



Queensland Association of Independent Legal Services Inc

24 December 2014

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

By email only: lacsc@parliament.qld.gov.au

Dear Committee,

Justice and Other Legislation Amendment Bill 2014

The Queensland Association of Independent Legal Services (**QAILS**) writes to express its significant concern with the proposed change to the *Legal Profession Act 2007* (**LPA**) included in clause 80 of the *Justice and Other Legislation Amendment Bill 2014* (**JOLA Bill**) currently being considered by the Legal Affairs and Community Safety Committee (the **Committee**).

QAILS submits that the Committee should recommend clause 80 of the JOLA Bill be removed.

We note the tight timeframes for the Committee's consideration of the JOLA Bill, and request that the Committee hold a public hearing to receive further evidence about the impact of the proposal, and the need to retain section 289 of the LPA in its current form.

Law reform and advocacy

Queensland's community legal centres helped over 46,000 individuals last year, providing over 100,000 pieces of information and advice, and opening over 9,000 new cases. Where we see the law operating unfairly or with unintended consequences, community legal centres can contribute to addressing these difficulties. Community legal centres have been instrumental in a number of important reforms to unfair systems and structures, including:

- establishment of the Residential Tenancies Authority and *Residential Tenancies Act*;
- the introduction of the *Domestic Violence (Family Protection) Act 1989*;
- changes to the Coroners Act, to allow Coroners to investigate systemic issues, including the requirement that any death in an institution be investigated.
- successfully arguing that a person who had suffered from domestic violence at the hands of their partner should not be treated as part of a couple in relation to their social security payments; and

- actively advocating for police to investigate various criminal acts going on in hostels, including suspicious deaths, theft, torture and people being forced to work and being used as sex slaves.

Clearly, these are positive changes for the Queensland community, which may well not have occurred without law reform activities initiated by community legal centres.

The amendment

Despite the positive impacts of community legal centres' law reform work, on 26 November 2014 the *Justice and Other Legislation Amendment Bill 2014 (Bill)* was introduced to the Queensland Parliament. Amongst miscellaneous amendments to over 30 Acts, the Bill seeks to amend s 289 of the *Legal Profession Act 2007*, to effectively prevent community organisations – including community legal centres – using funding from the Legal Practitioners Interest on Trust Accounts Fund (**LPITAF**) to undertake law reform.

We would respectfully suggest that this is not a miscellaneous amendment and should not have been included in such a Bill. Alternatively, the Explanatory Notes should have clearly drawn attention to the proposal when, in fact, they fail to address it specifically.

The Explanatory Notes suggest that QAILS was consulted in the development of this change, but do not note the views expressed in that consultation as has been the convention with Explanatory Notes in the past.. We have previously raised concerns with inferences that might be drawn, that QAILS or other parties support Bills because they are noted as having been consulted in the drafting without any further comment. This is another example of poor consultation, where the views of those parts of the community most likely to be impacted by legislation have been ignored, with no explanation provided.

Inconsistent with LPITAF review

According to the Explanatory Notes, the Bill

reflect[s] changes as a result of the implementation of recommendations resulting from the Review of the Allocation of Funds from the Legal Practitioner Interest on Trust Accounts Fund

As we read the review, it did not actually recommend removing law reform from the purposes for which LPITAF funding could be directed; in fact, the review recommended that

The LPA should be amended to broadly reflect the new strategic objectives for the allocation of LPITAF funds.

On that basis, the proposed amendment is inconsistent with the review's recommendation, and goes much further – it prevents community organisations from engaging in work to improve public policy and the impact of unfair laws and systems on vulnerable and disadvantaged Queenslanders.

Law reform as a frontline legal service

Advancing law reform is a cost effective way of delivering access to justice. The recent Productivity Commission *Report on Access to Justice* identifies that

legal assistance lawyers...are uniquely placed to identify systemic issues, particularly those affecting disadvantaged Australians.

The LPITAF Review identified the importance of ongoing delivery of legal advice and case work, and the Productivity Commission observes that there is not always sufficient funding to support individual representation for all cases that come before legal services. In this respect, advocacy and

advancing law reform complements other forms of frontline service and 'stretches the funding dollar'. In addition to recommending an immediate injection of \$200m for legal assistance services, the Productivity Commission expressly recommended:

The Australian, State and Territory Governments should provide funding for strategic advocacy and law reform activities that seek to identify and remedy systemic issues and so reduce demand for frontline services.

Governments need community organisations to be involved in law reform activity

Governments rely on community organisations with direct experience working with vulnerable clients to improve laws and policies. Preventing this work will result in less effective public policy development, with unforeseen impacts for the Queenslanders with whom our members work.

In his letter to QAILS dated 15 December 2014, the Attorney-General notes that, despite the provisions in the JOLA Bill,

[Community legal centres] will remain able to provide feedback or suggestions on systemic matters that have come to their attention through frontline service delivery. The input of [community legal centres] is valued and I will continue to consult with them over future reforms.

However, this position is entirely inconsistent with the proposed amendment to the LPA.

Only last month, the Queensland Law Reform Commission invited QAILS to contribute to its review of the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011*. In declining the Commission's invitation, QAILS noted the expertise of community legal centres in this area:

In 2013-14, Queensland community legal centres provided 1,785 pieces of legal information and 1,605 instances of legal advice in relation to 'neighbourhood dispute' problems, and opened 89 new cases. Over a quarter of the calls to QAILS in 2012-2014 were in relation to neighbourhood disputes, and we developed the www.qldneighbourhoods.com website to provide online legal information to people with neighbourhood problems, with financial support from the Brisbane City Council and significant in-kind legal services from Holding Redlich.

However, without the resources to develop a formal response to your review, QAILS is unable to provide further evidence that would assist the Commission in its deliberations.

QAILS made similar observations when declining the Department of Justice and Attorney-General's request to provide feedback in the statutory review of the *Victims of Crimes Assistance Act*.

Following the recent hail storms in Brisbane and the significant damage to cars, I wrote to the Minister for Transport and Main Roads to encourage removal of red tape for owners of cars that are written off where the damage doesn't compromise a vehicle's safety systems or structural integrity. This followed community legal centres' experience following previous storms, and is an example of constructive, proactive engagement with government. Unfortunately, due to these funding restrictions, this work was done out of hours, and is not a sustainable way for community organisations to work with governments to achieve positive outcomes.

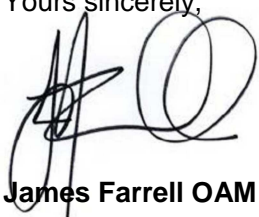
Allowing QAILS and its community legal centre members to actively participate in these discussions would assist government decision making and benefit Queenslanders.

We recommend the amendment be removed

QAILS strongly recommends that the Committee should recommend that clause 80 of the Bill be removed, and community legal centres and other community organisations should be encouraged to engage in proactive, constructive activities with governments that improve laws, policies and practices.

QAILS would welcome the opportunity to discuss these issues with the Committee, and strongly encourages the Committee to hold a public hearing to receive more evidence about the impact of this proposed change to the LPA. I can be contacted on (07) 3392 0092 or director@qails.org.au.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'J Farrell', written over a horizontal line.

James Farrell OAM
QAILS Director