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Office of the President

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Committee Secretary
Health, Communities, Disability Services and Domestic and
Family Violence Prevention Committee
Parliament House
George Street
Brisbane Qld 4000

By email: health@parliament.qld.gov.au

Dear Committee Secretary

Inquiry into the Queensland Government's health response to COVID-19

Thank you for the opportunity to provide feedback on the **Queensland Government's health response to COVID-19**. The Queensland Law Society (**QLS**) appreciates being consulted on this important inquiry.

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 assistance of the QLS Health and Disability Committee and the QLS Elder Law Committee, whose members have substantial expertise in this area.

Given the broad ranging nature of this inquiry, QLS has not sought to provide a comprehensive submission on all aspects of the Queensland Government's health response to the COVID-19 pandemic. Rather we have framed our comments in relation to a select number of issues that have emerged for the legal profession in Queensland and the communities it serves.

QLS would like to take the opportunity to commend the Queensland Government on its efforts to manage the pandemic. We have also been pleased to see that the health response has reflected thoughtful community engagement in many instances, responding to the needs of most Queenslanders.

Executive Summary

- The Committee should consider the economic response with sufficient regard to the *Human Rights Act 2019* (Qld). QLS recommends proactive ongoing consultation with relevant stakeholders, particularly with the Queensland Human Rights Commission

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and Aboriginal and Torres Strait Islander communities, amongst others. There are a number of groups within our community who will need targeted economic and health services to protect their human rights and to ensure that they receive appropriate and high level health services which are accessible and commensurate to the quality and access experienced by others in the community (such as those in metropolitan areas).

- Additional funding is required for the legal assistance sector to manage the increased demands arising from COVID-19. QLS members indicate an increased need for legal assistance from people seeking advice in relation to domestic and family violence; credit matters; insurance matters; superannuation claims; hardship applications; insolvency matters; tenancy disputes; and employment disputes – all of which have been impacted by the pandemic generally, and will be particularly challenging for groups experiencing impacts to regular health services due to disruption caused by COVID-19.

Ongoing impacts to health and healthcare services

Whilst scrutiny of the steps taken to this point to respond to COVID-19 is a critical exercise in evaluating best practice in the case of similar future events, the ongoing nature of the pandemic, including the full picture of individual and community health and wellbeing impacts will not be known for some time.

It is therefore important that additional inquiries take place periodically, for example, within 3 – 6 months after the expiry of the Public Health Emergency period declared under the *Public Health Act 2005* regarding COVID-19. The Queensland Government response to the pandemic will necessarily be ongoing, and so too should the scrutiny and guidance of that response.

The health response should reflect a commitment to protecting human rights

The Committee should consider the health response with sufficient regard to the *Human Rights Act 2019*. QLS recommends proactive ongoing consultation with a range of organisations to ensure the Queensland Government's health response reflects its commitment to human rights. QLS particularly encourages engagement with the Queensland Human Rights Commission.

The human rights of specific communities and appropriate healthcare measures designed to protect vulnerable parts of the community, whilst also seeking to uphold human rights must be balanced, and should be reviewed comprehensively. For example, the Queensland Human Rights Commission notes a number of human rights concerns in relation to the pandemic.¹ They outline the disproportionate impact of COVID-19 upon Aboriginal and Torres Strait Islander communities and people living with a disability, for example. They also raise concerns with respect to implications of the pandemic on the right to education, the right to health services and they raise concerns on child safety matters among other things.

¹ Queensland Human Rights Commission, 'COVID-19 and Human Rights', (<https://www.qhrc.qld.gov.au/your-rights/covid-19-and-human-rights>).

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We also draw the Committee's attention to the impact of the pandemic upon women,² older persons,³ and people experiencing homelessness. We acknowledge the significant support provided to address homelessness during the pandemic,⁴ and call for that support to continue.

Those experiencing homelessness have an increased risk of exposure to the virus and have a greater likelihood of severe cases and mortality.⁵ The assistance to date during the pandemic is already having positive economic and social benefits.⁶ Continuing this support will result in significant cost savings to the community, including savings to the criminal justice system.⁷

With respect to older persons, we have concerns about Queensland Civil and Administrative Tribunal hearings in hospital, where the final assessment of an older person's capacity may be completed too early in a person's recovery, sometimes prematurely removing their choice around accommodation, services and financial matters with questionable engagement between the older person and the Tribunal. QLS members have also reported an apparent increase in the use of Interim Orders, which occur without the need for engagement with the person, and often without advanced knowledge by the person.

