

QCAT 2026 Review conducted by the Hon David Thomas

Submission by QCAT President in respect of Issues paper 1: QCAT's objects and procedures

Response to Questions 1 and 2 Objects and reasonable help;
Question 3 Rejecting and refusing applications and other documents;
Questions 5 and 6 Electronic filing and QCase;
Questions 7-10 Remote conferencing and hearings on the papers.

17 March 2026

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Issues paper 1: objects and reasonable help

Introduction

1. I observe that some of the issues raised in Issues paper 1, and questions posed, go to matters of policy, and thus are ultimately matters for Government, not something about which a sitting judge would ordinarily express a view.
2. However, the *Queensland Civil and Administrative Tribunal Act 2009* (Qld) ('**QCAT Act**') provides that one of the functions of the President is to advise the Minister about how the QCAT Act or the enabling Acts could be made more effective,¹ and that the President may do all things necessary or convenient to be done for the performance of the President's functions.²
3. Although a Reviewer has been appointed, I note that this is a statutory review by the Minister of the QCAT Act pursuant to section 240, directed to whether or not there should be legislative amendment of the Act and enabling Acts.
4. I consider it necessary in order to properly discharge my statutory functions to respond to the Minister's review. In addition, since this will be the only response made on behalf of QCAT, I wish to provide as much assistance as possible to the Review team to enable it to make informed recommendations to the Minister.
5. I have not, however, purported to respond to, or verify the accuracy of, everything said in the Issues paper.

Remit of the section 240 Review

6. As in other issues papers, some of the consultation questions posed in this paper might give the impression that the Reviewer intends to make recommendations to the Minister about non-legislative operational change. I am sure this is not the Reviewer's intent, given QCAT's status as an independent tribunal and the terms of section 240 of the QCAT Act.
7. Section 240 of the QCAT Act, entitled 'Review of Act', requires the Minister to review the Act, not the practice of the Tribunal. The section is, rather, directed to whether there needs to be legislative change to:
 - a) the QCAT Act to change its objects if its currently stated objects do not remain valid; and/or
 - b) the QCAT Act or an enabling Act or Acts to assist QCAT to be able to meet, or better meet, its objects. This may include changes giving QCAT the ability to enhance

¹ *Queensland Civil and Administrative Tribunal Act 2009* (Qld) s 172(3)(b) ('**QCAT Act**'). See also section 240(2)(d) of the QCAT Act which provides that one of the objects of the statutory review is investigate any specific issue recommended by the Minister or the president, including, for example, whether any provision of an enabling Act affects the effective operation of the Tribunal.

² QCAT Act s 172(4).

operational efficiency, such as removing legislative hurdles to such efficiency.

8. The Ministerial review contemplated by the provision does not, on its clear language, concern non-legislative operational changes.
9. It is trite to say that QCAT, as an independent tribunal, is free from the direction of the Executive as to the way in which it conducts its operations. So much is plain from convention, the separation of powers doctrine, and the Act itself:
 - a) section 3(a) of the QCAT Act states that one of the objects is to establish an independent tribunal;
 - b) section 162 provides that in exercising its jurisdiction, the Tribunal must act independently and is not subject to direction or control by any entity, including any Minister;
 - c) section 172(5) provides that the President is not subject to direction or control by the Minister.
10. These provisions are consistent with the Explanatory Memorandum to the QCAT Bill which states that the objectives of the Bill are to 'establish an independent tribunal' and that:

The independence of QCAT will be achieved by providing for the appointment of a Supreme Court judge as president of the tribunal and by providing that the tribunal is not subject to direction or control by the executive.³

11. I recognise that section 240(2)(d) includes among the objects of the Review 'investigating any specific issue recommended by the Minister or the president, including, for example, whether any provision of an enabling Act affects the effective operation of the tribunal'. This provision must be read, however, in the context of section 240's focus on the Act itself, and of course, having regard to the independence of both Tribunal and President from Ministerial direction.
12. The issues and statement of 'Scope' in the Terms of Reference appear to have been drafted with these obvious propositions in mind.
13. The issues set out in the Terms of Reference turn on provisions of the Act and are consistent with an examination of whether legislative reform is called for:
 - whether the current legislation creates hurdles to procedural efficiency within the Tribunal;
 - QCAT senior leadership structure (set out in Chapter 4, Part 3 of the QCAT Act), 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 (sections 172 to 174 of the QCAT Act);
 - the current appeal structure for QCAT decisions (Chapter 2, Part 1, Division 4 of the

³ Explanatory Memorandum, Queensland Civil and Administrative Tribunal Bill 2009 (Qld) 4.

QCAT Act);

- the operation of various professional disciplinary lists (in the exercise of the Tribunal's review jurisdiction under section 17 of the QCAT Act) 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 (section 43 of the QCAT Act) 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 (sections 11 to 14 of the QCAT Act) 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 a 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 (Chapter 4, Part 4B of the QCAT Act) 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 (presumably this concerns whether and if so how the QCAT Act should be changed 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 (this would properly entail considering the ability of QCAT to carry out what is currently within its statutory remit pursuant to the QCAT Act and the enabling Acts; in this context it would be relevant to consider budget and resourcing); and
- the extent to which previous statutory review recommendations still apply and may assist in addressing issues (the single previous review, conducted by then Minister D'Ath was confined, as section 240 requires, to legislative reform).

14. The statement of scope also makes plain that the remit of the Review is to examine whether legislative reform is necessary, with a consideration of resourcing relevant in that context:

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. 'Systemic operational considerations' are those linked to how the legislation is currently framed and whether there should be changes in order to alleviate the significant pressures that QCAT is facing.

15. The reference to 'systemic operational considerations', it can be seen, is appropriately limited to a consideration of how systemic pressures on QCAT could be addressed by legislative change – that is, how pressures affecting its ability to achieve its statutory objects could be

alleviated, having regard to the amount and breadth of its work, and its resourcing, (with reference, among other matters to the availability of Tribunal Members and physical meeting or hearing room space).

16. Obviously, the Attorney-General, as First Law Officer of the State, and possessed of a clear understanding of the independence of the Tribunal and the President's insusceptibility to the direction of the Minister, did not frame Terms of Reference intended to extend to the Reviewer's making recommendations to the Minister, about how QCAT should run its business. (Nor, I am sure, would anyone think that a limited life, desk-top review, by an external person or group, without the requisite comprehensive and current understanding of operations, would be well-placed to make recommendations about non-legislative operational change).
17. The Terms of Reference, read as a whole, demonstrate no intent to depart from the restricted form of Ministerial review contemplated by section 240.
18. As stated above, I am sure it is not the Reviewer's intent to make recommendations to the Minister about non-legislative change, that is, about matters concerning which the Minister is expressly prohibited from directing the President of the Tribunal.⁴ I accept, however, that it would be reasonable to have regard to budget and resourcing, in the context of the reference in the Terms of Reference to 'identifying the implications for other forums if transfer of jurisdiction is proposed, the key cost drivers, and any potential savings and efficiencies' and to 'the capacity of QCAT to hear matters, with reference to the available tribunal members and physical meeting or hearing room space'.
19. Accordingly, in providing responses to the consultation questions, I have taken the questions to be directed to whether changes to the QCAT Act or the enabling Act would be desirable, in order for QCAT to better achieve its objects, taking into account any resource implications of the options posited.
20. As always, I encourage any stakeholders who have suggestions for operational reform, to write to the Principal Registrar and/or the President of QCAT with those suggestions, and to do so by providing as much specificity as possible of any problem encountered so that there can be a proper interrogation of the matter raised, and an informed view reached as to the best course of action moving forward. As the Reviewer would appreciate from his time as President, very generalised complaints which do not provide QCAT with sufficient information to explore the issue and get to the root of any problem (or perceived problem) are, unfortunately, not helpful vehicles for operational reform.
21. In those limited instances where the issues papers have set out assertions of non-legislative and non-budgetary concerns in a way which provides sufficient detail for QCAT to interrogate the concerns, the Minister can be assured that QCAT has taken notice.

⁴ Pursuant to section 172(5) QCAT Act. I acknowledge that section 240(2)(d) states that the objects of the review include investigating any specific issue recommended by the Minister or the president, including, for example, whether any provision of an enabling Act affects the effective operation of the Tribunal. This provision must be read together with the limitation in section 172(5) in determining its ambit.

Whether QCAT's objects are still valid

Consultation question 1

Q1 Are the objects of the QCAT Act and functions of the tribunal in sections 3 and 4 of the QCAT Act still valid? If not, what amendments should be made to those sections?

Summary and Tribunal Experience

22. This question engages directly with section 240(1) of the QCAT Act which provides that one of the objects of a section 240 Review is to decide whether the objects of the QCAT Act remain valid.
23. The objects as set out in section 3 of the QCAT Act remain valid.
24. Underfunding of QCAT, the sheer volume and breadth of work, and to some extent, external factors beyond QCAT's control,⁵ have made the object of dealing with all matters in a way that is 'quick' more aspirational than realistic. Successive Presidents and Deputy Presidents have spoken of the real challenges faced by QCAT in this respect.⁶
25. That, however, does not deprive the object of dealing with matters in a timely way, of its validity. It does, though, speak to the imperative of QCAT being resourced in a way which makes the objective a realistic possibility. At the risk of opprobrium for doing something which I very much dislike, that is, a writer quoting themselves, I refer to my comments made in the QCAT 2024-2025 Annual Report:

The objects of the QCAT Act are to establish an independent tribunal to deal with the matters it is empowered to deal with under the QCAT Act, or an enabling Act, to do so in a way that is accessible, fair, just, economical, informal and quick, to promote the quality and consistency of tribunal decisions, to enhance the quality and consistency of decisions made by decision-makers and to enhance the openness and accountability of public administration. Through dint of sheer hard work, QCAT has delivered on almost all of those statutory objectives, despite being chronically underfunded throughout its history. The one object which has proved beyond reach in some matters is to be 'quick'.

⁵ For example, restraint constraints on parties, including government entities, in being able to progress litigation in a timely manner. This topic will be discussed elsewhere in my responses to the Review.

