

Your Ref:

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12 April 2013

The Research Director  
Legal Affairs and Community Safety Committee  
Parliament House  
George Street  
BRISBANE QLD 4000

**Queensland Civil and  
Administrative Tribunal (Justices of  
the Peace) Amendment Bill 2013 -  
Submission 003**

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

Dear Research Director

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

Thank you for the opportunity to provide submissions on the *Queensland Civil and Administrative Tribunal (Justices of the Peace) Amendment Bill 2013*.

This letter has been prepared with the assistance of the Queensland Law Society Elder Law and Access to Justice/Pro Bono Committees.

Members of the above committees have both contributed to, and had the benefit of reading, the submission regarding the Bill lodged by Queensland Association of Independent Legal Services Inc on 5 April 2013.<sup>1</sup> The Society commends the work that went into that submission and wishes to endorse the submission.

**Consultation Time for the Bill**

We note that there is a truncated opportunity for review and for the Committee to table its response to Parliament. As such, an in-depth analysis has not been conducted. It is possible that there are issues relating to fundamental legislative principles or unintended drafting consequences which we have not identified.

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<sup>1</sup> <http://www.parliament.qld.gov.au/documents/committees/LACSC/2013/QCAT/submissions/002.pdf>

## **Pre-Bill Consultation**

We refer to the Attorney General's Introductory Speech delivered on 19 March 2013 and confirm the QLS was consulted on this Bill. The Society is strongly of the view that broad consultation on legislation at an early stage is the key to good law and commends the Attorney-General in this regard.

## **General Comments**

We renew our concerns regarding JP (qualified) sitting and determining "low level" QCAT matters.

We are particularly concerned that the trial now removes the number of years of experience for a JP (legally qualified) and JP (qualified) to sit and determine minor civil disputes. In our view this undermines the public's confidence that the matter will be heard by persons with adequate experience and understanding of the law and Tribunal processes. It is important to note that legal qualifications and the practice of law are, more times than not, at different ends of the spectrum, which is why it is critical that persons presiding in QCAT for these matters have sufficient legal practice experience. We further note that there are significant time and cost implications for educating and training inexperienced persons. We also consider this trial to be an unnecessary impost on both the community and Tribunal as appointing persons with no or very limited experience may result in inconsistent decision making and further cost and time expended by an increase in appeals.

We are also concerned that, if the trial is to go ahead, the proposed low level of remuneration proposed to be paid to legally qualified justices of the peace will act as a disincentive and will lessen the initiative's effectiveness.

We therefore propose that if the trial is to go ahead that only legally qualified and experienced Justices of the Peace be involved in determining low level QCAT matters, as assessed by the District Court scale with a cap which is below the sessional allowance. To facilitate and provide further assistance to members presiding on the Tribunal, we also suggest that consideration be given to approaching universities and legal practice courses for law graduates to undertake voluntary training at QCAT, similar to the activities of a Judge's associate or a Magistrates' clerk.

## **Specific Comments on the draft legislation**

We will now provide detailed commentary on the proposed legislation.

### ***1. Clause 206C – Definitions for pt 4B and clause 206O Appointment***

We note the following definitions:

- "legally qualified QCAT justice of the peace means a QCAT justice of the peace who is an Australian lawyer;" and

- “QCAT justice of the peace means a person appointed under section 206O as a QCAT justice of the peace.”

We renew our concerns above that no legal experience is required for QCAT JPs to sit. We also consider it to be an unnecessary impost on cost and time to have two persons sit and determine matters, particularly where one person is an Australian Legal Practitioner. From a practical perspective we consider that there ought to be further thought to the proposal to approach universities and legal practice courses for law graduates to undertake voluntary training at QCAT, similar to the activities of a Judge’s associate or a Magistrates’ clerk, to provide assistance to presiding members.

**Recommendation**

*We recommend that only legally qualified and experienced JPs are to sit, with a minimum of three years’ experience.*

*In the alternative, if two JPs are to sit, that a minimum of three years experience and five years experience be reinstated for JP (legally qualified) and JP (qual) respectively.*

**2. Clause 206C – excluded minor civil dispute**

We are concerned that disputes relating to *Neighbourhood Disputes Act* and building matters have a considerable element of complexity and often involve reliance on expert evidence. We recommend they be excluded from the trial.

**Recommendation**

*We recommend that Neighborhood Disputes Act and building matters be excluded from the trial.*

**3. Clause 206F –Reconstitution**

Clause 206F of the Bill prescribes that justices of the peace may only determine minor civil disputes. However proposed clause 206F is inconsistent as it does not restrict the type of matters the President may reconstitute QCAT to change from member/s and adjudicator/s to Justices of the Peace (QCAT). The proposed amendment is also in conflict with proposed section 206C (which sets out excluded minor civil disputes) as it would allow the President to reconstitute QCAT so that justices of the peace (QCAT) could determine matters outside minor civil dispute matters. The inconsistency should be removed.

**Recommendation**

*We recommend amendments to clause 206F as follows:*

- (a) – omit provision
- (b) – retain provision
- (c) – omit provision
- (d) – retain provision

**4. Clause 206BB – Expiry of pt 4B**

We note that in numerous media releases and in the Introductory Speech delivered on 19 March 2013 by the Attorney General it has been said that “the trial will run for six months.” There appears to be an anomaly as clause 206BB(1) reads that:

*This part<sup>2</sup> expires 1 year after the day this section commences.*

**Recommendation**

We recommend an amendment of clause 206BB(1) that the term “1 year” be replaced with “6 months.”

We also refer to clause 206BB(2) which states:

*However, before the end of the period mentioned in subsection (1), a regulation may extend the period before expiry to not more than 3 years after the day this section commences.*

We commend the Attorney-General and the drafters for the inclusion of the sunset clause, however note that there is no provision in the Bill for an external review and public consultation. As this will have a significant impact on QCAT, the People’s Tribunal, we consider that the legislation requires open consultation about the use and effectiveness of the trial.

**Recommendation**

We recommend that clause 206BB(2) provide provision for external review and public consultation.

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<sup>2</sup> Part 4B: QCAT Justices of the Peace

**5. Amendment of reg 18 – Daily sitting fees payable to justices of the peace (QCAT)**

We are of the view that the amount nominated for the daily sitting fee for a legally qualified justice of the peace (QCAT) - \$100 is nominal and does not represent the breadth of legal skill and experience of an Australian lawyer or Australian Legal Practitioner. Compare this daily sitting fee with a sessional member of QCAT – for a meeting over 4 hours - where the amount paid is \$543.<sup>3</sup> This will act as a disincentive and may lessen the effectiveness of the initiative.

The Society therefore recommends a revision to the daily sitting fee for legally qualified justices of the peace to be in accordance with the District Court scale of costs with a cap which is below the sessional allowance. We also suggest that there be consideration in approaching universities and legal practice courses for law graduates to undertake voluntary training at QCAT, similar to the activities of a Judge's associate or a Magistrate's to provide assistance to presiding members.

**Recommendation**

*We recommend a significant amendment to daily sitting fees payable to legally qualified justices of the peace.*

Thank you for the opportunity to provide comments to the proposed bill.

Yours faithfully



Annette Bradfield  
**President**

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<sup>3</sup> QCAT information kit - Information Kit: Adjudicators Expression of Interest – p9