

QCAT Bill consultation guide

1. INTRODUCTION

1.1 Background

The independent expert panel (the panel) established to advise on the implementation of the new Queensland Civil and Administrative Tribunal (QCAT) has provided a [report to the government](#), recommending the legislation necessary to create the new tribunal.

1.2 Purpose of consultation on draft legislation

The [draft legislation](#) has been released for consultation.

The purpose of the consultation is to ensure that there are no unintended consequences that will result from the way the legislation is drafted. The policy underpinning the legislation is not the subject of this consultation process.

Comments on the legislation must be provided by 27 February 2009 and emailed to: enquiries@tribunalsreview.qld.gov.au. Questions about the legislation can be directed to the tribunals review project team on 3239 3681.

1.3 Consultation documents

To help stakeholders give meaningful comments on the draft legislation, this document outlines the legislative scheme and summarises key aspects of the QCAT Bill in plain English, with cross references to specific provisions in the legislation.

Answers to [frequently asked questions](#) about the panel's report recommending the necessary legislation can also be found on our website.

1.4 What kinds of matters will QCAT deal with?

QCAT will take over the functions of a number of different tribunals as well as some review functions of the courts and other administrative bodies. The tribunal website lists the tribunals and other administrative bodies that will be amalgamated into QCAT.

Because of the wide variety of matters that QCAT will deal with, the tribunal will be organised into three divisions. These divisions will be established administratively and will not be specified in legislation to provide flexibility to respond to the changing needs of the tribunal.

The three divisions will be:

- **Human rights matters**- for matters previously dealt with by the Anti-Discrimination Tribunal, the Guardianship and Administration Tribunal and the Childrens Services Tribunal dealing with child protection matters.
- **Civil disputes** - for matters previously dealt with by the Small Claims Tribunal, minor debt claims in the Magistrates Court, retail shop lease disputes and civil disputes in the Commercial and Consumer Tribunal.
- **Administrative and disciplinary matters** - for matters previously dealt with by all existing disciplinary tribunals including those tribunals dealing with health practitioners, lawyers, teachers, vets, engineers, plumbers etc. This division will also deal with reviews of government decisions for example, decisions by government about taxation, liquor and gaming matters.

2. QCAT LEGISLATION

2.1 Structure of legislation

Two separate bills have been prepared and will be introduced into Parliament at the same time: the *QCAT Bill 2009* and the *QCAT (Jurisdiction Provisions) Amendment Bill 2009*.

The QCAT Bill establishes the new tribunal, provides for the appointment of the president, deputy president, members and tribunal staff as well as the generic powers and procedures applying to QCAT's range of jurisdictions.

The QCAT (Jurisdiction Provisions) Amendment Bill 2009 amends more than 160 pieces of legislation conferring jurisdiction on QCAT (the amendment Bill).

2.2 Overview of QCAT Bill

The QCAT Bill provides the generic framework setting out how the tribunal will operate and only deals with very limited specific procedural matters. Specific procedures will be provided for in the Rules and practice directions that will be developed by the president of the tribunal.

For example, the membership provisions are very broad, requiring the member to have extensive knowledge, expertise or experience in relation to any class of matter dealt with by QCAT. The administrative arrangements supporting the QCAT Act will specify the kinds of specific expertise required for the various matters in the tribunal.

Rules are designed to be flexible and easily adapted depending on the needs of the particular jurisdiction - other generic tribunals operate in this way. Tribunal members, staff and relevant agencies will be consulted in the development of the Rules.

Wherever possible, the generic procedures and powers of the tribunal are to apply across the full range of QCAT jurisdiction. Specialist procedures and powers are recommended to be retained only where there is significant policy justification.

If there is sufficient policy justification for specialist processes to be retained, wherever possible these matters are dealt with in procedures set out in the Rules, not in the QCAT Bill or in enabling Acts. It is only where specialist features cannot be adequately addressed through this process that legislative amendments to enabling Acts are required.

2.3 Presidential and membership structure of the tribunal

QCAT will be led by a president who is a Supreme Court judge. A deputy president will also be appointed who is a District Court judge. Both positions will be appointed on a full time basis for a minimum of three years and a maximum of five years. [See clauses 170 and 171 of the QCAT Bill].

There will be a core group of full time members, as well as sessional and part time members. Members will either be legal practitioners or have special knowledge experience in relation to any type of matter heard by QCAT. [See clause 178 of the QCAT Bill]. There will be the capacity for judges of the District Court and Supreme Courts and magistrates to be appointed as QCAT members to hear matters if necessary. [See clause 187 of the QCAT Bill].