⁶ See QCAT Annual Report 2022-2023, President's Message, from pages 11 to 13 which collates some of the observations made by some Presidential Members over time. The Reviewer, of course, has first-hand experience of the challenges presented by insufficient resourcing.

One cannot help but think that the objective of quick justice could also have been, and could be in the future, delivered by a Tribunal properly resourced to undertake the enormous breadth and quantum of work it does. QCAT has decision-makers of exceptional skill and knowledge, with expertise in subject matters developed over years of specialist work. They demonstrate the type of collective experience and expertise spoken of with approval in many administrative law cases. QCAT has, within its Registry staff, individuals who have acquired a corporate knowledge and operational expertise in Tribunal work of great depth and value. With the 2024 budget injection into QCAT and the expertise of QCAT decision-makers and Registry staff, the ability of QCAT to deliver on all of the statutory objects has been increased, with the real benefits of that funding to crystallize over the next 12 to 18 months.

26. Views may also differ on what 'quick' means, and thus expectations in that respect may differ. Some matters can be dealt with in a fairly short amount of time (weeks or months from commencement), but other matters, due to their complexity and/or size, will take what might seem like a long time, even in a tribunal which is fully and properly resourced. It is particularly important in a tribunal, particularly one which is not fully and properly resourced, that Government⁷ takes care not to have or create unrealistic expectations in the public or the profession as to what QCAT (or frankly, any court, commission or tribunal) can do or achieve.
27. I also observe that the stated objectives of dealing with matters in a way that is economical and informal must be read in the context of the incredible breadth of work that QCAT undertakes. Some matters can be dealt with in a way which is very informal, but others, for example, disciplinary proceedings which may lead to severe consequences for respondents, may call for a greater degree of formality, and may cost more. Some matters are able to be dealt with 'cheaply', but some matters, due to their complexity and/or size, will simply cost more. Put shortly, the objective of dealing with matters in a way that is economical, informal and quick needs to be understood in the context of a 'sliding scale' – what is appropriately informal for one matter may not be for another, what is economical for one matter may be different for what is economical for another, an appropriate time to finalisation for one type of matter may not be achievable for another. Again, this is about not having, or creating, unrealistic expectations.
28. Some of the functions of the Tribunal set out in section 4 do not reflect that the ability to carry out the mandate will be adversely affected by insufficient resourcing. While one could hope that the justice system is fully and properly resourced now and forever into the future, that type of optimism must give way to realism: funding will always be dependent on the economy and Government prioritisation.
29. To that end, the Review might consider that some parts of section 4 might be amended to something more realistic – that is, that the functions are to be performed to the extent that QCAT can reasonably do so within its resources. In that respect, the Review might give consideration to recommending that:
 - a) Section 4(a) be amended to read 'facilitate access to its services throughout Queensland so far as it can reasonably do so within its resources';

⁷ When I use the word 'Government', I am speaking of the elected representatives.

- b) Section 4(c) be amended to read ‘ensure proceedings are conducted in an informal way to the extent that it is appropriate, and is as quick as can reasonably be achieved within its resources’;
- c) Section 4(e) be amended to read ‘ensure the tribunal is accessible and responsive to the diverse needs of persons who use the tribunal to the extent that reasonably be achieved within its resources’;
- d) Section 4(i) be amended to ‘seek to maintain a cohesive organisational structure’. The ability of QCAT to maintain a cohesive organisational structure is to some extent influenced by matters outside QCAT’s powers, including having sufficient Registry staff, particularly in leadership positions, and having an adequate leadership structure of the Tribunal set out in the QCAT Act. As to the latter, I refer to my response to Issues paper 7 in which I express the view that changes need to be made within the QCAT Act to, *inter alia*, have a third layer of presidential membership. In any event, for current purposes, it is sufficient to make the observation that QCAT has as cohesive organisational structure as the current legislation and resourcing permits. The organisational structure within the QCAT Act needs improvement: it would be better with legislative amendments and increased resourcing for organisational positions.

Registry Functions and Powers

Consultation question 2

Q2 To what extent should QCAT be required to help parties?

- 30. The QCAT Act contains two provisions which expressly require assistance to be provided to parties.
- 31. The first is section 29 of the QCAT Act. It imposes broad obligations on the Tribunal, including the obligation to take all reasonable steps to ensure that each party to a proceeding understands the practices and procedures of the Tribunal, and the nature of assertions made in the proceeding and the legal implications of the assertions; and any decision of the Tribunal relating to the proceeding.
- 32. The second is section 30 of the QCAT Act. It imposes an obligation on the Principal Registrar to give parties and potential parties reasonable help to ensure their understanding of the Tribunal’s practices and procedures.
- 33. Given that question 2 comes under the broader heading of ‘Registry functions and powers’ (page 9 of the Issues paper), I have assumed it to relate to section 29 of the QCAT Act which is expressly directed to the Principal Registrar of QCAT.
- 34. Set out at table 1 below is a comparison table of obligations placed on civil and administrative tribunals in Australia (**‘CATS’**) within Australia.

Table 1: Obligations placed on CATS across Australia

Jurisdiction	Obligation on Registrar	Obligation on Tribunal
New South Wales	N/A	- ensure that the parties to the proceedings before it understand the nature of the proceedings⁸ - if requested to do so—explain to the parties any aspect of the procedure of the Tribunal, or any decision or ruling made by the Tribunal, that relates to the proceedings⁹
Tasmania	N/A	- ensure that the parties to any proceedings have a reasonable opportunity to understand the nature of the matter under consideration¹⁰ - ensure that the parties to any proceedings understand the nature of any assertions made in the proceedings and the implications of those assertions¹¹ - explain to the parties to any proceedings, if requested to do so, any aspect of the procedure of the Tribunal or any decision or ruling made by the Tribunal¹²
Western Australia	N/A	- ensure that the parties to the proceeding before it understand the nature of the assertions made in the proceeding and the legal implications of those assertions¹³ - explain to the parties, if requested to do so, any aspect of the procedure of the Tribunal, or any decision or ruling made by the Tribunal, that relates to the proceeding¹⁴
South Australia	N/A	ensure that the parties to any proceedings have a reasonable opportunity to understand the nature of the matter under consideration¹⁵

⁸ *Civil and Administrative Tribunal Act 2013* (NSW) s 38(5)(a).

⁹ *Civil and Administrative Tribunal Act 2013* (NSW) s 38(5)(b).

¹⁰ *Tasmanian Civil and Administrative Tribunal Act 2020* (Tas) s 83(2)(a).

¹¹ *Tasmanian Civil and Administrative Tribunal Act 2020* (Tas) s 83(2)(b).

¹² *Tasmanian Civil and Administrative Tribunal Act 2020* (Tas) s 83(2)(c).

¹³ *State Administrative Tribunal Act 2004* (WA) s 32(6)(a).

¹⁴ *State Administrative Tribunal Act 2004* (WA) s 32(6)(b).

¹⁵ *South Australian Civil and Administrative Tribunal Act 2013* (SA) s 43(1)(a).

Jurisdiction	Obligation on Registrar	Obligation on Tribunal
		- ensure that the parties to any proceedings understand the nature of any assertions made in the proceedings and the legal implications of those assertions¹⁶ - explain to the parties, if requested to do so, any aspect of the procedure of the Tribunal, or any decision or ruling made by the Tribunal¹⁷
Victoria	- give assistance, as the Principal Registrar considers appropriate to, parties in a proceeding and potential parties in a proceeding¹⁸ - the obligation does not extend to providing legal advice¹⁹	N/A
Queensland	give parties and potential parties reasonable help to ensure their understanding of the Tribunal's practices and procedures, including, for example, reasonable help to complete forms required²⁰	- ensure each party to a proceeding understands—²¹ (i) the practices and procedures of the Tribunal; and (ii) the nature of assertions made in the proceeding and the legal implications of the assertions; and (iii) any decision of the Tribunal relating to the proceeding
Northern Territory	ensure that a person intending to commence a proceeding before the Tribunal is given any reasonable assistance required by the person²²	- take reasonable steps to ensure that the parties to a proceeding have a reasonable opportunity to understand the nature of the matter under consideration²³ - take reasonable steps to ensure that the parties to a proceeding understand the nature of any assertions made in the proceedings and the legal implications of those assertions²⁴ - explain to the parties, if requested to do so, any aspect of the procedure of the

¹⁶ *South Australian Civil and Administrative Tribunal Act 2013* (SA) s 43(1)(b).

¹⁷ *South Australian Civil and Administrative Tribunal Act 2013* (SA) s 43(1)(c).

¹⁸ *Victorian Civil and Administrative Tribunal Act 1998* (Vic) s 32AA(1).

¹⁹ *Victorian Civil and Administrative Tribunal Act 1998* (Vic) s 32AA(3).

²⁰ QCAT Act s 30.

²¹ QCAT Act s 29(1)(a).

²² *Northern Territory Civil and Administrative Tribunal Act 2014* (NT) s 94(4).

²³ *Northern Territory Civil and Administrative Tribunal Act 2014* (NT) s 54(a).

²⁴ *Northern Territory Civil and Administrative Tribunal Act 2014* (NT) s 54(b).

Jurisdiction	Obligation on Registrar	Obligation on Tribunal
		Tribunal, or any decision or direction made by the Tribunal ²⁵
Australian Capital Territory	take reasonably practical steps to help a person make an application, as the Registrar considers appropriate²⁶	N/A
Commonwealth (ART)	N/A	N/A

Section 28 of the QCAT Act: obligation on registrar to help parties and potential parties

35. A review of interstate legislation indicates that only Victoria, Queensland, the Northern Territory and the Australian Capital Territory place an obligation on the Registrar to provide assistance to parties. Those obligations vary—
- In the ACT, it is to take reasonably practical steps to help a person make an application as the Registrar considers appropriate;
 - In the NT, it is to ensure a person intending to commence a proceeding is given any reasonable assistance required by the person;
 - In Victoria, it is to give assistance, as the Principal Registrar considers appropriate to parties in a proceeding and potential parties in a proceeding, with a clarifying statement that assistance does not include the giving of legal advice;
 - In Queensland, it is to give parties and potential parties reasonable help to ensure their understanding of the Tribunal's practices and procedures, including, for example, reasonable help to complete forms required.
36. As can be seen, the obligation:
- In some CATS is to provide assistance to commence a proceeding, including taking reasonable practical steps to assist the person to commence a proceeding; and
 - In some CATS is to provide assistance or reasonable help, with such obligation not limited to help in commencing the proceeding.
37. The QCAT provision falls within the broader of these two descriptions, and extends as far as imposing an obligation on the Principal Registrar to provide a person 'reasonable help to ensure their understanding of the tribunal's practices and procedures.' This is a high obligation, and one which is very difficult to strictly meet as currently framed ('to ensure')

²⁵ Northern Territory Civil and Administrative Tribunal Act 2014 (NT) s 54(c).

