

TERMS OF REFERENCE

Statutory Review of the Queensland Civil and Administrative Tribunal Act 2009

Pursuant to section 240 of the *Queensland Civil and Administrative Tribunal Act 2009* (QCAT Act), I, Deb Frecklington MP, Attorney-General and Minister for Justice and Minister for Integrity, commission former President of QCAT (2013 – 2017), the Honourable David Graham Thomas, to conduct a review of the QCAT Act. The terms of reference for this review supersede the terms of reference issued by the former Government on 21 February 2023. The second QCAT Act Review was due to be completed and tabled in Parliament in early 2024, however, remains overdue on account of the former Government failing to release a Departmental consultation paper and consult with stakeholders.

The appointed reviewer will consider the legislative framework that regulates the functions and operations of Queensland Civil and Administrative Tribunal (QCAT), and make recommendations in a comprehensive report to be tabled in the Legislative Assembly.

BACKGROUND

QCAT is an independent tribunal established under the QCAT Act. QCAT hears and determines a broad range of complex civil, administrative and disciplinary subject matters. The jurisdiction of QCAT is wide-ranging and complex, including:

- guardianship and administration applications
- residential tenancy disputes
- minor debt and consumer claims
- fence and tree disputes
- retail shop lease and building disputes
- reviews of a range of government decisions, on application of an affected person
- discipline matters across a range of industries and professions.

The QCAT Act requires the Minister to review the QCAT Act within three years after its commencement and at further intervals of five years. The first statutory review of the QCAT Act was completed in 2018, with the report tabled by the responsible Minister on 21 September 2018.

QCAT has been operating since 2009, and has grown significantly since its establishment, with the number of proceedings and complexity of cases continuing to grow. Noting the many pressures facing QCAT such as growing backlogs, hearing delays and the increased complexity of matters, the second QCAT Act review will also have a focus on the critical and significant operational issues experienced by the tribunal.

SCOPE

The review will take a genuine look at QCAT to identify ways to alleviate the significant pressures QCAT is currently facing, including an examination of any systemic operational or legislative issues impacting on the ability for QCAT to perform its statutory functions, in an accessible, economical and timely manner.

Specifically, section 240 of the QCAT Act provides that the objects of the review include:

- deciding whether the objects of the QCAT Act remain valid;
- deciding whether the QCAT Act is meeting its objects;
- deciding whether the provisions of the QCAT Act are appropriate for meeting its objects; and
- investigating any specific issue recommended by the Minister or the QCAT President, including, for example, whether any provision of an enabling Act affects the effective operation of the tribunal.

Without limiting the intended scope above and with a view to addressing operational pressures, the review will also include consideration of the following issues:

- whether the current legislation creates hurdles to procedural efficiency within the tribunal;
- QCAT senior leadership structure, with comparison to tribunals in other States and the Commonwealth (including whether the President and Deputy President should be appointed to the Supreme and District Courts, and including Heads of Division);
- the role and functions of the QCAT President and Deputy President;
- the current appeal structure for QCAT decisions;
- the operation of various professional disciplinary lists (including Legal and Health practitioners) and whether QCAT remains the most appropriate forum for these jurisdictions;
- whether legal representation should be ‘as of right’ for certain, or all, types of tribunal matters, and the impacts of any change on both the ability for QCAT to meet its objectives and the funding arrangements for legal service providers;
- the current minor civil dispute jurisdiction and whether the jurisdiction could be expanded, minimised, or transferred to a different forum;
- other jurisdictions conferred on QCAT through enabling Acts which have significant impact on its operations and the appropriateness of QCAT as forum for those matters, including, for example, QCAT’s role in relation to certain public housing disputes;
- the role of Justices of the Peace at QCAT and ways their involvement in matters and processes can alleviate pressures at the tribunal;
- ways in which QCAT can be improved to support the small business community;
- the capacity of QCAT to hear matters, with reference to the available tribunal members and physical meeting or hearing room space; and
- the extent to which previous statutory review recommendations still apply and may assist in addressing issues.

Recognising the existing bodies of work which are occurring across Queensland Government that intersect with the powers and functions of QCAT, the review is to have regard, as appropriate, to intersecting reforms or initiatives that are currently underway in undertaking the review.

The review will also include consideration and advice regarding the scale of reform required to implement the recommendations, including, where appropriate and possible, identifying the implications for other forums if transfer of jurisdiction is proposed, the key cost drivers, and any potential savings and efficiencies.

CONSULTATION

The review will be informed by broad consultation with the legal community and QCAT customers, including with:

- QCAT President, Deputy President, decision makers and relevant staff of the registry;
- Heads of Jurisdiction and Queensland Court Services;
- Queensland Law Society and Bar Association of Queensland;
- Legal Services Commission;
- Legal, community, and business stakeholders;
- government departments, agencies, and relevant statutory bodies that engage with QCAT; and
- any other group or individual, considered appropriate given the scope of the review.

Should the reviewer consider further consultation is required to inform the review, they may invite (for example, by public notice/advertisement) submissions from interested individuals and stakeholders.

FINAL REPORT

The review should be completed within twelve months from commencement and a final report provided to the Attorney-General and Minister for Justice and Minister for Integrity by 30 April 2026.

Under section 240(3) of the QCAT Act, the Minister must as soon as practicable after receiving the report, table a report about the outcome of the review in the Legislative Assembly.