



Queensland Association of Independent Legal Services Inc

4 July 2013

Mr Brook Hastie  
Research Director  
Legal Affairs and Community Safety Committee  
Parliament House  
George Street  
Brisbane QLD 4000

By email only: [lacsc@parliament.qld.gov.au](mailto:lacsc@parliament.qld.gov.au)

Dear Mr Hastie,

## Justice and Other Legislation Amendment Bill 2013

The Queensland Association of Independent Legal Services Inc. (**QAILS**) welcomes the opportunity to provide this information to the Legal Affairs and Community Safety Committee (the **Committee**) consideration of the *Justice and Other Legislation Amendment Bill 2013* (the **Bill**).

### Executive summary

QAILS is concerned about the proposed definition of 'community legal services' contained in Part 30 of the Bill, and proposes an alternative definition that more accurately reflects the work of community legal services, maintains Queenslanders' ability to access legal assistance in personal injury matters, and offers consumer protections to clients. Given the explanatory notes are silent on this point, we explain the impact on consumer/client protections in the *Legal Profession Act 2007* (Qld) (the **LPA**) that may flow from the proposed amendment. QAILS submits that the Committee recommend a more detailed consideration of the application of the LPA to community legal services.

QAILS welcomes proposed amendments to the *Queensland Civil and Administrative Tribunal Act 2009* to clarify tribunal users' rights, and amendments to the *Domestic and Family Violence Protection Act 2012* and the *Magistrates Courts Act 1921* to clarify the rights of family violence victims and perpetrators, and improve court proceedings in family violence matters.

QAILS encourages Government to engage in more meaningful consultation with the public and key stakeholders to improve development of legislation.

### About QAILS

The Queensland Association of Independent Legal Services (**QAILS**) is the independent peak body for community legal services in Queensland and represents the 33 funded and unfunded member community legal services operating across the state. QAILS is an incorporated association established for the public charitable purposes of assisting the Queensland community, particularly disadvantaged and marginalised people, to obtain access to legal services.

QAILS' purpose is to provide a collective voice advocating for social justice.

Queensland's community legal services are independent, community organisations providing equitable and accessible legal services. Community legal services offer appropriate, effective and creative solutions based on their experience

within their community. It is this community relationship that distinguishes community legal services from other legal agencies.

Community legal services also work beyond the individual in that they initiate community development, community legal education and law reform projects. These projects prevent the entrenchment of social disadvantage, prevent legal problems from worsening and strengthen the community as a whole. The Queensland community legal sector is an active and collegiate network which works together to provide better access to justice for disadvantaged Queenslanders. QAILS values and promotes the diverse contributions of its members and seeks to work cooperatively and collaboratively with all member community legal services and other free legal assistance sector partners such as Legal Aid Queensland, Aboriginal and Torres Strait Islander Legal Services (**ATSILS**) and Aboriginal Family Violence Prevention & Legal Services (**AFVPLS**).

## Definition of ‘community legal service’ must be improved

QAILS and our member community legal services are particularly interested in Part 30 of the Bill, which seeks to amend the definition of ‘community legal service’ in section 67A of the *Personal Injuries Proceedings Act 2002* (**PIPA**).

In our view, the proposed definition is fundamentally flawed, and we propose an alternative definition:

**community legal service** means:

- (a) an organisation, the service provision of which, is independent from government, commercial and professional bodies; and
- (b) is located in and operates in Queensland; and
- (c) is a non-profit, incorporated community based organisation whose goals and priorities are established in response to the geographic community and/or community of interest it serves; and
- (d) is an organisation which aims to:
  - (i) provide free legal and support services to the community or a section of the community; and
  - (ii) develop effective ways of informing the community of its legal rights and responsibilities; and
  - (iii) provide disadvantaged sections of the community with access to legal and related information and/or services; and
  - (iv) advocate for the development of laws, administrative practices and a legal justice system which are fair, just and accessible; and
  - (v) develop and maintain close links with the community it serves to ensure that areas of unmet needs are detected and appropriate services developed; and
- (e) is an organisation which has developed, and continues to develop management and operational structures which enable the involvement of the community or communities it serves.

## Why is a definition of ‘community legal service’ important?

There are two reasons why this definition is important:

- providing access to legal advice for people with personal injuries under the PIPA; and
- protecting legal consumers and clients under the LPA.