²⁶ ACT Civil and Administrative Tribunal Act 2008 (ACT) s 112(1)(b).

and/or determine whether it is being met or not (whether a person actually understands practices and procedures is a subjective question and not one which could readily be assessed as being delivered at a systemic level). That is, the best a Principal Registrar (or delegate) can do is to:

- (a) provide 'reasonable help to seek to ensure their understanding'; or
- (b) provide reasonable help to attempt to ensure their understanding; or
- (c) expressed another way, to 'take reasonable steps to explain, or provide an explanation of, the Tribunal's processes or procedures' and to 'provide reasonable help to complete forms required under this Act or the rules.'

38. Registry staff spend a great deal of time on the telephone, responding to emails, and attending to counter enquiries, to seek to fulfil the section 30 obligation.
39. The current approach to Registry staff helping parties is detailed in a 'fact sheet' titled 'What Registry staff can and cannot do' (**Fact Sheet**).²⁷ The Fact Sheet serves as both an internal policy for Registry staff and an external fact sheet that informs Tribunal users about what they can and cannot expect from Registry staff.
40. It would seem though, that some QCAT users have expectations that Registry can and should be providing assistance beyond that which is set out in the Fact Sheet as things Registry staff can do. Sometimes those QCAT users seek to rely on section 30, as currently framed, to put pressure on staff to do more. It is important that a provision such as section 30 is very carefully framed so that it does not inadvertently or advertently create levels of expectation in parties or potential parties that can and/or should not be met. Consideration might be given to amending the wording of section 30 to better set expectations. I have attempted some formulations above. Of those, I suspect the one at (c) is the best,²⁸ with a preference for the second. Others may come up with better ways to properly set expectations, but I proffer these merely as suggestions to start the consideration.
41. In my time as President, I have become aware that Registry staff are not infrequently asked for legal advice. Sometimes when the Registry staff member explains that they cannot provide legal advice, the enquirer has sought to argue that section 30 requires them to do so. This is one example of that which the Issues paper quite rightly points out at paragraph 52, namely that 'different people may also have a different understanding of what 'reasonable help' involves'. I respectfully agree with the observation made at paragraph 52 of the Issues paper that providing legal advice would be unfair to the other party and inappropriate since Registry staff are often not legally qualified to give such advice.
42. The Victorian model expressly states that the obligation to give assistance does not extend to providing legal advice: see section 32AA(3) of the VCAT Act.²⁹ I consider there would be

²⁷ Queensland Civil and Administrative Tribunal, What registry staff can and cannot do (July 2021) Queensland Civil and Administrative Tribunal <
https://www.qcat.qld.gov.au/__data/assets/pdf_file/0020/130592/What-registry-staff-can-and-cannot-do.pdf>. A copy of this document, in its current iteration, is attached to this response as Annexure 1.

²⁸ 'take reasonable steps to explain, or provide an explanation of, the Tribunal's processes or procedures' and to 'provide reasonable help to complete forms required under this Act or the rules.'

²⁹ Section 32AA of the VCAT Act provides:

benefit in including an express statement to the same effect in section 30 of the QCAT Act in order to try and set more realistic expectations of the help that can properly be provided. (This is so whether or not section 30 is also amended as per the suggestion in the preceding above.)

Section 29 of the QCAT Act – obligation on tribunal to ensure proper understanding and regard

43. In relation to section 29 of the QCAT Act, some concern has been raised with me about the requirement under section 29(1)(a)(ii) that the Tribunal take all reasonable steps to ensure that each party to a proceeding understands the nature of assertions made in the proceedings and the *legal implications* of the assertions. This is a high obligation.³⁰
44. The terms ‘assertions made in the proceeding’ is not defined, nor is the term ‘legal implications of the assertions’. A concern which has been expressed to me is that some parties interpret this provision as requiring the provision of legal advice.
45. Like section 30, a provision like section 29 should be framed in a way which does not create unrealistic or improper expectations. Rather than the possibility of competing interpretations as to the extent of the obligation, section 29(1)(a) may benefit from an express statement that the obligation does not extend to the provision of legal advice, and a more precise description of the extent of the obligation to ensure that the party understands the ‘nature of assertions made in the proceeding and the legal implications of the assertions’. Such a description should obviously not place an unrealistic burden on Members and Adjudicators having regard to the pace at which matters need to be heard and determined. Presumably the inclusion of the words ‘all reasonable steps’ at the commencement of section 29(1) is to provide such a limitation, but it would better if the legislative articulation of what the obligation includes also has this in mind. By making these observations I do not intend to give the impression that section 29 be reframed in a way which makes QCAT less accessible, but rather that the legislation strikes a clear statement as to what that level of accessibility should be, assessed against a framework of what is realistic.
46. Consideration might also be given to adding the words ‘seek to’ in front of the word ‘ensure’.³¹

Principal registrar to give assistance (1) The principal registrar is to give assistance as the principal registrar considers appropriate to— (a) participants in a proceeding; and (b) potential participants in a proceeding, including a person who is considering making an application but who has not yet made an application. (2) Assistance given under subsection (1) may be in relation to all stages or any stage of a proceeding. (3) To avoid doubt, assistance given under subsection (1) does not extend to providing legal advice.

³⁰ I note that the NSW obligation only extends to ensure that the parties before it understands the nature of the proceedings.

³¹ In case it is of any assistance to the Review, here are some cases which consider the operation of section 29: *Brisbane Marine Pilots Pty Ltd (in liquidation) v General Manager of Maritime Safety Queensland, Department of Transport and Main Roads and Ors* [2022] QCAT 225; *Ado v Cairns and District Regional Housing Corporation* [2012] QCATA 105; *Nagel v McDougall* [2019] QCATA 129; *FDK* [2024] QCAATA 19; *Ritson v Ryan* [2018] QCATA 148; *Harrison v Anor v Meehan* [2016] QCATA 197; *Chut v Brisbane City Council* [2014] QCATA 275; *Beck v Rowan* [2017] QCAT 151; *Warwick Real Estate & Property Sales Pty Ltd v Bailey & Morrow* [2013] QCATA 262.

Consultation question 3

- Q3** Should the registrar's powers to reject or refuse applications, referrals and other documents be amended and, if so, how? In particular:
- (a) Should there be a different process for rejecting applications and referrals commencing proceedings than for other documents?
 - (b) What should be the grounds for rejecting an application, referral or other document?
 - (c) Should there be a deeming provision that a rejected document is taken not to be lodged?
 - (d) Should there be different criteria when a document is lodged electronically through QCase?

Background

54. Section 33(2) of the QCAT Act provides that an application to QCAT to deal with a matter must be in a form substantially complying with the *Queensland Civil and Administrative Tribunal Rules 2009* (Qld) ('**Rules**'), state the reasons for the application and be filed in the Registry.
55. Section 33(3) of the QCAT Act provides that if the application is for the review of a reviewable decision, the application must be made, by filing it in the Registry within 28 days after the relevant day.³² Some enabling Acts prescribe a different time frame.
56. Section 35(2) provides that the Principal Registrar may accept an application or referral without imposing any conditions, or on conditions stated in the Rules, or may reject the application under a ground under section 35(3), or refer the application or referral to the Tribunal if the Principal Registrar believes there is a ground to reject the application under section 35(3).
57. The section 35(3) grounds are that:
- (a) the application or referral is made by a person who is not authorised to make it;

³² 'Relevant day' for the purposes of section 33(3) means the day the applicant is notified of the decision or if the applicant has applied to the decision-maker for written statement of reasons under section 158, the earlier of the day the written statement is given to the applicant or the day by which the written statement is required to be given under section 158; or if the applicant has applied to QCAT for an order under section 159, if the Tribunal makes an order, the earlier of the day the written statement of reasons is given to the application or the day it is required to be given to the applicant under the order; or if QCAT does not make a section 159 order, the day the applicant is notified of QCAT's decision to not make the order.

- (b) the application or referral is made after the expiry of the period within which it is required to be made under the QCAT Act;
- (c) the application or referral does not otherwise comply with the QCAT Act, an enabling Act or the Rules.

58. If the Principal Registrar rejects an application or referral, or accepts it on conditions, the Principal Registrar must notify the applicant they can request the Principal Registrar to refer the decision to the Tribunal for review; and if the applicant makes the request, the Principal Registrar must refer the decision to the Tribunal for review: section 35(4).
59. If the Principal Registrar refers the question of whether or not the application or referral should be rejected, the Tribunal must either direct the Principal Registrar to reject it, or accept it on stated questions: section 35(7).
60. If the Principal Registrar refers the question of whether or not an application or referral should be accepted on stated conditions, the Tribunal must direct the Principal Registrar to accept it on no conditions, or accept it on stated conditions or different conditions, or to reject it (but only if a section 35(3) ground exists): section 35(7) and (8).
61. I note that paragraph 57 of Issues paper 1 states that 'Even where parties have failed to use the correct form, the QCAT Rules provide that the Registry can still accept an application or referral if it is in writing, is signed by the applicant and contains the information required by the rules' and cites rules 7 and 10 in support of that proposition. However, it is section 33 which permits an application to be accepted provided that it is in a form 'substantially complying with the rules' and 'states the reasons for the application'. QCAT rules 7 and 10 sets out the form to be used (rule 7) or that the application or referral must be made in writing and be signed by the applicant and set out certain information (rule 10).

