

QLS Access to Justice Policy Position

October 2021

1. Access to justice is a human right. It also makes other human rights a reality. In the absence of access to justice, people are unable to exercise their rights, hold decision-makers accountable, challenge discrimination and have their voice heard.
2. All people should have access to quality legal advice, representation and impartial, independent forums for the resolution of disputes and grievances affecting their rights. However, access to justice is not just about equal access to legal services. It also involves:
 - correcting structural inequalities within the justice system;
 - streamlining court processes;
 - providing clearer laws;
 - improving community legal education; and
 - promoting alternative forms of dispute resolution.
3. Queensland Law Society (**QLS**) is committed to advocating for fair, transparent, effective, non-discriminatory and accountable services to promote access to justice for all people.
4. QLS recognises, however, that certain vulnerable members of our community may face greater barriers to justice than others. QLS highlights that access to justice is a particular problem for Queensland's Aboriginal and Torres Strait Islander Peoples, who are overrepresented in all aspects of the criminal justice, youth justice and child protection systems. Aboriginal and Torres Strait Islander Peoples people have complex legal needs, arising from the intergenerational impact of colonialism, ongoing disadvantage and social exclusion. Language, cross cultural issues and rurality increase the barriers for Aboriginal and Torres Strait Islander Peoples to have equitable access to justice.
5. To promote access to justice in Queensland, QLS supports:
 - a. **Increased funding to the legal assistance sector, including Aboriginal and Torres Strait Islander legal services, Legal Aid Queensland and community legal centres.**

Respondents to Queensland Law Society's *Access to Justice Scorecard* report have consistently identified inadequate funding of legal assistance services and the affordability of legal representation as the most significant barriers to justice in Queensland.

Legal Aid, community legal centres and pro bono services enhance access to justice by providing legal information and services to those who cannot afford private legal services. However, in Queensland, these vital legal services do not possess sufficient funding to meet the community's legal need. This affects vulnerable Queenslanders already experiencing total exclusion from the justice system and who have limited capacity to self-assist. It also affects those who have some capacity for self-resolving legal issues but who do not meet the restrictive means test for legal aid or whose matters fall outside the funding guidelines for community legal centres. This impacts individuals and small businesses.

Queensland Law Society supports substantial increases in funding across the legal assistance sector and across all areas of law to the level required to meet the community's legal need.

b. Greater resourcing of courts and tribunals in Queensland.

Courts and tribunals are key platforms for delivering justice. However, navigating legal proceedings can be complicated, time consuming and distressing. Greater resourcing in courts and tribunals can overcome some of these obstacles and promote access to justice for court and tribunal users.

Increasing the capacity of courts and tribunals involves, non-exhaustively:

- Increasing the number of judges, magistrates and tribunal members (including the number of Aboriginal and Torres Strait Islander judges, magistrates and tribunal members);
- Ensuring courts are supported by an appropriate number of registrars, court liaison officers, duty lawyers, and social work services to assist vulnerable and inexperienced users of the court system;
- increasing the professional development, training and support services available to judicial officers to improve their capacity to manage complex cases involving vulnerable parties; and
- Improving the technological and physical infrastructure in courts and tribunals (particularly in rural and remote areas) to provide user-friendly and accessible facilities.

c. More accessible legal information and legal education.

Lack of understanding and clear guidance prevents individuals taking effective action to address their legal issues. Awareness and early access to information about legal issues and services can lead to the early resolution of legal problems and disputes.

QLS supports measures that increase the accessibility of legal information, including:

- Clear, plain English legislation, policy information and practical self-help materials to make it easier for individuals to understand the law, how it applies to them and how to take appropriate action;
- greater distribution of legal information and advice in different languages and formats, including language, captioning or deaf interpreting services in courts, tribunals and legal assistance services; and
- increased resourcing for outreach and community legal education initiatives.

d. The use of technology to improve access to the law, legal advice and courts and tribunals.

QLS acknowledges that not everyone has access to technology and the internet, and technological solutions must not exclude such individuals. Nevertheless, technology can make legal processes and services more accessible.

QLS supports:

- Online access to information about the law, legal rights and available legal services and dispute resolution processes;
- Electronic court filing for documents; and
- The use of communications technology (including online and teleconference hearings) where appropriate.

e. Greater use of Alternative Dispute Resolution, where appropriate and selected to suit the issue at hand.

Alternative Dispute Resolution (**ADR**) refers to processes of dispute resolution that are not judicially determined, such as mediation, arbitration, and expert determination. Where appropriate and carefully selected to suit the issue at hand, ADR can facilitate the expeditious and affordable resolution of disputes and free up court resources by diverting cases from litigation.

QLS supports:

- the referral of appropriate matters to free or affordable ADR to facilitate the early resolution of disputes;
- increased funding for lawyer-assisted ADR services; and
- a 'Dispute Resolution Hub' in Queensland, to provide a referral service and consolidated information about the range of ADR options available.

f. The provision of volunteer and pro bono work by Queensland solicitors and law firms.

QLS recognises and supports the valuable contributions Queensland's legal practitioners make to improving access to justice. Solicitors and law firms promote access to justice by:

- Participating in the delivery of legal assistance for no or low fees as Legal Aid preferred suppliers, volunteers at Community Legal Centres and through pro bono work;
- Implementing strategies in practices to make legal services more accessible, including for example by offering discrete task services in appropriate cases and capitalising on technology to reduce costs; and
- Participating in community education and law reform, including by volunteering time to educate the public, share insights with the profession, and provide comments to parliamentary inquiries and legislative reform bodies.

g. A strategic legal response to sustainability, climate disaster and public health emergencies.

Climate, disaster and public health emergencies expand the array of legal needs in Queensland communities. They can create long-term and complex legal problems for those affected, including legal issues relating to insurance claims, housing, debt, unemployment, domestic and family violence and family law.

QLS supports:

- the integration of funded legal assistance service as a key element of disaster and health response programs, provided on the basis of need rather than means; and
- the establishment and maintenance of a Disaster Legal Manual that would be available to assist Community Legal Centres and volunteer lawyers involved in providing emergency legal advice to people affected by disaster.

This policy position is designed to provide a high-level indication of QLS's policy. It is not intended to provide comprehensive commentary on access to justice in Queensland, nor to provide an exhaustive statement of QLS's position on all access to justice issues.