



Queensland Legal Affairs and Community Safety Committee

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Dear Colleagues

**RE: QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL (JUSTICES OF THE PEACE)  
AMENDMENT BILL 2013**

We refer to the above and thank you for the opportunity to provide submissions.

**Background – preliminary consideration**

The Aboriginal and Torres Strait Islander Legal Service (QLD) Ltd (“ATSILS”) provides legal services to Aboriginal and Torres Strait Islander peoples throughout Queensland. Our primary role is to provide criminal, civil and family law representation. We are also funded by the Commonwealth to perform a State-wide role in the key areas of: Law and Social Justice Reform; Community Legal Education and Monitoring Indigenous Australian Deaths in Custody. As an organisation which, for four decades has practiced at the coalface of the justice arena, and over the past few years in civil law, we believe we are well placed to provide meaningful comment. Not from a theoretical or purely academic perspective, but rather from a platform based upon actual experiences.

We wish to acknowledge the good and important work of Justices of the Peace. We understand that the trial will take place and suggest active recruitment of Aboriginal and Torres Strait Islander Justices of the Peace. Access to justice for Aboriginal and Torres Strait Islander peoples in all respects is something we have heard both Commonwealth and the previous Queensland Governments advocate. We fail to see any information on how the new approach may better Aboriginal and Torres Strait Islander peoples access to the

Queensland Civil and Administrative Tribunal (QCAT) as a more culturally appropriate service. Although we note that the procedures of QCAT will continue to be followed, we view that a less formal approach in regard to hearings and appearances before the Tribunal is likely to occur with Justices of the Peace, making it a more comfortable process for those involved. We see this as likely to better assist parties in being open and in providing information and evidence and therefore a just outcome.

We view this as a good opportunity for Aboriginal and Torres Strait Islander people to be engaged in a process that could create a partnership with a legal process. Aboriginal and Torres Strait Islander peoples cultural knowledge and communication skills would be utilised, as well as making QCAT a more accessible service for Aboriginal and Torres Strait Islander peoples. We believe that the legislation needs to cater for specific recruitment of Aboriginal and Torres Strait Islander peoples. The other positive of such recruitment is that it will bring the wider community into contact with Aboriginal and Torres Strait Islander peoples and act to breakdown stereotypes.

We also wish to place importance on ongoing training and support for Justices of the Peace working in QCAT. This training should of course be in the law, as well as in dispute resolution skills and debriefing processes. Even lawyers do not necessarily possess all of these skills. Given that lawyers often argue for a particular view on behalf of clients, they are not simply able, due to their qualification, to be an “adjudicator”.

We are concerned that there is no legislative requirement that the lawyer have any specific level of experience in terms of years worked or areas in which they are required to have worked. It would be reasonable for the community to expect that the legally qualified QCAT Justices of the Peace have a certain minimum level of practising experience (we suggest ten years) and that it include a significant component of civil litigation and/or dispute resolution. It is also suggested that the legally qualified Justices of the peace have a current practising certificate.

We also acknowledge that the skills required to make the important decision required in the QCAT process cannot be gained from short courses in the areas mentioned above (law, dispute resolution and debriefing). If the Justices of the Peace possess knowledge of the law, dispute resolution and debriefing skills as a minimum skill set, we view this as being

likely to effect the quality of the process, the experience by those who access QCAT and the outcomes.

We hold a number of concerns in terms of the trial, in particular, as to the level and quality of service our clients will receive. We submit that simply because a matter may be concerned with an amount of money that equates to less than \$5,000.00, it is not always a good indication as to the complexity of the matter. The same may be said in regard to fencing disputes and tenancy matters. The evidence will be varied and it is important for QCAT users as well as community onlookers (who may be potential service users) to have confidence in QCAT and its ability to satisfactorily resolve issues. As mentioned above, these matters not only require an experienced legal mind, especially where evidentiary issues complicate matters, but also a person experienced at resolving conflict. This is a unique skill and not necessarily one that is gained by being a lawyer or a Justice of the Peace. Clearly this skill is important where there is an ongoing relationship between disputants (e.g., in fencing cases), it being important for proceedings not to be conducted in a way that may inflame animosity.

We understand that Justices of the Peace generally provide their service free of charge, but for this work will be paid \$100.00 a day. We view this as a poor reflection of the value of the work, even if it is meant to be an acknowledgment of service. It is unlikely to entice people with the skill set and experience required, especially in terms of legally qualified Justices of the Peace. Although, in saying this we think that there may be a pool of retired lawyers who could be interested in participating as a continued community service for the small fee. The requirements of maintaining a practising certificate (if required) may become an issue for these lawyers, given the requirement for continuing professional development. Our view is that \$100.00 an hour would be reasonable and still cost effective in relation to an appropriately experienced and legally qualified person.

The Explanatory Notes (p. 2) mention the requirement of \$1.608 million over two years to fund this trial. There is no breakdown of this figure for training, recruitment, administrative costs and payments to the Justices of the Peace or the evaluation. We also note that there is no information as to the training and support to be provided to the Justices of the Peace. The Explanatory Notes (p. 1) also mention that the aims of the trial include reducing the costs of hearing minor civil disputes and improving administration of the justice system.

There is no information to explain these aims. At this point we can see that there is going to be further expenditure without any explanation of the saving. We also acknowledge that if users are dissatisfied with the outcome, then they may appeal and this will increase costs.

We view it as unfortunate that we were not consulted at an earlier stage. We understand that the recruitment process for the Justices of the Peace has already occurred, thus meaning that our comments in regard to experience and qualifications are likely to be ignored. We are disappointed with the lack of detail in the Explanatory Notes and the Bill, as our view is that for this trial to have the best opportunity for success, it requires better planning and detail prior to implementation.

In saying the above, we wish you well in your deliberations and trust that our submission is of assistance. Again, we thank you for providing us with the opportunity to provide comment.

Yours faithfully,

Shane Duffy

Chief Executive Officer