When a proceeding starts

62. Section 36 provides that a proceeding starts when the Principal Registrar accepts an application or referral, whether or not on conditions.

The interplay between when a proceeding starts and the power to refuse or reject applications

63. The power to refuse or reject applications affects the question of when the proceeding is commenced. This is particularly important in the context of time limitations which preclude jurisdiction if they are not complied with.³³

Legislative change which clarifies and harmonises the concepts of 'made', 'filed', 'lodged' and when a proceeding commences would be beneficial

64. The decision of Judicial Member McGill SC in *Beyond Reserve Pty Ltd and Mek Property Services Pty Ltd v Chiho Kagawa and Chief Executive, Department of Justice and Attorney*

³³ See *Beyond Reserve Pty Ltd and Mek Property Services Pty Ltd v Chiho Kagawa and Chief Executive, Department of Justice and Attorney General, Office of Fair Trading* [2024] QCATA 98.

*General, Office of Fair Trading*³⁴ (**'Beyond Reserve'**) contains a very helpful analysis of the complexity of the current legislation in respect of, inter alia, determination of when a proceeding has been commenced. No doubt the Review will have a very close eye to all of the issues that His Honour discussed in respect of Registry powers and functions, with a view to amending the QCAT Act and subordinate legislation to bring clarity and consistency.

65. I do not propose to set each of these out in this response paper given the *Beyond Reserve* decision already does that. However, I do wish to address section 33 and rule 31 which would likely benefit, at the very least, from greater clarity regarding when an application is 'made' for the purposes of section 33 of the QCAT Act and when a document is 'filed' for the purposes of the QCAT Rules. Ambiguity currently arises in several contexts, including electronic lodgement, after-hours lodgement, and lodgement at Magistrates Court Registries. These uncertainties have practical consequences for limitation periods, statutory timeframes, and the validity of review applications. Harmonising the concepts of 'lodged', 'filed', and 'made' and when a proceeding commences would promote consistency across the Act and Rules and align QCAT's processes with contemporary lodgement practices in other Queensland jurisdictions.
66. As such, it is my view that legislative reform in respect of section 33 and rule 31, to provide clear and consistent definitions, would be beneficial. Such reform might include consideration being given to:
 - (a) amending section 33 of the QCAT Act to clarify when an application is made;
 - (b) amending rule 31 of the QCAT Rules to clarify when a document is filed (to be consistent with when an application is made) for all types of filings, ie, electronic, in person or posted.

Should there be a different process for rejecting applications and referrals commencing proceedings than for other documents?

67. I am not entirely clear as to the aspect of 'process' this question is directed to. What I can say is that having processes which are as consistent as possible generally permits greater efficiency and streamlining. If there is a specific proposal that the Review has in mind in respect of this topic, I am happy to respond once in receipt of same.
68. I also note that in the response to the questions concerning vexatious litigants in Issues paper 1, I suggested the introduction of a legislative analogue to rule 398A of the *Uniform Civil Procedure Rules 1999* (Qld) (**'UCPR'**) (that is, a power for the Tribunal to order that that a party, who has made an application in an existing proceeding that is frivolous, vexatious or abuse of process, to not make a further application to the Tribunal without leave, and/or to not start a similar proceeding without leave of the Tribunal).

³⁴ [2024] QCATA 98.

What should be the grounds for rejecting an application, referral or other document?

69. In the Magistrates, District and Supreme Courts, rule 15 of the UCPR empowers the Registrar to refer the issue of an originating process to the court if the Registrar considers that an originating process appears to be an abuse of the process of the court or frivolous or vexatious.³⁵ The court may then direct the Registrar to issue the originating process, or refuse to do so without leave of the court.³⁶
70. The power provided in the UCPR to refuse to issue originating processes differs from the powers currently available to the Principal Registrar of QCAT in two material ways. First, the power in rule 15 of the UCPR is not an independent power of the Registrar. Instead, it relies on the Registrar referring the originating process to the court and on the Registrar receiving and acting on the court's direction. Second, the power is only exercisable in the event that an originating process appears to be an abuse of process of the court or frivolous or vexatious. This differs from the circumstances in which the Principal Registrar of QCAT can reject an application or referral (because the person is not authorised to make it, the proceeding is out of time, or the proceeding does not otherwise comply with an Act or the Rules), or refuse to file a document (because the document does not comply with the Rules or cannot otherwise be filed).
71. In *Walter v Premier of Queensland*,³⁷ Henry J, by way of obiter, made observations as to the utility of rule 15 of the UCPR.³⁸ His Honour noted that 'r 15 represents a useful safeguard against the apparent misuse of [the Supreme Court's] authority.'³⁹ His Honour stated that:

When a claim is issued it issues under the cover of the authority of the Supreme Court of Queensland. Rule 15 represents a useful safeguard against apparent misuse of that authority. The claim's failure to, in any articulate way, state the nature of the claim or the relief sought, and its content generally, were strong indicators that the claim was an abuse of the processes of the Supreme Court of Queensland. It is a good example of the type of case in which Registrars should consider a r 15 referral.
72. In the response to questions posed regarding vexatious litigants in Issues paper 1, I expressed the view that there would be benefit in introducing a legislative analogue to UCPR rule 15, and that this might best be placed in the QCAT Act. For completeness, I repeat that suggestion here.
73. Consideration might be given to adding a ground of rejection into section 35 on the basis of the application being an abuse of process, frivolous or vexatious.

³⁵ *Uniform Civil Procedure Rules 1999* (Qld) r 15(1).

³⁶ *Uniform Civil Procedure Rules 1999* (Qld) r 15(2).

³⁷ *Walter v Premier of Queensland* [2018] QSC 237.

³⁸ See also *McEwan v Merrin (Magistrate) & Ors* [2023] QSC 6, [7] (Brown J).

³⁹ *Walter v Premier of Queensland* [2018] QSC 237, [10].

Should there be a deeming provision that a rejected document is taken not to be lodged?

74. Yes – there should be a deeming provision that a rejected document is taken not to be filed (or lodged – depending on what consistent terminology is landed upon).
75. Consideration might also be given to inserting a power into the QCAT Act that empowers the Tribunal to hear a proceeding that is commenced out of time if the reason for it being out of time is an error arising from a slip or omission of the Principal Registrar. This is particularly important in the category of the case spoken of by Judicial Member McGill in *Beyond Reserve* at paragraph 1, namely where the enabling Act excludes the power in the QCAT Act to extend time. Such a power would address the issue which was canvassed in *Bowie v Gela* [2023] QCATA 129. In that case, a Member of the Tribunal found that the Tribunal did not have the power to extend the time for making an application for a termination order under the *Residential Tenancies and Rooming Accommodation Act 2008* (Qld), even where a Registry error resulted in the application being made out of time. The Member found that the Tribunal, as an inferior court of record, does not have a ‘general discretion to correct’ an error of the Registrar.⁴⁰

Should there be different criteria when a document is lodged electronically through QCase?

76. When considering the solutions to the issues discussed in *Beyond Reserve*, the Review should seek to bring about harmony in approach between electronic, posted and in-person lodgement so far as is practicable.

Proposals for legislative reform

77. If Government chooses to engage in reform in this area, once draft legislation is drafted, there should be close consultation with the Principal Registrar and President of QCAT, as well as with the Principal Registrar of the Magistrates Court and the Chief Magistrate. This will be critical so as to seek to ensure that any legislative reform marries with the reality of what can be achieved on the ground and addresses problems commonly experienced by QCAT and the Magistrates Court

Legislation in other CATS in Australia

78. In case it is of assistance to the Review, below is a table which contains an overview of the powers of the Registrar to reject or refuse the lodgement of documents in other civil and administrative tribunals in Australia.

Table 2: Overview of the powers of the Registrar to reject or refuse lodgement of documents in other multi-jurisdictional tribunals

Jurisdiction	Power Provided by Act	Power Provided by Rules
New South Wales	N/A	the Tribunal or a Registrar may reject a document that has been lodged with the

⁴⁰ *Bowie v Gela* [2023] QCATA 129, [59].

Jurisdiction	Power Provided by Act	Power Provided by Rules
		Tribunal (whether in hard copy or by electronic means) if:⁴¹ (a) the document is not in or to the effect of the approved form, has not been duly completed or does not comply with any other requirement of the rules in relation to the document, or (b) the applicable fee (if any) for the lodgement of the document has not been fully paid.
Tasmania	N/A	• the Tribunal or a Registrar may reject a document that has been lodged with the Tribunal (whether in hard copy or by electronic method), if:⁴² (a) the document is not in, or to the effect of, the approved form, has not been duly completed or does not comply with any other requirement of these rules, the Act or a relevant Act, in relation to the document; or (b) the applicable fee, if any, for the lodgement of the document has not been fully paid.
Western Australia	• the executive officer may reject an application on the ground that:⁴³ (a) it is made by a person not entitled to make it; or (b) it is made after the time limit before which the application is required by the rules or the enabling Act to be made; or (c) it does not otherwise comply with this Act or the enabling Act.	N/A

⁴¹ *Civil and Administrative Tribunal Rules 2014* (NSW) r 22.

⁴² *Tasmanian Civil and Administrative Tribunal Rules 2021* (Tas) r 17.

⁴³ *State Administrative Tribunal Act 2004* (WA) s 44(1).

Jurisdiction	Power Provided by Act	Power Provided by Rules
South Australia	N/A	- a Registrar may refuse to receive any application or document if it does not comply with the rules;⁴⁴ - a Registrar must refuse to receive an application or other document for lodgement in certain prescribed circumstances.⁴⁵
Victoria	- unless otherwise provided for in the rules, the Principal Registrar may reject an application that:⁴⁶ (a) is made by a person not entitled to make it; or (b) is lodged after the expiry of the period specified in the enabling enactment; or (c) does not otherwise comply with this Act, the regulations or the rules.	N/A
Queensland	- the Principal Registrar may reject an application or referral on any of the following grounds:⁴⁷ (a) the application or referral is made by a person who is not authorised to make it; (b) the application or referral is made after the expiry of the period within which it is required to be made under this Act; (c) the application or referral does not otherwise comply with this Act, an enabling Act or the Rules.	the Principal Registrar may refuse to file a document if it does not comply with these Rules or cannot otherwise be filed.⁴⁸
Northern Territory	the Registrar may reject the application on the grounds that:⁴⁹	N/A

⁴⁴ South Australian Civil and Administrative Tribunal Rules 2014 (SA) r 12(b).

