

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CHANGES FOR THE NURSING TRIBUNAL

What did the Nursing Tribunal previously do?

The Nursing Tribunal heard and decided disciplinary proceedings referred by the Nursing Council.

The Nursing Council is an independent statutory body that regulates nursing and midwifery in Queensland. It may investigate a nurse or midwife if it reasonably believes an aspect of their conduct or practice, or another matter relating to the nurse or midwife may provide a ground for disciplinary action against them. In appropriate circumstances the Council may refer the matter to the Nursing Tribunal and it may also consider whether the person's registration, enrolment or authorisation should be limited or suspended.

Appeals from disciplinary decisions of the Nursing Council were previously heard in the District Court.

Do the Nursing Council and the Nursing Tribunal continue to exist?

The Nursing Tribunal was abolished and its jurisdiction included in the jurisdiction of QCAT under the *Queensland Civil and Administrative Tribunal (Jurisdiction Provisions) Amendment Act 2009*. The provisions of the *Nursing Act 1992* establishing the Nursing Tribunal are repealed.

The Nursing Council continues to investigate disciplinary matters and take action currently authorised by the *Nursing Act*. The more serious disciplinary matters that were previously referred to the Nursing Tribunal are now referred to QCAT.

Who hears these matters in QCAT?

The Nursing Tribunal was previously constituted by a lawyer, twelve registered nurses and three lay persons representing persons who use services provided by the nursing profession.

Similar to the former Health Practitioners Tribunal, QCAT is constituted by a judicial member when hearing disciplinary matters about nurses and midwives, and is assisted by three "assessors" - one assessor chosen from the public panel of assessors (non-professionals) and two assessors chosen from the professional panel of assessors. However, this will not be necessary if the matter is urgent.

The public panel of assessors is established under the *Health Practitioners (Professional Standards) Act 1999* while the Professional Panel of Assessors is established under the *Nursing Act 1992*. The Professional Panel of

Assessors is constituted by registered nurses or midwives who have the appropriate experience, knowledge, skills and standing in the profession.

Before choosing an assessor the principal registrar of QCAT must be satisfied the assessor does not have a personal or professional connection with the nursing practitioner subject of the disciplinary proceedings that may prejudice the way in which the assessor performs their functions.

The Nursing Council advises the principal registrar if the proceeding is of a specialist or technical nature and of the type of assessor the tribunal should have to assist it. The principal registrar must have regard to this advice.

How does QCAT deal with nurses disciplinary matters?

There are not any significant changes to the way that these matters were previously dealt with by the Nursing Tribunal. QCAT has the same jurisdiction, functions and powers to make decisions under the *Nursing Act 1992* as the Nursing Tribunal had before the amalgamation process.

The *Queensland Civil and Administrative Tribunal Act 2009* sets out the generic powers and procedures of QCAT. Where the generic provisions of the *Queensland Civil and Administrative Tribunal Act 2009* are appropriate for nursing disciplinary matters, corresponding provisions have been removed from the *Nursing Act 1992*. For example, provisions in the *Nursing Act 1992* relating to summoning witnesses, receipt of evidence and how questions before the tribunal were similar to the generic provisions in the *Queensland Civil and Administrative Tribunal Act 2009* and have been removed. However, other specific functions and powers required for this jurisdiction, including the types of disciplinary orders QCAT can make, are retained in the *Nursing Act 1992*.

Are nurses disciplinary matters heard in the original or review jurisdiction of QCAT?

QCAT exercises original jurisdiction when it makes a primary decision about a matter. It is the first time the matter has been decided by an independent body, even if the matter has gone through mediation or conciliation. Disciplinary matters are part of QCAT's original jurisdiction. QCAT exercises its review jurisdiction when it reviews a decision made by another body. Applications to QCAT for review of disciplinary decisions of the Nursing Council are part of QCAT's review jurisdiction.

Where is the QCAT registry located?

The registry function for matters under the *Nursing Act 1992* is no longer performed by the Nursing Council. The registry is part of the general QCAT registry on Level 9, Bank of Queensland Building, 259 Queen Street, Brisbane.

How are decisions of QCAT about nursing disciplinary matters appealed?

Under section 137(1)(c) appeals from orders of the Nursing Tribunal were previously made to the District Court. The *Queensland Civil and Administrative Tribunal Act 2009* sets out the general rights of appeal from decisions of QCAT. Once QCAT hears the matter, a person can appeal that decision.

Because nursing disciplinary matters are decided by a judicial member, the appeal can be made to the Court of Appeal on a question of law. The person must ask the permission of the Court of Appeal if the appeal is about a question of fact.

What happens to applications in the Nursing Tribunal when QCAT commences?

The transitional provisions in the *Queensland Civil and Administrative Tribunal Act 2009* set out the standard approach to how matters are dealt with as of the date of commencement of QCAT on 1 December 2009.

If a person was able to apply to the Nursing Tribunal before 1 December 2009, but has not done so and is still within time to apply, the person may apply to QCAT from 1 December 2009. The functions, powers and procedures that apply to the matter are those set out in the *QCAT Act 2009* and the amended *Nursing Act 1992*.

If an application was in the Nursing Tribunal before 1 December 2009 but the matter had not yet begun to be heard, the matter is heard in QCAT. The procedure is that of QCAT under the *Queensland Civil and Administrative Tribunal Act 2009* and the amended the *Nursing Act 1992*. However QCAT only has the functions and powers the former tribunal had (the functions and powers are not significantly altered). The right of appeal from QCAT's decision are the rights set out under the *Queensland Civil and Administrative Tribunal Act 2009* and the amended *Nursing Act 1992*.

If the application had already started to be heard by the Nursing Tribunal before 1 December 2009, the proceeding continues before the same person but is taken to be a proceeding before QCAT and the person hearing the matter is taken to be a QCAT member. The procedure is that of QCAT under the *Queensland Civil and Administrative Tribunal Act 2009* and the amended *Nursing Act 1992*. However QCAT may only perform the functions and exercise the powers of the former Nursing Tribunal. The right of appeal is the right of appeal that applied to decisions of the Nursing Tribunal.

If the application was finalised before 1 December 2009, the decision of the Nursing Tribunal is deemed to be a decision of QCAT. The right of appeal is the right of appeal that applied to decisions of the Nursing Tribunal.

How are these changes affected by the proposed National Regulation Law contained in the *Health Practitioner Regulation National Law Act 2009*?

In March 2008, the Council of Australian Governments signed an Intergovernmental Agreement to establish a national registration and accreditation scheme for the health professions. The national scheme is to be fully implemented by 1 July 2010 and is to initially apply to the following ten health professions—medical, nursing and midwifery, pharmacy, physiotherapy, dental (dentists, dental prosthetists, dental therapists, dental hygienists), psychology, optometry, osteopathy, chiropractic, and podiatry.

To implement the national scheme, legislation was introduced in the Queensland Parliament in two stages. The *Health Practitioner Regulation (Administrative Arrangements) National Law Act 2008* was passed on 13 November 2008, and established the governance structure for the national scheme. The second stage (the *Health Practitioner Regulation National Law Act 2009*) was passed on 6 October 2009, and establishes the registration and accreditation functions of the boards and provides for national registration and accreditation of all relevant health professions.

Following this, a further Bill will be introduced to amend and/or repeal related current Queensland based legislation.

QCAT will continue to be responsible for hearing disciplinary matters referred to it under the new National Regulation Law in relation to Queensland based registered health practitioners. However, to ensure national consistency, the new legislation will specify common findings and determinations that can be made.