Ethical Framework and Clinical Frailty Scale

QLS recognises the necessity of developing and utilising a framework which allows hospitals and medical practitioners to triage patients with a view to allocating resources in a way that facilitates the best medical outcomes for the greatest number of people. However, we are concerned about the use of the Clinical Frailty Scale as the primary tool used to make these evaluations. The scale calls for an assessment of a person, with or without a disability as they present, but without providing appropriate detail or guidance to assist a healthcare practitioner to ensure that the impacts to and quality of life of the individual with a disability are properly considered in the process. This may lead to assumptions which can be inappropriate and discriminatory to persons with disability.

QLS understands that Queensland Health is aware of some of the challenges associated with the Framework, and the Clinical Frailty Scale, and that it continues to consult with key stakeholders in relation to improving these tools. QLS supports the ongoing review of these critical documents to ensure that all of the ethical and practical issues are thoroughly

² Workplace Gender Equality Agency (updated as at June 2020), 'Gendered impact of COVID-19', (<https://www.wgea.gov.au/topics/gendered-impact-of-covid-19>), (accessed 2 July 2020).

³ United Nations Department of Economic and Social Affairs (8 May 2020), 'COVID-19 and Older Persons: A Defining Moment for an Informed, Inclusive and Targeted Response', (<https://www.un.org/development/desa/ageing/news/2020/05/covid19/>), (accessed 2 July 2020).

⁴ Minister for Housing and Public Works, Minister for Digital Technology and Minister for Sport The Honourable Mick de Brenni, Media Statement (25 March 2020), '\$24.7 million coronavirus housing and homelessness response', Queensland Government, (<http://statements.qld.gov.au/Statement/2020/3/25/247-million-coronavirus-housing-and-homelessness-response>).

⁵ Centre for Social Impact (updated as at 3 April 2020), 'Homelessness and COVID-19' (https://www.csi.edu.au/media/uploads/csi-covid_factsheet_homelessness_statement2.pdf).

⁶ Ben Knight (updated as at 8 June 2020), 'Has the coronavirus pandemic proved that homelessness is solvable?' (<https://www.abc.net.au/news/2020-06-08/housing-homeless-in-pandemic-has-worked-lets-make-it-permanent/12330442>).

⁷ Institute for Social Science Research, University of Queensland (December 2015), 'Brisbane Common Ground Evaluation: Final Report', (<https://issr.uq.edu.au/files/4003/BrisbaneCommonGroundFinalReport.pdf>)

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considered and will result in the implementation of practical measures to assist healthcare practitioners whilst upholding the rights of individuals to access care without impediment.

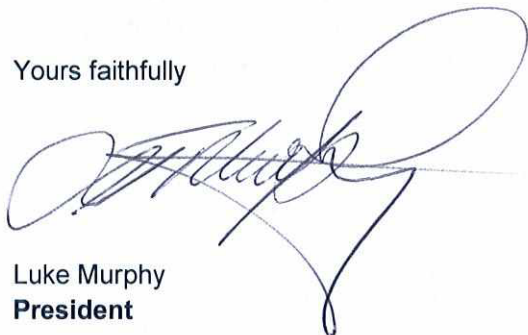
Directions of the Chief Health Officer

As mentioned above, there have been some inconsistencies in the treatment of and effect on various community groups as a result of particular directions issued by the Chief Health Officer (the **CHO**). In the case of older people and persons with disability, these inconsistencies have been observed in relation to the rigidity of some restrictions, such as relating to movement, visitation, and access to services such as healthcare professionals and legal advisors.

Several aspects of the imposed limitations were necessary, but sometimes not well communicated or made without sufficient clarity and transparency around the decision-making for the community (including affected professional sectors) to understand if the measure was appropriate and justified. For example, the exemption for legal practitioners to visit clients in restricted facilities was welcome and necessary but there were several examples where the exemption was not understood or followed by a facility. Other examples raised by our members which in some cases disrupted the provision of healthcare services for individuals include the operation of the domestic violence scheme, with restricted visitations and travel, and proposed changes to the *Disability Services Act 2006* and the *Forensic Disability Act 2011* in the Justice and Other Legislation Amendment (COVID Emergency response) Bill 2020.

Thank you again for the opportunity to provide comments. If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via [REDACTED] or by phone on [REDACTED]

Yours faithfully



Luke Murphy
President