⁴⁵ South Australian Civil and Administrative Tribunal Rules 2014 (SA) r 16(b).

⁴⁶ Victorian Civil and Administrative Tribunal Act 1998 (Vic) s 71(1).

⁴⁷ QCAT Act s 35(3).

⁴⁸ Queensland Civil and Administrative Tribunal Rules 2009 (Qld) r 32(1).

⁴⁹ Northern Territory Civil and Administrative Tribunal Act 2014 (NT) s 95(3).

Jurisdiction	Power Provided by Act	Power Provided by Rules
	(a) the application is made by a person who is not entitled to make it; (b) the application is made after the expiry of the time limit within which the application is required to be made; (c) the application does not relate to a matter within the jurisdiction of the Tribunal; (d) the application otherwise does not comply with the relevant Act, this Act or the rules.	
Australian Capital Territory	N/A	- the Registrar may reject a document that is lodged if it does not comply with certain prescribed procedural requirements;⁵⁰ - the Registrar may reject a document that is lodged if it appears to the Registrar on its face to be:⁵¹ (a) an abuse of the Tribunal's process; or (b) frivolous or vexatious.
Commonwealth (ART)	N/A	N/A

⁵⁰ ACT Civil and Administrative Tribunal Procedures Rules 2024 (ACT) r 16.

⁵¹ ACT Civil and Administrative Tribunal Procedures Rules 2024 (ACT) r 17.

Electronic filing and QCase

Summary and overview

80. Issues paper 1 raises the issue of electronic filing and QCase.⁵²
81. As the paper notes, the digital case management system, QCase, was launched in March 2023. It is part of a wider courts digitisation program being run by the Department of Justice. The current intention of that program is for QCase to be extended beyond minor civil disputes and become operable in other matters within CAD and in HuRD.
82. An objective of courts digitisation programs is to enable electronic filing and digital case management, with the hope that this will increase productivity and efficiency by reducing reliance on paper files and non-electronic filing. The hope is that this will also increase accessibility by allowing for electronic filing of, and access to documents, without the need to physically travel to the Registry.
83. The QCase system is made up of three different interfaces, working together. The three systems are:
 - (a) QCase Portal – the interface that enables users external to QCAT. The QCase Portal allows registered users to initiate and manage cases and to search and inspect documents. Individuals can register to use the QCase Portal. The Portal also allows access for individuals as a part of a business or organisation when authorised through firm access.
 - (b) QCase Customer Relations Manager (CRM) – a database for use by Registry staff and Members to manage applications to QCAT.
 - (c) QCase Judicial Workspace – an interface for QCase decision-makers to access the Record of Proceedings at a QCase proceeding.
84. The paper identifies that difficulties have been experienced with respect to both the transition over to QCase, and with QCase itself. These include challenges arising from the simultaneous use of QCase and legacy systems, as well as difficulties with QCase itself. I, myself, have publicly acknowledged that the introduction of QCase was very challenging.⁵³

⁵² The Honourable David Thomas, 'QCAT's objects and procedures' (Issues paper 1, Queensland Civil and Administrative Tribunal Act Statutory Review 2025-26, October 2025) [80]-[86].

⁵³ See QCAT Annual Report 2022-23, page 6:

'This year, I wish to give our adjudicators a particularly large "shout out". They deal with multiple matters every day in Brisbane and at courthouses throughout South East Queensland. They have no individual administrative staff assistance outside hearings, they manage files that not infrequently run to hundreds of pages, they have very constrained preparation time and they operate in jurisdictions where most of the parties before them are self represented. This year they coped with a very significant additional change. QCAT's adjudicators commenced hearing minor civil disputes (MCDs) in the newly introduced online environment called QCase on 6 April 2023. Because QCAT was maintaining its legacy system for MCDs which were already filed, they worked with the two systems running in parallel, on any given day conducting a mixture of digital and paper-based hearings, in

85. Issues paper 1 asks, 'How have users found the transition to QCase?', and 'How could the QCase system be improved?'
86. In so far as the first of those questions is concerned, if the 'users' here includes QCAT Adjudicators and Members, the answer is that it was very difficult to start with, and that it has taken a great deal of effort and investment to move towards a workable system – one that is truly fit for purpose. This work is not complete but is underway. Significant strides were able to be taken once the work was taken in-house through DOJ, rather than needing to deal with an external provider.
87. In so far as the second question, 'How could the QCase system be improved?', the answer, in a practical sense, is that commitment of sufficient resources by Government to courts and tribunal digitisation is essential.
88. It is extremely important that the work of improving QCase is able to continue, and that DOJ and QCAT are properly funded and resourced to do this to a high standard. Failure by Government to ensure proper resourcing will certainly undermine the ability of QCAT to carry out its objects.
89. I do not have any suggestion as to legislative amendment which might improve QCase.
90. In conclusion, the transition to QCase has been challenging, particularly in the earlier stages. Having invested a substantial amount of resources into QCase, my observation is that QCAT is committed to ensuring that QCase is a workable, fit-for-purpose product that is truly suitable for use by QCAT users, staff and Members alike. This includes ensuring that it has a good document management interface, in which an Adjudicator or Member can refer to a document reference, and everyone in the hearing is able to readily identify and go to that document reference. Obviously, it is critical that the system be properly resourced now and into the future. This involves resourcing both at QCAT level and DOJ level. My impression is that current resourcing is extremely stretched and, without additional commitment by Government, this will have detrimental effects on the administration of justice in Queensland.

Consultation question 5

Q5 How have users found the transition to QCase?

91. The transition from existing paper-based and legacy systems has proved challenging for users. My understanding of the experience of many Members and Registry staff was that a

busy lists, while coming themselves to understand the QCase operating environment for hearings. The inevitable 'teething problems' that come with such a significant process change have meant that hearings have, on occasion, taken longer and been more difficult. Their ongoing hard work in the MCD jurisdiction, in often very stressful situations, deserves fulsome recognition and acknowledgment. In the regions, Queensland's Magistrates do this work and we are, as ever, grateful for their ongoing professionalism.'

number of problems had been encountered by internal and external users of the QCase system, and the experience during the transition to QCase had been difficult and frustrating.

92. On retrospective analysis, one broad issue which appears to have contributed to difficulties was that there was an incongruence between the iterative processes used in development of information technology, and the practical reality of how operational users of QCase needed it to be developed.
93. Under an iterative model, development generally occurs through cycles of incremental change. Issues are discovered and feedback is gathered, and this information is used to build upon, and gradually improve, a system in order to achieve the desired outcome. However, what was required by users of QCase was a system that was functionally workable from a much earlier stage. Following the commencement of the use of QCase, it became apparent that when users encountered a problem with the system, it was impractical for them to have to wait until that process was fixed under an iterative model. Instead, users had to find workarounds or alternative methods to complete tasks.
94. Some Registry staff and Members experienced an increase in workload due to having to find these workarounds in order to complete a task, or because of having to use both the QCase system and the legacy IT system. At times, Registry staff had to undertake additional work for parties or other external users who were having difficulties accessing the system and uploading documents.
95. Some Adjudicators and Members reported that the system was slow or unstable, and that it had impacted their ability to work efficiently and effectively.
96. In retrospect, far more user testing, and by a broader cohort of users, prior to launch, may have helped. I very much regret that I was not able to identify this at the time. Lessons have been learned from this experience. Extensive and thorough user testing (and by this I mean much more than you think you need, including by very senior judicial officers) is absolutely critical – and if that user testing indicates that the product is not ready, then launch should be delayed until it is.

Actions taken to address the problems and improve the system

97. Following the initial implementation of the QCase system, QCAT allocated additional staff to assist with the project, including experienced operational Registry staff. QCAT recognised the need for QCase to work effectively for all users, and to do so in advance of its being implemented in other QCAT jurisdictions as planned. The feedback and learnings from the experience of the initial implementation of QCase have proved invaluable in informing the proposed expansion of the system.
98. More recent feedback is promising, with some users noting improvements, including in the stability of the system since the end of 2024. Some have also noted that from an operational perspective, the system readily allowed for viewing of files and preparing for hearings in regional locations. It also allowed for the efficient reallocation of matters, which had flow-on benefits, including a potential reduction in the number of adjournments due to Member or Adjudicator unavailability.

99. It is my understanding that some positive feedback has been received from external users about the ability of firms or organisations to administer multiple cases electronically. Registry staff also identified that the ability of external users, including firms or organisations, to obtain documents electronically would be of benefit to both those users and Registry staff. One example of this was that electronic access to documents would reduce or eliminate the need for users to physically attend QCAT to obtain documents, and would reduce the need for Registry staff to physically copy the documents or send them to parties.
100. I am cautiously optimistic that things will be better, but I cannot emphasise enough the need for extremely rigorous user testing to ensure the product is truly fit for purpose before launch – and for the need for Government to commit to the additional provision of resources specifically for courts and tribunal digitisation. The hard-working team at DOJ and within QCAT will only be able to do so much with what they have.

Consultation question 6

Q6 How could the QCase system be improved?

101. Digitisation is an important step towards greater efficiency and accessibility to digitisation of case management processes, wherever possible. The expected outcomes of the implementation and expansion of QCase include reduced reliance on manual processes and paper files, a reduction in printing, postage and file archiving, improved efficiencies in case management processes, and reduced use (and eventual decommissioning) of legacy systems.
102. These outcomes are intended to improve the efficiency of QCAT's processes and operations, and to increase the accessibility of QCAT by allowing filing and access to documents at any time and removing the need to physically travel to the Registry.
103. In order to achieve these outcomes, as stated above, it is necessary to ensure that the current process of digitisation is completed, with a commitment to ongoing improvement. This requires adequate resources for this to occur, and to ensure that QCase is a system which is fit-for-purpose, has appropriate functionality, and provides a positive experience for all users.
104. It is also important to ensure that once QCase is operational across QCAT, adequate resources will also be required for ongoing development, maintenance and support of the system, both at QCAT and DOJ level.
105. I have not identified any legislative change that would enhance QCase. Should the review identify such a change, QCAT should of course be consulted in respect of that proposed change.