The explanatory notes and correspondence from the Director General of the Department of Justice and Attorney-General (**DJAG**) to the Committee<sup>1</sup> do not mention the impact of the definition on the LPA protections, which is (in our view) the more important implication flowing from the statutory definition. We are concerned that there may be other unforeseen implications of the proposed change to the definition for our members, which might have been addressed through a more robust consultation process (discussed below).

We discuss both of the reasons why the definition is important below.

### **PIPA**

The purpose of the PIPA is to ‘give certainty to those involved in personal injuries litigation and streamline the claims process’ through:

- reducing the costs of legal proceedings;
- reducing the number of frivolous claims for minor injuries; and

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<sup>1</sup> Letter from John Sosso to the Committee, 14 June 2013, <http://www.parliament.qld.gov.au/documents/committees/LACSC/2013/Justice/cor-14Jun2013.pdf>.

- capping the size of large claims.<sup>2</sup>

PIPA provides two dispensations to community legal services in relation to this regulatory framework:

1. Ordinarily, a claimant must give a notice of claim to the person against whom the proceeding is proposed to be started. Strict time limits apply, including from the time when a person first instructs a lawyer to act,<sup>3</sup> although this does not apply where a claimant has consulted with a community legal centre.<sup>4</sup> This recognises the large number of Queenslanders that receive preliminary, discrete advice from lawyers prior to initiating any court actions – in 2011-12, QAILS members provided 59,803 advice activities, as measured by the Community Legal Service Information System.<sup>5</sup>
2. Touting for business at the scene of an accident is prohibited by PIPA,<sup>6</sup> although (under strict conditions) community legal services and industrial organisations are exempted and may provide some information to potential clients.<sup>7</sup> This recognises that community legal services are not motivated by making a profit, but by making sure that vulnerable citizens are aware of their legal rights and able to access legal services and support.

These provisions enhance people's access to justice and ability to obtain quality, free legal services from community legal services. In our view, similar dispensations should be included in the *Motor Accident Insurance Act 1994* (Qld).

## LPA

The Queensland Law Society holds and administers a 'fidelity fund' for the purposes of providing a source of compensation to persons who suffer financial loss as a result of 'defaults' by Law Practices arising from, or constituted by, acts or omissions of 'associates'<sup>8</sup> of the Law Practice. Part 3.6 of the LPA provides the legislative regime which regulates the administration of the fund.

Community legal services do not fall within the definition of a Law Practice as that term is defined by the LPA and, accordingly, the provisions of Part 3.6 do not, on first blush, apply to those entities. However, section 357 of the LPA and regulation 85 of the Legal Practice Regulations 2007 (Qld) (LPR) operate to extend the application of Part 3.6 (as modified by the LPR) to those entities which fall within the legislative definition of a community legal service. Therefore, in order to ensure that consumers and other persons are able to access the protection of the fidelity fund, all community legal services must be covered by the fund.

In addition to the consumer protections available under the Fidelity Fund, the LPA also prohibits a person (other than an 'Australian Legal Practitioner', as defined) engaging in legal practice. By virtue of section 24(2)(e) and regulation 6, 'community legal services' are excluded from this provision. This recognises that many community legal services engage in multi-disciplinary and holistic service delivery, which is quite different to traditional legal practice. QAILS submits that the Committee recommend a more detailed consideration of the application of the LPA to community legal services.

## Problems with the proposed definition

In this section, we set out a number of problems with the definition in the Bill, which defines a community legal service as

an organisation that—

- (a) holds itself out as—
  - (i) a community legal service; or
  - (ii) a community legal centre; or
  - (iii) an Aboriginal and Torres Strait Islander Legal Service; and
- (b) is established and operated on a not-for-profit basis; and
- (c) provides legal services that—

<sup>2</sup> Queensland, *Parliamentary Debates*, Legislative Assembly, 18 June 2002, 1848 (Rob Welford, Attorney-General).

<sup>3</sup> PIPA s 9A(3).

<sup>4</sup> PIPA s 9A(13); s 20C(4)

<sup>5</sup> QAILS, *Annual Report 2011-12*, 38.

<sup>6</sup> PIPA s 67.

<sup>7</sup> PIPA s 67A. See also Sosso, above n 1, 8.

