and working to improve their access to the law.

Key Points:

- The Society is supportive of the transfer of the legal practitioner jurisdiction back to the Supreme Court, but has provided feedback on some aspects of the Bill.
- The Society supports the removal of the requirement for parties to seek leave to be legally represented (section 43 of the QCAT Act).
- The Society supports the broad concepts carried over from QCAT, including procedural flexibility (section 581PA of the Bill), and the general approach to costs (section 581PV of the Bill) and appeals (sections 581PR(2) and 581PT of the Bill).
- The Society is concerned about the absence of guidance in relation to costs, including the lack of statutory factors to guide the exercise of discretion (comparable to sections 102(3) and 107 of the QCAT Act) and uncertainty regarding the applicable costs scale.
- The Society is also concerned about practical accessibility issues arising from the transition to the Supreme Court, particularly for self-represented litigants in Fidelity Guarantee Fund matters. In particular, we highlight the absence of clarity regarding forms, filing fees and procedural requirements, as well as the potential exposure to adverse costs orders assessed on the Supreme Court scale.

The Bill proposes the transfer of almost all of the legal practitioner jurisdiction from Queensland Civil and Administrative Tribunal (QCAT) to the Supreme Court of Queensland (**Supreme Court**).

The proposed amendments will implement the transfer of certain matters from QCAT to the Supreme Court, which directly involves the Society, including:

- (a) the review of decisions by the Society which affect a person's ability to practise in Queensland, including in relation to decisions about practising certificates; and
- (b) the review of decisions in relation to claims made to the Legal Practitioners' Fidelity Guarantee Fund (**Fidelity Guarantee Fund**).

These reforms represent a fundamental shift in the character of these review proceedings, moving from an administrative merits review model in QCAT to a judicial appellate model in the Supreme Court.

Whilst the Society is supportive of the transfer of the legal practitioner jurisdiction back to the Supreme Court, the Society provides the following feedback in response to the Bill.

The Society's position

Legal representation

The Bill removes the requirement for applicants to seek leave to be legally represented, which is the present requirement in Occupational Regulation (disciplinary and review decisions) matters in QCAT (section 43 *Queensland Civil and Administrative Tribunal Act 2009* (**QCAT Act**)). The Society supports the change which naturally arises from the move in jurisdiction, as that is the ordinary practice in the Supreme Court (i.e. representation as of right).

Nature of review jurisdiction

Under the QCAT framework, review proceedings are merits-based, with the tribunal standing in the shoes of the original decision maker to make the correct and preferable decision. The Bill does not carry forward these concepts in the same way.

There is no equivalent to section 19 of the QCAT Act in the Bill, particularly section 19(c) "*the tribunal...has all the function of the decision-maker for the reviewable decision being reviewed*". Whilst section 581PT allows the Supreme Court to confirm, amend, set aside and substitute or remit decisions, or to make whatever decision it sees fit, the Bill does not state the Supreme Court stands in the shoes of the decision-maker as the tribunal previously did.

The absence of an express "standing in the shoes of the decision-maker" provision may suggest an intention to move away from the previous scope of the nature of merits review. While the Supreme Court's power to substitute decisions provides functional capacity, the lack of an explicit statutory statement may alter the conceptual framing of a review.

If the intent is to transfer the current tribunal merits review framework to the Supreme Court jurisdiction, the Society suggests the current QCAT Act drafting be explicitly included in the Bill or, as a minimum, the intent be explicitly stated in the Explanatory Notes. This will avoid any potential confusion about the scope of the transferred jurisdiction, which in turn reduces any cost or time delay involved in the Court or the parties analysing the effect of the Bill.

Correct and preferable decision

Section 20 of the QCAT Act provides that “the purpose of the review...is to produce the correct and preferable decision”. The Bill does not carry across the requirement for the Supreme Court to produce the correct and preferable decision in review matters in the legal practitioner jurisdiction. The Bill does, however, carry across the requirement for the appeal to be by way of fresh hearing (section 581PR(2)).

Although the requirement for a fresh hearing preserves a broad merits-based approach, the omission of an express “correct and preferable decision” mandate signals a shift away from the traditional administrative review framework.

As noted above regarding section 581PT of the Bill, if the intent is to maintain the current tribunal framework, the Society suggests the terminology in section 581PR(2) reflect the current QCAT Act drafting to avoid any confusion about the intent and effect of the Bill.

Role of decision-maker

The Bill does not include a provision equivalent to section 21(1) of the QCAT Act, which presently requires the Society to use its best endeavours to help the tribunal to make its decision on the review (to produce the correct and preferable decision) and provide the tribunal with certain documents within 28 days.

The absence of an equivalent to section 21(1) of the QCAT Act materially alters the role of the Society in review proceedings from that of a statutory assistant supporting the tribunal to a conventional litigant defending its decision. This represents a significant shift in the regulatory and procedural balance of review proceedings and may increase adversarialism, litigation complexity and costs.