Remote conferencing and on the papers hearings

Summary

106. On the papers hearings and remote hearings play an important role in enabling the Tribunal to deliver justice services, including providing equitable access to justice.
107. Being able to hear matters by remote conferencing, and being able to do matters on the papers, is an essential part of getting through the work of the Tribunal, particularly given that QCAT does not have enough hearing rooms or hearing staff to be able to deal with each matter by way of an in-person oral hearing, and that an in-person oral hearing can actually prevent equitable access for justice for those not able to travel (for whatever reason – sometimes this is due to ill health, sometimes it is due to the individual not having the means to attend an in person hearing). Further, as the Reviewer noted in his 2015-2016 Annual Report, ‘Remote conferencing is a cost-effective, time-efficient option to hear matters and communicate with regional parties.’
108. ‘Hybrid’ hearings, that is, where some parties and/or witnesses and/or representatives appear in person, and some by remote means, are also an important way of helping QCAT to achieve its statutory objects. Often a matter may be listed as an in-person hearing, but due to circumstances, it becomes desirable to enable a person to appear remotely, in order to provide equitable access to justice and for the hearing to proceed in a timely way.⁵⁴
109. It is my view that amending the QCAT Act so as to prescribe the circumstances in which the Tribunal can and/or should hear and determine matters by conducting an in-person hearing, using remote conferencing, or making a decision on the papers is not desirable. Currently, the Act contains no particular requirement in that regard or a particular test that needs to be met. Rather, the QCAT Act provides that the procedure for a proceeding is at the discretion of the Tribunal, subject to this Act, an enabling Act and the Rules.⁵⁵ Adding a statutory overlay, whether that be by way of prescribing a default hearing method or by setting out a test to be applied, would create additional and unnecessary work, and is not desirable. My view is that prescribing a default hearing method for proceedings, or a category of proceedings, would create inefficiencies,⁵⁶ rather than assist the Tribunal to carry out its statutory objects.
110. My view is that it is important that QCAT retains a broad discretion to determine how any particular hearing, whether that be a directions hearing, an interlocutory hearing or a final

⁵⁴ I note that this is one of the complicating features of not being able to provide accurate data on the number of hearings which are remote or in-person, in that a matter may be scheduled as one or the other, but in the course of the hearing, or between scheduling and hearing, the hearing becomes hybrid, and QCAT has not had the resources to track this data fully.

⁵⁵ QCAT Act s 28(1).

⁵⁶ In particular, by creating additional work, particularly if reasons are required for decisions as to mode of hearings.

hearing, is conducted. That broad discretion already exists in a statutory form: section 28 and section 32 of the QCAT Act.

111. As stated above, section 28(1) provides that the procedure for a proceeding is at the discretion of the Tribunal, subject to the QCAT Act and Rules and enabling Acts. Section 28(2) imposes an obligation of fairness in all proceedings; and section 28(3) requires the Tribunal to observe the rules of natural justice and that it is not bound by the rules of evidence or any practices or procedures applying to courts of record, other than to the extent the Tribunal adopts the rules, practices or procedures. Section 28(3) also requires that the Tribunal act with as much speed as the requirements of the Act, an enabling Act or the Rules and a proper consideration of the matters before the Tribunal permit.
112. Section 32(1) expressly provides that the Tribunal may, if appropriate, conduct all or a part of a proceeding by remote conferencing. Remote conferencing is defined as meaning teleconferencing, videoconferencing or another form of communication that allows persons taking part in the proceeding to hear and take part in discussion as they happen: section 32(5).
113. The current legislative regime enables the Tribunal to take into account all of the considerations relevant to the mode of hearing and determine what would be 'appropriate' on a case by case scenario, rather than being tied to a statutory test. In my view, this is as it should be. Members of the Tribunal are well able to determine whether a particular matter is appropriate for remote conferencing or on the papers.
114. Like many courts, QCAT deploys the use of remote hearings as needed and as is desirable. My experience of the use of remote hearings is that they are an important tool in being able to get the work done. In this regard, of course there are some technical and connectivity issues from time to time, as also happens in courts. That, though, is not a sufficient reason for changing the legislation so as to set a default method of hearing or set out a test to apply in deciding the mode of hearing. The Members of the Tribunal are well able to apply relevant considerations in deciding the method of hearing, and they are well able to change the method of hearing if the chosen method becomes impracticable or less than desirable.

Some observations in respect of some statements in Issues paper 1

115. I note that at paragraph 97, the Issues paper states that remote conferencing may be difficult for people with limited access to the internet or technology, particularly those living in rural and remote communities. I accept this proposition and observe that such an issue would be a relevant matter for a Member to take into account in determining the mode of hearing. I further observe that a remote hearing, for some people, is the only way they can participate in a 'live' hearing because travel and/or personal attendance is not possible for them.
116. I note that at paragraph 98, the Issues paper states that making a decision on the papers is not suitable for all types of proceedings as it deprives parties of the benefit of putting forward their case at hearing. While I agree that making a decision on the papers is not suitable for all proceedings, I would disagree with the proposition that on the papers hearings deprive a party of the benefit of putting forward their case at hearing. While an on the papers hearing means that a party can't put their case forward in an oral hearing, it does not prevent the party putting their case forward. They have the opportunity to do this through written submissions. If, in the course of an on the papers matter, the Member considers that they

need to hear further submissions, this can be achieved by requesting further written submissions on an issue. Further, in some cases, the Member will finalise the hearing as an oral hearing so as to hear from the parties 'live'. Also, for some parties, proceeding on the papers provides a more accessible means of advancing their case – that is, some parties get very worried about having to argue their case in a hearing room.

117. Paragraph 99 states that evidence or submissions can be over video link if the court allows it. This is, of course, correct. Sometimes courts, like QCAT, also permit evidence or submissions by telephone link.

The Tribunal's Experience

118. QCAT adapted well during the COVID-19 period and was able to 'pivot' and provide hearings by way of remote hearings and on the papers hearings in order to keep the work of the Tribunal going in the very difficult circumstances that the pandemic presented. I hasten to say that I take no credit for that. This initiative was well underway under the leadership of the previous President and Deputy President by the time I started at QCAT.
119. QCAT now frequently uses remote methods of hearing, and on the papers hearings, where appropriate. Remote hearings and on the papers hearings can actually provide better equitable access to justice for some QCAT users – that is, for people who experience difficulty traveling to a hearing room, or presenting their matter orally. Further, the Tribunal currently faces severe practical constraints on the availability of physical hearing space. This has been raised in the Tribunal's annual report for several years. Remote hearings allow matters to proceed in smaller rooms with portable recording devices when formal hearing rooms are unavailable. Construction of five additional hearing rooms should be finalised later this year. This will help, but it will not be a complete answer to the need for more hearing rooms, particularly if the trend that QCAT is seeing in increased lodgements continues. In this regard, I note that financial year to 31 January 2026, shows a staggering 20% increase in CAD lodgements and a 34% increase in guardianship lodgements.
120. Of course, even when hearings are held remotely, the Tribunal must comply with its obligations under sections 32(3) and 90(1) of the QCAT Act and ensure that the public has access to the proceeding. Importantly, only those matters which are appropriate for remote hearings, or on the papers hearings, are conducted that way.
121. I also observe that regional circuits (e.g., Cairns, Townsville, Rockhampton) depend on the availability of shared court facilities; remote attendance is commonly sought by parties to avoid travel costs and scheduling issues. In minor civil disputes (MCDs), anecdotal experience is that the ability to attend by telephone has increased participation by respondents, reduces adjournments (for example, by allowing for respondents to be called by telephone and participate immediately), and can lessen subsequent reopening applications.

Existing powers and implementation

122. The current legislative framework already permits hearings to proceed in person, by remote conferencing, and on the papers.
123. In practice, a Member gives directions and entertains applications about the mode of hearing and how parties, representatives and witnesses are to attend. Concerns about assessing the

credit of witnesses form part of a Member's assessment of whether or not remote appearance, or an on the papers hearing pursuant to section 32, is appropriate.

124. Conducting hearings remotely does not come without its issues, but those issues are largely operational, not statutory: for example, ensuring accurate attendance details (numbers, video links), preferring video to telephone, and resourcing adequate hardware and connectivity across hearing rooms and regional sites. As the Registry continues to develop its IT and information management systems, issues related to contact details are expected to improve.

Other Tribunals – general powers

125. Each Australian Civil and Administrative Tribunal has different provisions in its constituting Act and rules relating to the modes of hearing that can be adopted and when they can be adopted. Those provisions are summarised in the table below.

Table 3: Modes of hearings across other jurisdictions

Jurisdiction	Power Provided by Act	Power Provided by Rules
New South Wales	Under section 38(6)(b),⁵⁷ the Tribunal may require evidence or argument to be presented orally or in writing. Under section 50(2), hearings are required for proceedings in the Tribunal, except in certain circumstances, including when the Tribunal makes an order dispensing with a hearing because it is satisfied that the issues can be adequately determined in the absence of the parties. Before making such an order, the Tribunal must afford the parties the opportunity to make submissions about the proposed order. Under section 90(2)(g), regulations can be made with respect to the use of telephones, audio-visual links or other means of communication in connection with proceedings in the Tribunal (although no regulations have been made).	Rule 36A provides some circumstances in which a hearing is not required (the parties consent, or it is not appropriate to hold a hearing due to the urgency of the matter). ⁵⁸
Tasmania	Section 82(1) provides that the Tribunal may allow parties, representatives, or witnesses to participate via telephone, video link or any other communication system. ⁵⁹	N/A

⁵⁷ *Civil and Administrative Tribunal Act 2013* (NSW).