<sup>8</sup> An 'associate' is defined in section 7 of the LPA to include (among other things) an Australian legal practitioner who is either a sole practitioner, a partner in a law firm, a legal practitioner director (if the Law Practice is an incorporated legal practice or multi-disciplinary partnership) or an employee of, or consultant to, a Law Practice.

- (i) are directed generally to people who are disadvantaged (including being financially disadvantaged) in accessing the legal system or in protecting their legal rights; or
- (ii) are conducted in the public interest.

**legal services** means work done, or business transacted, in the ordinary course of legal practice

### ***'Holding itself out'***

The proposed definition suggests an organisation is a community legal service if it says it is a community legal service. Without providing any further details, it is not clear which organisations can 'hold themselves out' as community legal services, and if there is any requirement to ensure that the organisation meets minimum standards of quality. The National Association of Community Legal Centres (**NACLC**), the national peak organisation for community legal services, has developed a National Accreditation Scheme that provides an industry based certification process that support and recognise good practice in the delivery of community legal services. Members of QAILS must comply with the NACLC Accreditation Criteria, or be actively working towards compliance.

On the other hand, allowing any organisation 'which holds itself out' as a community legal services to access the protection of a statutory compensation scheme like the Fidelity Fund and to get around the prohibition on legal practice by non-lawyers, without providing any further quality control or structure, poses risks for clients, other community legal services and other legal practices/practitioners.

QAILS rejects the suggestion that any organisation holding itself out as a community legal service should come within the definition; rather, we say any community legal service should aim to:

- provide free legal and support services to the community or a section of the community;
- develop effective ways of informing the community of its legal rights and responsibilities;
- provide disadvantaged sections of the community with access to legal and related information and/or services;
- advocate for the development of laws, administrative practices and a legal justice system which are fair, just and accessible;
- develop and maintain close links with the community it serves to ensure that areas of unmet needs are detected and appropriate services developed.

### ***Excluding important agencies***

The entities listed in sub-paragraphs (i) to (iii) are not the only organisations that provide legal services to disadvantaged persons, that should be included in this definition. For example, our member organisation, the Queensland Indigenous Family Violence Legal Service (**QIFVLS**) is a not-for-profit organisation which provides legal and counselling services to Aboriginal and Torres Strait Islander peoples suffering from the direct and indirect effects of domestic violence and sexual assault. The program is primarily funded by the Commonwealth Attorney-General's Department through the AFVPLS program to provide culturally sensitive assistance to Indigenous victim-survivors of family violence and sexual assault. The separate inclusion of ATSILS in the proposed definition may create the impression that QIFVLS isn't included. We refer to, and endorse, the submission of QIFVLS, which expands on this point.

There may be other important agencies providing similar services that do not 'hold themselves out' as community legal services and would therefore not fall within the proposed definition. Without any power to add organisations by regulation, these agencies would not be included in the definition, and Queenslanders would lose the protections available under the PIPA Act and the LPA, discussed above.

At an **absolute minimum**, to clarify that AFVPLSs are covered by the proposed definition, a new sub-paragraph (iv) should be inserted, as follows:

#### **Omit:**

- (iii) an Aboriginal and Torres Strait Islander Legal Service; and

#### **Insert:**

- (iii) an Aboriginal and Torres Strait Islander Legal Service; or
- (iv) an Aboriginal Family Violence Prevention & Legal Service; and

However, a more descriptive and accurate definition (like the one that we propose) would be a better solution, and would not require the regular amendment of the PIPA to add different organisations or programs.

## ***The importance of community ownership and independence***

As we note above, Queensland's community legal services are independent, community organisations providing equitable and accessible legal services. Community legal services offer appropriate, effective and creative solutions based on their experience within their community. It is this community relationship that distinguishes community legal services from other legal services.

In our view, both the independence of community legal services and their community ownership are important features of community legal services that should be included in the definition.

## ***Definition of 'legal services'***

As we note above, community legal services also work beyond the individual in that they initiate community development, community legal education and law reform projects. These projects prevent the entrenchment of social disadvantage, prevent legal problems from worsening and strengthen the community as a whole.

