

QCAT Practice Direction No. 2 of 2019

Motor Vehicle List

Updated 7 September 2021

PRELIMINARY

1. This Practice Direction establishes the Motor Vehicle List ("MVL") within the civil disputes division of the Tribunal for the purpose of managing all applications made under Sch 1, s 14 of the *Motor Dealers and Chattel Auctioneers Act 2014* (Qld) and s 50A of the *Fair Trading Act 1989* (Qld).
2. This Practice Direction applies to all matters in the MVL.

APPLICATIONS UP TO AND INCLUDING \$25,000

3. Unless otherwise directed by the Tribunal, all applications in the MVL in which the amount claimed in the application does not exceed \$25,000 will be heard and determined by an adjudicator, and shall otherwise generally be managed and dealt with by the Tribunal in accordance with the Tribunal practices and procedures for minor civil disputes.

APPLICATIONS EXCEEDING \$25,000

4. Each application in the MVL in which the amount claimed in the application exceeds \$25,000 shall be listed for a directions hearing before a member as soon as practicable after service of the application on the respondent.
5. Without limiting the discretion conferred on the member conducting the directions hearing by s 62 of the *Queensland Civil and Administrative Tribunal Act 2009* ("QCAT Act"), parties can generally expect that directions will be made:
 - a. to ensure that all affected parties have been served with the application;
 - b. for the appointment of an assessor;¹
 - c. to allow inspection of the subject vehicle by the assessor;
 - d. for an appropriate alternative dispute resolution process;
 - e. for the filing and service of all non-expert evidence;
 - f. identifying whether any party may adduce expert evidence, and consequential directions in relation to such expert evidence (including for the inspection of the vehicle);
 - g. to progress the matter expeditiously to hearing if it is not resolved by an alternative dispute resolution process.

APPOINTMENT OF ASSESSORS IN APPLICATIONS EXCEEDING \$25,000

6. The timely and effective resolution of disputes about motor vehicles may be assisted by the Tribunal having the assistance of an independent assessor

¹ Under Chapter 2 Part 6 Division 7 of the QCAT Act.

and, where appropriate, obtaining independent expert evidence from such an assessor.


7. To ensure that appropriate independent expert evidence is available to the Tribunal, and to avoid the parties incurring excessive costs in engaging their own experts, it is expected that the Tribunal will generally appoint an independent expert assessor to help the Tribunal, including by providing expert evidence. The assessor will be asked to inspect the motor vehicle the subject of the application and provide a report which will address the issues raised in the application.
8. The Tribunal may make an order requiring a party or all parties to pay all or part of the Tribunal's cost of appointing the assessor. The Tribunal's consideration of the parties' payment of such costs will start from the general proposition that the parties are to share the costs equally. For example, if the Tribunal decides that both parties are to share the costs equally, the Tribunal will order that each party pay 50% of those costs. In its absolute discretion, the Tribunal may make a different order, having regard to the contents of the application, any other submission or document filed in the proceeding and any other matter the Tribunal may consider relevant.
9. The parties must make payment to the Tribunal for the costs of the appointment of the assessor in accordance with any order of the Tribunal and prior to the assessor being appointed.
10. Once the assessor is appointed, the applicant must give the assessor access to the motor vehicle the subject of the application on the date and at the location advised by the Tribunal's Registry.
11. Once the inspection is carried out, the assessor will provide to the Tribunal a report of the assessor's observations and opinions. The Tribunal will then send to the parties a copy of the assessor's report.
12. A report received by the Tribunal from an assessor appointed by the Tribunal will be received by the Tribunal as expert evidence. In any Tribunal proceeding held following the receipt of the report, no party will be allowed to produce further expert evidence on the same issues covered by the assessor in the report without the leave of the Tribunal.
13. Where an assessor is not appointed, each party may provide evidence from one expert only. In these circumstances, the applicant may be required to give access to the motor vehicle the subject of the application to an expert engaged by the respondent. If both parties provide expert evidence, then subject to any orders or directions which the Tribunal may make in a specific application:
 - a. each expert must prepare a written statement of their evidence;
 - b. the statement of evidence must satisfy the requirements of rule 428 of the *Uniform Civil Procedure Rules 1999* (copy attached); and
 - c. the experts will give concurrent evidence at the hearing.
14. For the avoidance of doubt, QCAT Practice Direction 4 of 2009 (Expert Evidence) does not apply in relation to matters in the MVL list.

WITNESS STATEMENTS IN APPLICATIONS EXCEEDING \$25,000

15. The parties will usually be directed to provide statements from themselves and any other witnesses on which they intend to rely to support their respective cases. These statements will usually be provided well in advance of the hearing date.
16. The preparation of statements is the most important part of a party's preparation for a hearing. The evidence of each witness needs to be set out in detail in the statements, as the Tribunal may not allow a party to present evidence at the hearing which is not contained in their statements or from witnesses who do not attend in person at the hearing.
17. Guidance on the preparation of statements, including a sample template, can be found on the Tribunal's website at the following link: <https://www.qcat.qld.gov.au/going-to-the-tribunal/preparing-statements>.

COMPLIANCE WITH DIRECTIONS IN APPLICATIONS EXCEEDING \$25,000

18. The Tribunal is required by s 3 of the QCAT Act to deal with matters (amongst other things) in a timely manner. To that end, the Tribunal takes compliance with directions made by it very seriously. If a party fails to comply with a direction made by the Tribunal within the time specified, the matter will be referred by the Registry to a member. The member may then make a self-executing order requiring compliance with the direction within 21 days, failing which:
 - a. in the case of a failure to comply by the applicant, the application may be dismissed; or
 - b. in the case of a failure to comply by the respondent, a final decision may be made in the applicant's favour.
19. Where a party seeks an extension of time to comply with a direction made by the Tribunal, the Tribunal may extend the time for a stated period (usually no longer than 28 days). Factors which the Tribunal may take into account in exercising its discretion to grant or refuse a request for an extension of time include whether any extension might put a hearing date at risk and any prejudice (including as to costs) which might be suffered by any other party if an extension is granted. In extending time, the Tribunal may also extend the time for any other party to comply with a subsequent direction.



Hon Justice Martin Daubney AM
President
7 September 2021

UNIFORM CIVIL PROCEDURE RULES 1999
RULE 428

428 Requirements for report

- (1) An expert's report must be addressed to the court and signed by the expert.
- (2) The report must include the following information –
 - (a) the expert's qualifications;
 - (b) all material facts, whether written or oral, on which the report is based;
 - (c) references to any literature or other material relied on by the expert to prepare the report;
 - (d) for any inspection, examination or experiment conducted, initiated, or relied on by the expert to prepare the report –
 - (i) a description of what was done; and
 - (ii) whether the inspection, examination or experiment was done by the expert or under the expert's supervision; and
 - (iii) the name and qualifications of any other person involved; and
 - (iv) the result;
 - (e) if there is a range of opinion on matters dealt with in the report, a summary of the range of opinion, and the reasons why the expert adopted a particular opinion;
 - (f) a summary of the conclusions reached by the expert;
 - (g) a statement about whether access to any readily ascertainable additional facts would assist the expert in reaching a more reliable conclusion.
- (3) The expert must confirm, at the end of the report –
 - (a) the factual matters stated in the report are, as far as the expert knows, true; and
 - (b) the expert has made all enquiries considered appropriate; and
 - (c) the opinions stated in the report are genuinely held by the expert; and
 - (d) the report contains reference to all matters the expert considers significant; and
 - (e) the expert understands the expert's duty to the court and has complied with the duty.