⁵⁸ *Civil and Administrative Tribunal Rules 2014* (NSW).

⁵⁹ *Tasmanian Civil and Administrative Tribunal Act 2020* (Tas).

Jurisdiction	Power Provided by Act	Power Provided by Rules
	Section 82(2) provides that the Tribunal may conduct all or part of proceedings entirely on the basis of documents without any attendance by parties, representatives or witnesses. Section 83(3)(c) provides that the Tribunal may permit or require evidence or argument to be presented in writing.	
Western Australia	Section 60(1) provides that the SAT may allow parties, their representatives, and any witnesses to participate in a hearing by means of telephone video links or any other system or any other method or communication.⁶⁰ Section 60(2) provides that the Tribunal may conduct all or part of a proceeding entirely on the basis of documents without the parties or their representatives or any witnesses attending or participating in a hearing. Section 93(2) provides that at or before an initial directions hearing in a minor proceeding (generally, a proceeding in which a monetary value of \$10,000 or less can be ascribed to the matter in issue), the applicant may elect a 'no hearings election'. Under section 93(4), if an applicant elects a no hearings election, the matter shall proceed pursuant to section 60(2).	N/A
South Australia	Section 67(1) provides that the Tribunal may allow parties, representatives and witnesses to participate by telephone, video link, or any other communications system.⁶¹ Section 67(2) provides that the Tribunal may conduct all or part of any proceedings entirely on the basis of documents without the parties or their representatives or any witnesses attending or participating in a hearing.	N/A

⁶⁰ *State Administrative Tribunal Act 2004 (WA)*.

⁶¹ *South Australian Civil and Administrative Tribunal Act 2013 (SA)*.

Jurisdiction	Power Provided by Act	Power Provided by Rules
	Section 43(2)(b) provides that SACAT may require evidence or argument to be presented in writing and decide which matters require oral evidence.	
Victoria	Section 100 provides that the Tribunal may conduct a hearing in person, by audio link, by audio-visual link, or partially or wholly on the papers. ⁶² Pursuant to sections 100(2) and (3), an on-the-papers hearing can only occur in the absence of objection from a party or if the Tribunal considers that an objection is unreasonable.	N/A
Queensland	Section 32(1) provides that the Tribunal may conduct all or part of a proceeding by remote conferencing if appropriate. ⁶³ Section 32(5) provides that remote conferencing includes teleconferencing, videoconferencing, or any other communication method allowing real-time participation. Section 32(2) provides that the Tribunal may conduct all or part of a proceeding on the basis of documents without the parties, representatives, or witnesses appearing.	Rule 75(4) provides that the Tribunal may decide any application for directions entirely on the basis of documents, without a hearing or meeting. ⁶⁴
Northern Territory	Section 69(1) provides that the Tribunal may allow parties, representatives, or witnesses to participate by telephone, video link, or any other communication method. ⁶⁵ Section 69(2) provides that the Tribunal may conduct all or part of a proceeding on the basis of documents without attendance or participation. Section 56(a) of the Act provides that the Tribunal may require all evidence or	Rule 8(8) provides that the Tribunal may, in an appropriate case, deal with an ordinary application without the requirement for a hearing. ⁶⁶

⁶² *Victorian Civil and Administrative Tribunal Act 1998* (Vic).

⁶³ *Queensland Civil and Administrative Tribunal Act 2009* (Qld).

⁶⁴ *Queensland Civil and Administrative Tribunal Rules 2009* (Qld).

⁶⁵ *Northern Territory Civil and Administrative Tribunal Act 2014* (NT).

⁶⁶ *Northern Territory Civil and Administrative Tribunal Rules 2016* (NT).

Jurisdiction	Power Provided by Act	Power Provided by Rules
	argument to be presented in writing and decide which matters will be heard orally.	
Australian Capital Territory	Section 45 of the Act provides that the Tribunal may direct a person to take part or give evidence via phone link, satellite link, internet or intranet audio-visual systems.⁶⁷ Section 54 of the Act provides that the Tribunal may decide an application based on documents alone if notice is given to each party that the Tribunal proposes to do so and the parties are given an opportunity to make representations. It must also be in the public interest not to hold a hearing, and the Tribunal must have sufficient information to make an informed decision on the application.	Rule 64 provides that a party may apply in writing to appear other than in person or that the Tribunal or a Registrar may direct remote participation on its own initiative.⁶⁸ Rule 65 provides that any party may apply for the matter to be decided solely on the basis of documents. The Tribunal may order an on-the-papers hearing if it is in the public interest and the Tribunal has sufficient information to make an informed decision.
Commonwealth (ART)	Section 36(1)(f) of the Act provides that the President may make practice directions about the use of technology that allows a person to participate in a proceeding without being physically present.⁶⁹ [The Administrative Review Tribunal (Common Procedures) Practice Direction 2024 provides that the Tribunal may hold a hearing in person, by video conferencing, by telephone, or by a combination of in person, telephone, and/or video. The practice direction also sets out the relevant considerations for the Tribunal in determining how a hearing is to be held. The practice direction also provides that there is no entitlement to a particular hearing method.]	N/A

⁶⁷ ACT Civil and Administrative Tribunal Act 2008 (ACT).

⁶⁸ ACT Civil and Administrative Tribunal Procedural Rules 2024 (ACT).

⁶⁹ Administrative Review Tribunal Act 2024 (Cth).

Jurisdiction	Power Provided by Act	Power Provided by Rules
	Under s 106 of the Act, the Tribunal may determine the matter after considering documents alone if: - the parties consent, and the Tribunal is satisfied that the issues can be adequately determined without an oral hearing; - the only parties to the proceeding are the applicant and a non-participating party, and the decision is wholly in favour of the applicant, or the applicant requests the Tribunal to make its decision on the papers, and the Tribunal considers that the issues can be adequately determined in the absence of the parties; - a party fails to comply with the Act or an order of the Tribunal within a reasonable time, and it appears that the issues can be adequately determined in the absence of the parties; or - a party other than a non-participating party fails to appear, and the Tribunal considers that the issues can be adequately determined in the absence of the parties.	

126. A review of the constituting Acts and rules for civil and administrative tribunals in other Australian jurisdictions indicates that the mode of hearing is, in every case, except for 'minor proceedings' in Western Australia, left to the discretion of the tribunal. No Australian jurisdiction prescribes a default method of hearing.

127. I have not identified any need for legislative amendment in respect of modes of hearing.

Public access to hearings

Section 32(3)

128. Section 32(3) provides that if a tribunal conducts a proceeding remotely or on the papers then it must ensure the public has access to, or is precluded from access to, matters disclosed in the proceeding to the same extent as if the proceeding had been heard before the Tribunal with the attendance in person of all persons involved.⁷⁰
129. If 'access to matters' is intended to cover only the ability to inspect files, and obtain transcripts or recording, then the Tribunal is able to meet this obligation. However, the obligation might be interpreted more broadly given the inclusion of the words 'to the same extent'. That is, it might be interpreted to impose an obligation on the Tribunal to facilitate open public access to streaming links for remote hearings where the Member is not hearing the matter from a public hearing room. It is my understanding that is not practical to achieve, particularly within existing resources. Nor is there a functional equivalent to access by the public in an oral hearing for matters which are determined on the papers.
130. I consider that the provision could benefit from some amendment to make the extent of the obligation more clear, and to frame that obligation in a way which is consistent with what is realistically achievable.
131. In the event this is of assistance to the Review, I have set out below a table of the legislative position for other CATS.

Table 4: Remote proceedings and on the papers provisions across Australian jurisdictions

Jurisdiction	Section	Extract
Tasmania	82(4)	82. Electronic hearings and proceedings without hearings (1) If the Tribunal considers it appropriate, it may allow – (a) the parties and their representatives; and (b) any witnesses, or one or more of them – to participate in any proceedings by means of telephone, video link or any other system or method of communication. (2) If the Tribunal considers it appropriate, it may conduct all or part of any proceedings entirely on the basis of documents without the parties or their representatives or any witnesses attending or participating in a hearing or any other part of the proceedings. (3) Subsection (2) does not apply to proceedings in relation to which a hearing is required by a relevant Act to be held. (4) If the Tribunal acts under this section, the Tribunal is to take reasonably practicable steps to ensure that the public has access

⁷⁰ For completeness, I also note QCAT r 87. QCAT r 87 permits an assessor to determine costs absent the parties.

Jurisdiction	Section	Extract
		to, or is precluded from access to, matters disclosed in the proceedings to the same extent as if the proceedings had been heard before the Tribunal with the attendance in person of all persons involved in the proceedings.
South Australia	67(3)	67—Electronic hearings and proceedings without hearings (1) If the Tribunal thinks it appropriate, it may allow the parties and their representatives and any witnesses (or 1 or more of them) to participate in a hearing in any proceedings by means of telephone, video link, or any other system or method of communication. (2) If the Tribunal thinks it appropriate, it may conduct all or part of any proceedings entirely on the basis of documents without the parties or their representatives or any witnesses attending or participating in a hearing. (3) If the Tribunal acts under this section, the Tribunal is to take steps to ensure that the public has access to, or is precluded from access to, matters disclosed in the proceedings to the same extent as if the proceedings had been heard before the Tribunal with the attendance in person of all persons involved in the proceedings.
Western Australia	60(3)	60. Electronic hearings and proceedings without hearings (1) If the Tribunal thinks it appropriate, it may allow the parties and their representatives and any witnesses (or one or more of them) to participate in a hearing in a proceeding by means of telephones, video links, or any other system or method of communication. (2) If the Tribunal thinks it appropriate, it may conduct all or part of a proceeding entirely on the basis of documents without the parties or their representatives or any witnesses attending or participating in a hearing. (3) If the Tribunal conducts a proceeding in accordance with this section, the Tribunal is to take steps to ensure that the public has access to, or is precluded from access to, matters disclosed in the proceeding to the same extent as if the proceeding had been heard before the Tribunal with the attendance in person of all persons involved in the proceeding. (4) Provisions of this Act applying in relation to hearings (other than section 61 or 63) apply with any necessary modifications in relation to a proceeding conducted in accordance with subsection (2).