QCAT will also have adjudicators (called judicial registrars in the panel's stage two report) who will have the power to hear certain types of matters and perform directions hearings and alternative disputes resolution processes. [See clauses 191 and 194 of the QCAT Bill].

2.4 How will QCAT operate?

There are two different types of jurisdiction in QCAT: original and review.

Original jurisdiction addresses a primary decision regarding a range of matters such as minor civil disputes, guardianship, discrimination, building disputes, and disciplinary matters.

Review jurisdiction is where a decision made by another body including a government department or regulatory or disciplinary authority is reviewed by QCAT. Examples of decisions heard in the review jurisdiction include whether to licence a child care centre or deciding in whose care to place a child subject to a child protection order.

Where QCAT reviews decisions of original decision makers, the hearings will be by way of a fresh (new) hearing instead of only relying on material provided to the original decision maker. [See clause 19 of the QCAT Bill].

Some enabling Acts will restrict this process. For taxation matters, fresh evidence will only be allowed to support the original grounds of the objection. For liquor and gaming and higher education matters fresh evidence will only be provided with leave of the tribunal.

2.5 Giving QCAT the power to deal with matters

In addition to the original jurisdiction in the QCAT Bill (for minor civil disputes), approximately 160 different Acts give QCAT the jurisdiction to review decisions, consider disciplinary matters or make original decisions.

Potential applicants to QCAT can bring a matter before QCAT if an enabling Act or the QCAT Bill gives QCAT the power to make a decision on that matter.

2.6 Representation

QCAT is not a court and has different rules to those of a court. It has to operate in a way that is fair, just, economical and quick.

For that reason the general rule in the QCAT Bill is that a person who asks QCAT to make decisions will have to appear in person before the tribunal. If a person wants to have a lawyer or friend represent them, they will need to ask the tribunal for permission.

Where there are complex issues of fact and law then it is likely the tribunal will let people be represented. The QCAT Bill sets out those matters the tribunal will consider when deciding whether to let people be represented [See clause 42 of the QCAT Bill].

Where the matter QCAT is deciding is a disciplinary matter which affects a person's capacity to work in their chosen profession or earn a livelihood, the person will be entitled to legal representation and will not have to ask permission from the tribunal. However, if they choose to they may also appear themselves. [See clause 42 of the QCAT Bill].

QCAT Rules will be developed to indicate which matters the tribunal believes are appropriate to have legal representation, to avoid certain parties repeatedly having to apply for leave to be represented. The Rules will also specify how parties who are not individuals may appear before the tribunal.

Some enabling Acts conferring jurisdiction on QCAT also ensure that representation occurs in all cases without having to ask permission (for example in taxation matters and in reviews about fuel subsidies and first home owner grants where the matters will always be complex and involve questions of law).

2.7 Costs

As a general rule, each party will pay for their own costs. However, in limited circumstances, the tribunal can require a person to pay another person's costs. The tribunal must be satisfied that it is in the "interests of justice" to make this order. Examples where this might happen include where a person has caused unreasonable delay or obstruction while the tribunal was dealing with an application or contravened an order of the tribunal. [See clause 99 of the QCAT Bill].

The QCAT Rules will provide some guidance as to the circumstances in which this may occur. Enabling Acts conferring jurisdiction on the tribunal can provide for specific circumstances when costs will be awarded.

2.8 Rights of appeal

Decisions made by a member of QCAT can be appealed. The way in which a person can appeal depends on whether or not it was a judicial member who made the decision in QCAT.

If the decision was made by a **non-judicial member**, the appeal can be made to the appeal tribunal within QCAT. The appeal tribunal can be made up of the president, the deputy president, another judicial member, or in some cases a suitably qualified member or members. [See clause 138 of the QCAT Bill].

Appeals to the appeal tribunal may be made on a question of law and, with the permission of the president, on a question of fact. A party must also ask the president's permission to appeal decisions:

- about minor civil disputes
- about a claim of a monetary value of not more than \$7500
- that are an interim or interlocutory decision, (not final)
- about an award of costs.

Appeals on decisions made by a **judicial member** can be made directly to the Court of Appeal. The person must ask the permission of the Court of Appeal if the appeal is about a question of fact. If the appeal is about a question of law, the person does not have to ask the Court of Appeal for permission. [See clauses 145 and 146 of the QCAT Bill]

2.9 Commencement of the legislation

Most of the provisions in the QCAT Act will start on 1 December 2009 when the new tribunal starts and when the enabling Acts will give QCAT jurisdiction.

Some provisions may start earlier to allow key positions to be filled (for example the president and members) and for the rules to be prepared before the tribunal starts.