In that context, the proposed definition of legal services ('work done, or business transacted, in the ordinary course of legal practice') is not an appropriate way to describe the work of community legal services. For that reason, we have proposed that the definition should include a number of the unique functions of community legal services, including:

- provide free legal and support services to the community or a section of the community;
- develop effective ways of informing the community of its legal rights and responsibilities;
- provide disadvantaged sections of the community with access to legal and related information and/or services;
- advocate for the development of laws, administrative practices and a legal justice system which are fair, just and accessible; and
- develop and maintain close links with the community it serves to ensure that areas of unmet needs are detected and appropriate services developed.

If our full definition is not adopted, we recommend that 'legal services' in clause 144 of the Bill be amended to read:

**Legal services** means:

- (a) providing free legal and support services to the community or a section of the community; and
- (b) developing effective ways of informing the community of its legal rights and responsibilities; and
- (c) providing disadvantaged sections of the community with access to legal and related information and/or services; and
- (d) advocating for the development of laws, administrative practices and a legal justice system which are fair, just and accessible; and
- (e) developing and maintaining close links with the community it serves to ensure that areas of unmet needs are detected and appropriate services developed.

## **Improving consultation improves legislation**

The Explanatory Notes to the Bill suggest that the Queensland Law Society, QAILS and ATSILS were consulted on the proposed definition of 'community legal service'. Despite the tight timeframe (less than two days) and the requirement to keep the information confidential (preventing us from consulting widely with our members), QAILS provided our alternative definition and highlighted some concerns with the Bill. There was no further engagement until after the Bill was introduced, and none of the issues raised in this submission (which were also raised in the 'consultation') have been considered.

We note that the Committee has previously expressed concerns with inadequate consultation processes,<sup>9</sup> including noting that that *'it would have been helpful for some information to be included in the Explanatory Notes on the results of consultation, rather than simply listing the bodies with whom the Department is stated to have consulted.'*<sup>10</sup> QAILS would encourage the Committee to again highlight the need for thorough, engaged consultation with key stakeholders, and for Explanatory Notes to provide the Committee and the Parliament with information about the substance and process of any consultation.

<sup>9</sup> See eg Legal Affairs and Community Safety Committee, *Youth Justice (Boot Camp Orders) and Other Legislation Amendment Bill 2012* (Report No. 18, November 2012) 3-4; Legal Affairs and Community Safety Committee, *Penalties and Sentences and Other Legislation Amendment Bill 2012* (Report No. 5, July 2012) 1-6; Legal Affairs and Community Safety Committee, *Body Corporate and Community Management and Other Legislation Amendment Bill 2012* (Report No. 16, November 2012) 2-3.

<sup>10</sup> Legal Affairs and Community Safety Committee, *Youth Justice (Boot Camp Orders) and Other Legislation Amendment Bill 2012* (Report No. 18, November 2012) 3-4.



QAILS supports the Committee's view (expressed in relation to another Bill) that '*the Committee considers that the development of this Bill would have been greatly enhanced if there were public consultation and discussions with relevant stakeholders, prior to its introduction into the Parliament.*'<sup>11</sup> In a number of reports, the Committee has recognised the concerns of stakeholders regarding shortened timeframes or insufficient consultation,<sup>12</sup> and in less than a handful of reports<sup>13</sup> has the Committee been able to recognise that consultation has been sufficient, leading to improved legislation.

The Bill would have benefitted from a more thorough, consultative development with key stakeholders.

QAILS provided a draft of this submission to DJAG before lodging it with the Committee,<sup>14</sup> and DJAG has advised that the matters raised in this submission are under consideration and will be addressed in the Department's response to the Committee on submissions on the Bill.<sup>15</sup>

## **QAILS welcomes other amendments**

QAILS welcomes some of the other amendments contained in the Bill, and makes some limited comments below.

### **QCAT Act amendment**

QAILS has previously raised concerns about the lack of clarity in section 143 of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld) (**QCAT Act**). In the QAILS submission to the review of the QCAT Act<sup>16</sup> (appended to the QAILS submission to the Committee's inquiry into the *Queensland Civil and Administrative Tribunal (Justices of the Peace) Amendment Bill 2013*),<sup>17</sup> QAILS noted (at page 16):

The QCAT Act does not specify that a person must seek written reasons prior to lodging an appeal. The time limit for lodging an application for leave to appear/appeal is not clear where the person has not received written reasons. The application of the time limits are not well understood by advisers or legal practitioners. The legislation should be amended to dispel ambiguity.