Jurisdiction	Section	Extract
Northern Territory	No equivalent	N/A
Australian Capital Territory	No equivalent	N/A
New South Wales	No equivalent	N/A
Victoria	No equivalent	N/A

132. I note that the Tasmanian provision contains the qualifier ‘reasonably practicable’: section 82(4) TasCAT Act. Inclusion of a qualifier such as ‘reasonably practicable’ or ‘seek to ensure, so far as is practicable’ might go some way to address the absolute imperative as currently expressed and bring the obligation to something which is capable of being complied with. The Review might also consider whether the provision might benefit from some clarifying statements about what is not expected with respect to equivalency of public access for remote hearings and on the papers matters.

Consultation question 7

Q7 In what circumstances should QCAT hear and determine matters by conducting an in-person hearing, using remote conferencing or making a decision on the papers?

133. The short answer is ‘whenever the Tribunal considers it appropriate and desirable to do so’.
134. QCAT Practice Direction No. 10 of 2022 deals with ‘Proceedings by remote conferencing’. The practice direction does not apply to guardianship matters. The practice direction provides that unless otherwise ordered by the Tribunal, all hearings, compulsory conferences, mediations, expert conclaves and Tribunal hearings will proceed in accordance with:
- (a) The QCAT Notice of Hearing sent to the parties;⁷¹ or
 - (b) Written directions given by the Tribunal which serve as the QCAT Notice of Hearing, in accordance with other practice directions (for example, QCAT Practice Direction No. 5 of 2022 – Applications for review of decisions made about Blue Cards).

⁷¹ Given by the Principal Registrar pursuant to section 92 of the QCAT Act and r 76 of the *Queensland Civil and Administrative Tribunal Rules 2009* (Qld).

135. It is a matter for a Member to exercise the Member's discretion as to the appropriate mode of hearing, having regard to the circumstances of a particular matter.

In-person hearing

136. I repeat the view I expressed above, that there should not be a legislative amendment which would be a departure from the broad discretions set out in section 28 and sections 32(1) and (2).

137. However, in case it is of any use, I note that the following features tend to weigh in favour of a proceeding being in person:

- (a) credibility, demeanour, or significant factual dispute is central;
- (b) a matter is complex or document-heavy and would benefit from in-room management;
- (c) cross-examination is required, and video is undesirable or impracticable;
- (d) interpreters are required and remote arrangements risk accuracy; and
- (e) disciplinary matters where the Member considers an in-person event better reflects the gravity of the proceeding.

138. This is not an exhaustive list.

Remote conferencing

139. Some factors which may tend to weigh in favour of remote conferencing:

- (a) are located regionally or face transport, cost, work/caring or accessibility constraints;
- (b) hearing-room scarcity would otherwise delay listing, and other steps can be taken to comply with the Tribunal's obligations;
- (c) safety concerns arise (e.g., domestic violence orders, threats to staff);⁷² and
- (d) straight forward directions hearings.

140. This list is not exhaustive.

On the papers determinations

141. Factors which may tend to weigh in favour of proceeding on the papers include:

- (a) the matter proceeds on submissions without factual dispute or the parties consent to an on the papers hearing;
- (b) the parties have reached an agreed position;
- (c) appeals or reviews turning on discrete legal issues; and
- (d) non-complex interlocutory applications.

⁷² Although the Tribunal has also managed security risks by relocating in-person hearings to facilities with more rigorous security screening, this requires the agreement of the head of jurisdiction responsible for the other facility (e.g., the Chief Justice for the Supreme Court building).

142. This list is not exhaustive.

143. I note that the Tribunal's usual practice is to seek to ensure that the parties to a proceeding are aware of a proposal that the proceeding be heard and determined on the papers and allow the parties to request an oral hearing.

Mode of hearing generally

144. My view is that the QCAT Act should not be more prescriptive about modes of hearing. It should remain a matter for the Tribunal to determine the appropriate method of hearing.

145. Experience has shown that changing circumstances make deciding the appropriate mode of hearing an ever-evolving task. Changing and improving technology, public health emergencies, natural disasters, and other circumstances all point to the need for the decision as to the appropriate mode of hearing, a proceeding must be a flexible task to be undertaken by a Member of the Tribunal.

Consultation question 8

Q8 Should the QCAT Act specify a default hearing method for proceedings? Should it be different for different types of proceedings? In what circumstances should parties be able to request a different hearing method?

146. No, for reasons advanced above. A legislative default is not necessary or desirable.

Consultation question 9

Q9 How have QCAT users experienced remote conferencing? What went well? What could be improved?

147. While the Tribunal cannot speak for Tribunal users, Members of the Tribunal have generally observed that remote conferencing is a useful way to conduct some hearings. Sometimes there are technical and connectivity issues, but this is just one consideration.

148. Members have anecdotally reported higher attendance rates, particularly for MCD hearings conducted remotely. I understand that this has decreased adjournments due to non-attendance and it is possible this may also decrease the prospect of re-opening applications. Remote hearings also reduce travel and cost burdens for both regional and South-East Queensland-based parties. This is consistent with the Tribunal's obligation to facilitate access to its services throughout Queensland.⁷³ Remote formats have also supported greater

⁷³ QCAT Act s 4(a).

inclusion for participants with accessibility needs or caring obligations (such as single parents).

149. Remote conferencing helps tribunal efficiency and timeliness by allowing matters to be listed despite limited hearing-room availability.
150. It is acknowledged that technological and logistical issues can be problematic. These include connection failures and issues with camera or microphone configuration. Ensuring that accurate attendance details are provided, such as direct phone numbers and confirmation of video capability, is critical.
151. Members have also communicated to me that they are alive to fairness risks in some remote hearings. Concerns about potential witness coaching and coercion, underscore the importance of Members retaining discretion as to whether to proceed with a remote hearing.
152. Overall, video participation tends to be more effective than telephone. These are all operational matters, and not ones in respect of which I have yet identified any useful suggestions for legislative reform.
153. Interpreter-assisted evidence is often more reliably taken in person or less so through an audio-visual link as opposed to by telephone.

Consultation question 10

Q10 Has the availability of remote conferencing allowed matters to be resolved faster?

154. Yes. Remote conferencing enables earlier listings (including outside formal hearing rooms), reduces travel-related adjournments, and increases party participation, each of which contributes to faster resolution. Delays can occur due to technology issues or last-minute connection problems, but these are outweighed by the benefits. These IT issues speak to the need for proper and ongoing funding of good quality fit for purpose IT equipment for QCAT hearings.

Conclusion

155. Flexibility in hearing methods is essential to ensuring accessible, efficient and fair dispute resolution. The existing provisions of the QCAT Act already empower the Tribunal to conduct hearings in person, by remote conferencing, or on the papers. I do not believe that further statutory prescription is necessary or desirable. Instead, retaining broad discretion for Members to determine the most appropriate mode of hearing in the circumstances of each case best supports the Tribunal's obligations to act with as little formality and technicality as possible while observing natural justice.
156. Remote conferencing and on the papers determinations have delivered clear benefits, including increased participation, reduced adjournments, improved listing efficiencies, and greater accessibility for regional and vulnerable users. These advantages outweigh the IT technological challenges encountered, which are technological and administrative rather than

legislative in nature. Such issues can be resolved through continued improvements to Registry systems and infrastructure rather than through statutory amendment.

157. While certain matters will continue to warrant in-person hearings, particularly where credibility, safety, concerns about influence on witnesses giving evidence when not in the hearing room, or the complexity of the evidence requires it, the Tribunal's experience is that remote formats and on the papers processes, when used appropriately, enhance the Tribunal's capacity to provide timely, proportionate and accessible justice across Queensland. If further guidance concerning hearing modes is necessary or desirable, this can be addressed through practice directions, rather than amendments to the QCAT Act. For these reasons, I do not recommend legislative change to the current provisions which relate to mode of hearings.
158. I hope this response is of some assistance to the Review in carrying out its remit. As always, please do not hesitate to contact me should you have any queries or if I am able to be of assistance.



The Honourable Justice Kerri Mellifont

Supreme Court of Queensland

President of the Queensland Civil and Administrative Tribunal

ANNEXURE 1

QCAT

Queensland Civil and Administrative Tribunal

What Registry staff can and cannot do

The Queensland Civil and Administrative Tribunal (QCAT)'s registry is here to administer your matter and provide general advice.

Registry staff can:

- answer questions about QCAT processes
- based on the information you provide, answer questions and let you know about the different types of QCAT forms that may be available for you to consider
- provide you with information and support about how to lodge an application
- request on your behalf access to the QCAT register of proceedings (a publicly available list of QCAT cases) or records of proceedings (the case files themselves)
- advise on fees and allowances, and how to apply for a waiver of fees
- guide you in checking your forms are complete before lodgement (eg signed in the correct places)
- give you information on legal organisations that could help.

Registry staff cannot:

- provide legal advice
- advise on whether you should submit an application and whether you are filing under the correct legal area (eg minor civil dispute – consumer or trader or minor civil dispute – minor debt)
- tell you if you should lodge an appeal or a counter-application
- recommend a specific lawyer to assist you
- instruct you on how to word your application, supporting documents or what to say at a proceeding
- contact a QCAT member or adjudicator directly on your behalf
- predict likely outcomes of a case or appeal
- help you prepare your case
- advise what orders or decisions you should seek
- explain what you should do to follow QCAT directions
- recommend your next steps regarding enforcing an order or tribunal decision
- advise on exact timeframes for resolution of a matter – this depends on your individual matter.

Contact information

Email: enquiries@qcat.qld.gov.au

Phone: 1300 753 228

Website: qcat.qld.gov.au

Address: Level 11, 259 Queen Street, Brisbane,
4000 Post: GPO Box 1639, Brisbane Qld 4001

Contact details for local Magistrates Courts are available on [Queensland Courts' website](#).

This fact sheet provides general information and should not be considered legal advice. If you are unsure about your legal rights, you should seek legal advice. Your individual circumstances should determine any actions taken to resolve your matter.

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