Orders on appeal

The orders which the Supreme Court can make on appeal (section 581PT) broadly mirror those set out in section 24(a) of the QCAT Act with the addition of section 581PT(d) which allows the making of any other order the Court considers appropriate. The alignment and expansion of available orders maintain substantive continuity in remedial powers and supports the effective resolution of appeals notwithstanding the change in forum.

Procedure for conducting proceeding and rules of evidence

Section 28(3)(b) of the QCAT Act is carried across in section 581PA of the Bill, which provides that, when conducting a hearing of an appeal, the Supreme Court:

- (a) must act quickly, and with as little formality and technicality, as is consistent with a fair and proper consideration of the issues before it; and
- (b) is not bound by the rules of evidence; and
- (c) may inform itself in any way it considers appropriate.

These provisions replicate key elements of QCAT’s procedural flexibility, but their operation within a Supreme Court setting may be constrained by judicial norms and practice. The effectiveness of these provisions in preserving informality will therefore depend on their

practical application rather than statutory form alone. While section 581PA preserves elements of QCAT's informal approach, practical application within a Supreme Court context will inevitably reflect judicial procedure.

The Society supports the continuation of hearings being conducted with as little formality and technicality as is consistent with a fair and proper consideration of the issues. The Society will be seeking to meet with the Supreme Court to discuss how the newly transferred jurisdiction will operate in practice.

Procedural changes

Section 581PQ (starting appeal) of the Bill provides some guidance about starting an appeal and timeframes.

Clarification of filing requirements and fees would support accessibility and consistency in the administration of appeals. The Society would welcome the opportunity to consult on procedural guidance to assist parties in navigating the new appeal framework efficiently and minimise uncertainty during transition.

In particular, the Society suggests that some consideration be given to the applicable filing fees and forms to be completed in a review of Fidelity Guarantee Fund matters, as distinct from reviews of decisions involving legal practitioners. While the latter will involve persons familiar with legal requirements (being the legal practitioners the subject of the decision), the former matters often involve self-represented litigants and clients who have been impacted by conduct giving rise to a claim on the Fund. The Society is eager to ensure that such clients have the opportunity to exercise their review rights in relation to decisions about the Fund, and are not subject to any barriers to doing so occasioned by filing fees or administrative complexity at the Registry in commencing such proceedings.

Costs orders for legal practitioner jurisdiction matters

Section 581PV of the Bill mirrors the essence of section 100 of the QCAT Act, in that the default position will remain that parties bear their own costs unless, mirroring section 102 of the QCAT Act, it is in the interests of justice to make an order requiring a party to pay all or part of the costs of another party.

The amendments do not, however, incorporate the factors set out in section 102(3) of the QCAT Act for the decision maker to have regard to when deciding whether to award costs. This may make it more difficult for parties to make meaningful submissions regarding costs.

The Bill is also silent on whether parties or the Supreme Court should or must fix costs if possible and whether costs are to be assessed by reference to a particular scale as is set out in section 107 QCAT Act.

While the retention of a default "each party bears their own costs" position is appropriate, the absence of statutory guidance equivalent to section 102(3) and section 107 of the QCAT Act introduces uncertainty into costs decision-making.

As to the appropriate scale to be applied, in the absence of statutory guidance being incorporated into the Bill, further time may be taken up by the Court in deciding such matters.

While the Supreme Court scale may be appropriate for most matters, recognising the jurisdiction in which these matters are being determined, it is arguably not appropriate for review matters concerning the Fidelity Guarantee Fund where the amount in dispute is relatively modest. Such matters often involve self-represented litigants who were former clients of the law practice the subject of the alleged default. In those circumstances, the risk (albeit relatively low) of an adverse costs order assessed at the Supreme Court scale may become a barrier to those litigants exercising their review rights in respect of these decisions.

Access to justice implications

The transfer to the Supreme Court introduces structural barriers for self-represented parties, particularly in Fidelity Guarantee Fund matters. These matters often involve vulnerable claimants, relatively modest claims and limited familiarity with court processes. Absent clear procedural guidance, proportionate fees and flexibility in costs, there is a material risk that affected claimants will be effectively deterred or prevented from exercising review rights.

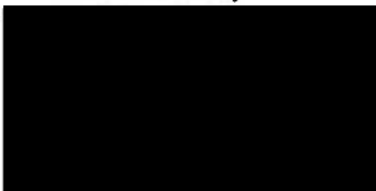
Further consultation

The Society would welcome the opportunity to assist further with the development of amendments or supporting procedural frameworks to ensure the objectives of the Bill are achieved in practice, including any amendments to the *Uniform Civil Procedure Rules 1999* (Qld).

Contact

This response was prepared by the Society's Office of General Counsel. If you have any queries regarding the contents of this letter, please contact our General Counsel via ogc@qls.com.au.

Yours faithfully



Peter Jolly
President