Clause 153 of the Bill makes amendments to the QCAT Act to dispel the ambiguity QAILS identified, and we support this amendment.

### **Family violence changes**

Queensland community legal services provide significant amounts advice and advocacy for people in the area of family violence, and this has been growing significantly in recent years, as illustrated by the growth in 'family violence advices' captured by the Community Legal Service Information System below:

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<sup>11</sup> Legal Affairs and Community Safety Committee, *Penalties and Sentences and Other Legislation Amendment Bill 2012* (Report No. 5, July 2012) 1-6. See also Legal Affairs and Community Safety Committee, *Directors' Liability Reform Amendment Bill 2012* (Report No. 25, March 2013) 13-14.

<sup>12</sup> Legal Affairs and Community Safety Committee, *Criminal Law (Two Strike Child Sex Offenders) Amendment Bill 2012* (Report No. 2, July 2012) Appendix B; Legal Affairs and Community Safety Committee, *Criminal Law Amendment Bill 2012* (Report No. 3, July 2012) Appendix B; Legal Affairs and Community Safety Committee, *Holidays and Other Legislation Amendment Bill 2012* (Report No. 9, September 2012) 27; Legal Affairs and Community Safety Committee, *Guardianship and Administration and Other Legislation Amendment Bill 2012* (Report No. 14, November 2012) 16-17; Legal Affairs and Community Safety Committee, *Police Powers and Responsibilities (Motor Vehicle Impoundment) and Other Legislation Amendment Bill 2012* (Report No. 24, March 2013) 2; Legal Affairs and Community Safety Committee, *Criminal Proceeds (Unexplained Wealth and Serious Drug Offender Confiscation Order) Amendment Bill 2012* (Report No. 26, April 2013) 2-3; Legal Affairs and Community Safety Committee, *Liquor and Gaming (Red Tape Reduction) and Other Legislation Amendment Bill 2013* (Report No. 30, May 2013) 2; Legal Affairs and Community Safety Committee, *Li Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Bill 2013* (Report No. 31, June 2013) 2.

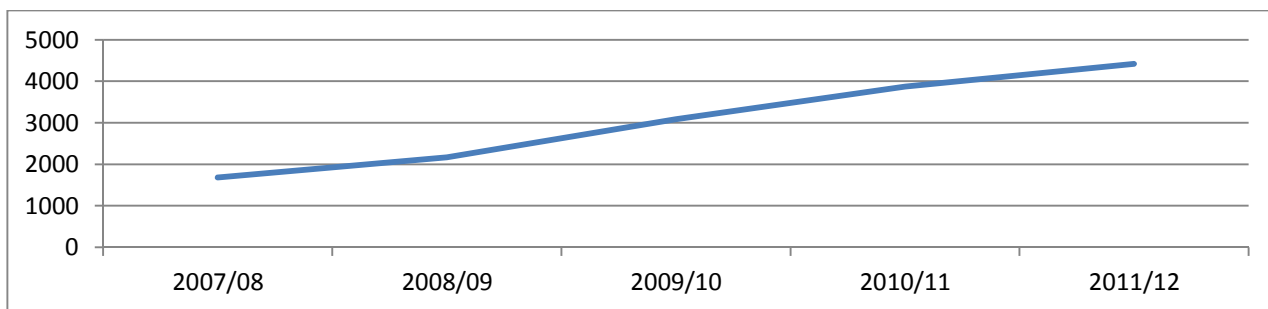
<sup>13</sup> Legal Affairs and Community Safety Committee, *Weapons and Other Legislation Amendment Bill 2012* (Report No. 17, November 2012) 27, where the Committee positively comments on the level of consultation, saying 'the early engagement by the Minister with interested stakeholders is a positive step for the development of legislation'; and Legal Affairs and Community Safety Committee, *Criminal Law Amendment Bill [No. 2] 2012* (Report No. 27, November 2012) 2; Legal Affairs and Community Safety Committee, *Queensland Civil and Administrative Tribunal (Justices of the Peace) Amendment Bill 2013* (Report No. 28, April 2013) 2.

