

## **Criteria to be adopted by the independent expert panel on the implementation of an amalgamated civil and administrative tribunal in Queensland**

### ***Background***

1. The Queensland Government has decided to establish a civil and administrative tribunal that will provide a single recognisable gateway to increase the community's access to justice and increase the efficiency and quality of decision-making through a larger administrative structure.
2. The Queensland Government has established an independent panel of experts to provide advice on how best to implement an amalgamated civil and administrative tribunal, including the precise scope of the jurisdiction of the new tribunal, membership and registry structure, and accommodation, information technology and other infrastructure needs. It's Terms of Reference and other information about the panel can be found at [www.tribunalsreview.qld.gov.au](http://www.tribunalsreview.qld.gov.au).
3. The panel must provide advice on implementing the amalgamated civil and administrative tribunal to ensure it delivers justice in a way that is:
  - a. independent
  - b. efficient (that is, timely and cost efficient)
  - c. expert (to ensure quality of decision-making across a range of different jurisdictions)
  - d. accessible
  - e. flexible (to meet the needs of a range of stakeholders ranging from the most vulnerable in the community to businesses with complex contractual disputes); and
  - f. able to adapt to future pressures.
4. Amongst the things the panel will consider are the precise scope of the jurisdiction of the new tribunal including the original and appellate jurisdictions of the bodies currently performing civil and administrative justice in Queensland (listed in Attachment 1 to its Terms of Reference) and which of these bodies is to remain outside of the new tribunal.
5. In formulating its recommendations about which of these bodies is to remain outside of the new tribunal, the panel will have regard to, amongst other things:
  - a. The expert views of existing tribunal members and registry staff, representatives of users of tribunals and relevant government agencies
  - b. The experience of other jurisdictions in developing and implementing amalgamated models of civil and administrative justice in Australia
  - c. Any evaluations of amalgamated models of civil and administrative justice currently operating in Australia

- d. Advice from the Legal, Constitutional and Administrative Review Committee arising out of its review into the accessibility of administrative justice.
6. In formulating its recommendations about which of the nominated bodies is to remain outside of the new tribunal, the panel envisages that the new tribunal will draw upon the specialist expertise possessed by members and staff appointed to the new tribunal, including many people who presently are members and staff of existing tribunals.
  7. Accordingly, the panel does not consider that the fact that an existing tribunal possesses specialist skills and experience is a sufficient reason for it to remain outside of the new tribunal.
  8. The panel's preliminary view is that the specialist skills and experience of people appointed to the new tribunal (whether from existing tribunals or otherwise) should be utilised in the organizational and administrative arrangements for the new tribunal, including the creation of specialist lists or divisions within which these skills and experience can be most effectively utilised.
  9. In formulating its recommendations about which of the bodies listed in Attachment 1 to its Terms of Reference is to remain outside of the new tribunal, the panel proposes to adopt the following criteria to guide its deliberations.

### ***Criteria***

10. Unless good reasons exist for a tribunal to remain outside of the new tribunal, the panel is inclined to recommend its inclusion.
11. A tribunal should remain outside of the new tribunal if its inclusion in the new tribunal would substantially impair the effectiveness and efficiency of the new tribunal.
12. In general, a tribunal should be included in the new tribunal if inclusion is likely to enhance the quality and consistency of decision-making of the new tribunal.
13. A tribunal should remain outside of the new tribunal if its inclusion in the new tribunal would diminish the effectiveness of its operation, its efficiency or access to it by members of the community.
14. The fact that an existing tribunal already acts efficiently, and delivers good quality decision-making that is independent of the original decision maker or other parties to the proceedings, is not a sufficient reason for it to remain outside of the new tribunal. Indeed, these attributes can be expected to enhance the operation of the new tribunal, and provide a point of reference by which the tribunal as a whole can improve its efficiency and effectiveness.

15. The panel recognises that special circumstances may exist as to why an existing tribunal should remain outside of the new tribunal, and that circumstances may exist as to why a court, rather than a tribunal, should determine a matter.
16. The fact that the type of decision being undertaken is one that is characteristic of a tribunal, rather than a court, for instance merit review and disciplinary and regulatory matters, provides a strong reason as to why, as a general rule, the matter should fall within the jurisdiction of the new tribunal, rather than be determined by a court. But special circumstances may warrant the matter being determined by a court.
17. The fact that a Magistrates Court or another court previously has had conferred upon it specific jurisdiction to determine certain matters requires consideration by the panel of whether there is a good reason for those matters to continue to be determined by a court, rather than by the new tribunal. The original reasons for jurisdiction being conferred upon a court rather than a tribunal, the subject matter in issue or other factors may justify the matter remaining within the jurisdiction of a court.
18. The volume of matters, or the capacity of an existing court or tribunal to deal with those matters, may make it more practical and efficient to maintain the *status quo*, provided that the quality and consistency of decision-making are not compromised.
19. Access to an existing court or tribunal may provide a more accessible, timely and efficient disposition of a matter than the new tribunal. This may be so in certain regional, rural and remote areas. To reach an informed decision about such access issues the panel will need to consider the ease with which persons currently access such courts or tribunals, and the likely means of access via a new tribunal.
20. Accessibility, timeliness and cost effectiveness are relevant criteria. The panel will consider whether these matters are likely to be improved, maintained or reduced by the inclusion of an existing tribunal in the new tribunal. Cost effectiveness includes the costs of operating the amalgamated tribunal and the costs to members of the community using it.
21. The panel will need to be persuaded that attributes possessed by an existing tribunal (e.g. independence, efficiency, expertise, accessibility, timeliness and quality of decision making) would not be able to be maintained if the tribunal was amalgamated into the new tribunal.
22. The resource and administrative implications of including certain matters within the jurisdiction of the new tribunal require consideration. For instance, the volume of certain matters (e.g. residential tenancy disputes) and reasonable expectations of how the new tribunal might

deal with those matters (e.g. the provision of a lengthier hearing than under present arrangements and the provision of reasons for decision) may impose a substantial administrative and resource burden upon the new tribunal. The panel will need to make an informed assessment of the probable cost of providing an enhanced system for the determination of such matters through the new tribunal.