



Queensland Association of Independent Legal Services Inc

Queensland Civil and Administrative
Tribunal (Justices of the Peace)
Amendment Bill 2013 - Submission
002

4 April 2013

Research Director
Legal Affairs and Community Safety Committee
Parliament House
George Street
BRISBANE QLD 4000
By email: lacsc@parliament.qld.gov.au

Dear Committee,

Queensland Civil and Administrative Tribunal (Justices of the Peace) Amendment Bill 2013

The Queensland Association of Independent Legal Services Inc (**QAILS**) represents community legal centres (**CLCs**) across Queensland who regularly provide advice and representation to parties appearing before the Queensland Civil and Administrative Tribunal (**QCAT**). Earlier this year, we prepared the **attached** submission to the Queensland Government's review of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld) (the **QCAT Act**).

In our submission, we made a number of recommendations that focussed on:

- ensuring QCAT decisions are fair and just;
- improving the consistency and quality of QCAT decisions, processes and practices;
- reducing the cost and non-financial burden of appeals;
- providing representation and support, especially for vulnerable or disadvantaged QCAT users; and
- ensuring equality in access and outcomes for Queenslanders in regional, rural and remote locations.

In passing, our submission noted that the use of unpaid Justices of the Peace (**JPs**) to constitute QCAT may exacerbate parties' frustrations with the result or process of QCAT matters, especially in regional sittings. QAILS is concerned at measures that lead to Queensland's judicial system relying on volunteers (through this program) or user-pays (through the introduction of offender levies under the new Part 10A of the *Penalties and Sentences Act 1992*), both of which may have deleterious impacts on Queenslanders' access to justice. A properly funded, fair and accessible justice system is a vital component of civil society and should guide any initiatives in this important policy area.

QAILS understood the original proposal to have JPs constitute QCAT would require legally qualified JPs to have five years' experience as a JP and three years' post-admission experience (see s 32 of the *Queensland Civil and Administrative Tribunal (Justices of the Peace) Amendment Bill 2013* (the **Bill**) consultation draft). In our view, these protections would ensure that QCAT would continue to have experienced members with exposure to legal practice, statutory interpretation, procedural fairness and the rule of law.

The Bill currently before the Committee and the Parliament removes these protections. The issues to be considered by JPs are often complex legal questions – see the discussion of ‘Civil claims for debt of damages’ at pages 9 and 10 of our submission, which discusses jurisdictional blurring, definitional complexity, and application of inconsistent civil procedure rules. As the Bill currently sits, it is possible for first year lawyers, with only limited practical legal experience, to be called upon to answer complex questions of law in matters between parties with complex behaviours at times of significant stress.

QAILS believes that the following amendments should be made to the Bill to ensure that JPs engaged as QCAT members are qualified, experienced and able to provide fair, consistent and correct decisions:

1. the definition of legally qualified QCAT justice of the peace in cl 7 of the Bill should be amended to ‘means a QCAT justice of the peace who is an Australian lawyer **of at least 3 years standing.**’
2. The following sub-section should be inserted into proposed section 206O of the Bill:
‘A person is eligible for appointment as a justice of the peace (QCAT) if the person is a justice of the peace of at least 5 years standing.’

QAILS would also support the Committee seeking further information about any proposed evaluation of the trial, prior to the implementation of this program. The Bill contains no details about the form or timing of any evaluation. In QAILS’s view, the trial should be independently evaluated and seek feedback from QCAT users and their legal representatives, as well as other interested stakeholders. Appropriate data sets and collection methods should be considered before the program is implemented, to make sure that the evaluation is evidence-based and useful.

QAILS would be pleased to discuss this submission with the Committee, and we thank you for the opportunity to contribute to the Committee’s consideration of the Bill.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'James Farrell', with a stylized, looping flourish at the end.

James Farrell
QAILS Director