<sup>14</sup> Email from James Farrell, QAILS, to Imelda Bradley and Kym Higgins, DJAG, 27 June 2013; email from James Farrell, QAILS, to Linda Buyers, DJAG, 1 July 2013.

<sup>15</sup> Email from Imelda Bradley, DJAG, to James Farrell, QAILS, 4 July 2013.

<sup>16</sup> Available at [http://www.qails.org.au/dbase\\_upl/QAILS%20QCAT%20submission.pdf](http://www.qails.org.au/dbase_upl/QAILS%20QCAT%20submission.pdf).

<sup>17</sup> Available at <http://www.parliament.qld.gov.au/documents/committees/LACSC/2013/QCAT/submissions/002.pdf>.



The Bill contains two welcome changes to the legal framework that responds to family violence.

1. The *Domestic and Family Violence Protection Act 2012* will be amended to suspend a domestic violence order while an application is made to vary that order, where a temporary protection order is made, until the variation application is finalised. These amendments will ensure that only one order is in force while an amendment is sought, providing clarity as to the conditions the respondent must comply with, and ensuring affected parties are aware of their rights and responsibilities. Any changes to law and policies that increase clarity (while maintaining or improving safety) are to be welcomed, and QAILS supports this amendment.
2. The *Domestic and Family Violence Protection Act 2012* and the *Magistrates Courts Act 1921* will be amended to allow for the creation of stand-alone rules of court for domestic and family violence proceedings. Specialist domestic violence court lists are heard in 77 courts and circuits across Queensland,<sup>18</sup> from every court day (in Southport) to three times per year (in Mount Garnet, Mareeba Circuit). The procedures in these courts can vary, and current procedural rules are contained in various pieces of legislation or rules that may not be relevant or appropriate, or there may be gaps. QAILS submits that the development of specific rules of court in domestic and family violence proceedings are an opportunity to make the process safer and clearer for a jurisdiction which is overwhelmingly full of unrepresented litigants. However, this is strongly contingent on ensuring that any new rules are developed in strong consultation with practitioners working in this jurisdiction, and with other community groups that provide support and advocacy for victim-survivors of family violence.

In respect of these proposed amendments, QAILS supports and endorses the comments made in the submission to this inquiry by our member, Women's Legal Service Inc., which has specialist expertise and knowledge in family violence matters.

## Conclusion

As we have outlined, the definition of community legal service in the PIPA plays a fundamental role in ensuring people are able to access appropriate legal advice, and protecting legal service consumers. For that reason, it is important that the definition is accurate, inclusive and articulate. The definition included in the Bill is flawed, and we hope the Committee will consider our proposed definition.

QAILS welcomes the proposed amendments in clause 153, Part 15 and Part 28 of the Bill, and support these provisions.

Thank you for considering this submission, and please contact me (at [director@qails.org.au](mailto:director@qails.org.au) or (07) 3392 0092) if you require any further information.

Yours sincerely,

**James Farrell**

Director

Queensland Association of Independent Legal Services Inc.

<sup>18</sup> 'Domestic Violence', 'Domestic Violence Application' or 'Domestic Violence Callover' lists are held at Atherton, Aurukun, Ayr, Bamaga, Barcaldane, Beaudesert, Beenleigh, Biloela, Blackall, Bowen, Brisbane, Bundaberg, Caboolture, Cairns, Caloundra, Charleville, Charters Tower, Childers, Chinchilla, Clermont, Cleveland, Cooktown, Coolangatta, Cunnamulla, Dalby, Emerald, Gatton, Gladstone, Goondiwindi, Gympie, Hervey Bay, Holland Park, Hughenden, Ingham, Innisfail, Ipswich, Kingaroy, Kowanyama, Longreach, Mackay, Mareeba, Maroochydore, Maryborough, Moranbah, Mossman, Mount Garnet, Mount Isa, Murgon, Nambour, Nanango, Noosa, Oakey, Palm Island, Pine Rivers, Pittsworth, Proserpine, Quilpie, Redcliffe, Richlands, Richmond, Rockhampton, Roma, Sandgate, Sarina, Southport, Stanthorpe, Tambo, Thursday Island, Toogoolawah, Toowoomba, Townsville, Warwick, Weipa, Winton, Wynnum and Yeppoon: see <http://www.courts.qld.gov.au/courts/magistrates-court/court-calendars/2013>.