

QCAT Practice Direction No. 9 of 2022

APPLICATIONS FOR REVIEW OF DECISIONS MADE BY THE QUEENSLAND BUILDING AND CONSTRUCTION COMMISSION

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INTRODUCTION

1. This Practice Direction is issued pursuant to section 226 of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld) (“QCAT Act”). It is supplementary to [QCAT Practice Direction No 3 of 2013 – Hearings in Administrative Review Proceedings](#).
2. The Practice Direction explains the pre-hearing process used in QCAT for an application to review a decision made by the Queensland Building and Construction Commission (“the Commission”).
3. The purposes of this Practice Direction include:
 - a) providing information to assist the understanding of the process by the litigants;
 - b) promote matters being dealt with in a more efficient way, while retaining fairness and justice;
 - c) ensuring all necessary interlocutory applications, for example, joinder or extension of time applications, are filed and dealt with, early in the proceedings;
 - d) facilitate the hearing by the provision of a Hearing Book containing all relevant material upon which each party intends to rely.
4. Annexed to the Practice Direction are the Standard Directions which may be issued:
 - a) upon the filing of the application for review ([Annexure A: Initial Directions](#));
 - b) at the Compulsory Conference (conference), facilitated by the conference adjudicator ([Annexure B: Conference Directions](#)); and
 - c) at the pre-hearing Directions Hearing ([Annexure C: Final Directions](#)).
5. The parties are expected to familiarise themselves with the content of the Standard Directions and be prepared to discuss any proposed departures from those directions at either the conference or Directions Hearing. The QCAT decision maker retains full discretion to amend, supplement or reduce those directions as appropriate in each matter.

INITIAL DIRECTIONS

THE APPLICATION TO REVIEW A DECISION

6. An application to review a decision referred to in section 86 of the *Queensland Building and Construction Commission Act 1991* (Qld) (“QBCC Act”) must be filed in QCAT within 28 days after the day the applicant is notified of the decision. (In counting the days, the day upon which notification of the decision is received by the applicant is not counted; the 28th day after the day of notification is counted.)

7. Decisions listed in [section 86F of the QBCC Act](#) are not reviewable.
8. The application to review must be made using the QCAT [Form 23 – “Application to Review a Decision”](#).
9. The applicant must give a copy of the Form 23 (including a copy of the decision to be reviewed) to the Commission within 7 days after filing.¹
10. The preferred method of serving the Commission is by email at QBCC.LegalBranch@qbcc.qld.gov.au.
11. If a party cannot serve by email, then the method of serving the Commission is by post to:
QBCC Legal Branch
GPO Box 5099
Brisbane Qld 4001
12. A separate Form 23 must be filed for each decision sought to be reviewed. For example, a decision to issue a direction to rectify and a decision about a scope of works should be the subject of separate applications to review.

APPLICATIONS FOR EXTENSION OF TIME

13. If the Form 23 is not filed within 28 days after the applicant is notified of the decision, the applicant must also file an application for an extension of time together with any accompanying submissions using the QCAT [Form 42 – “Application to extend or shorten a time limit or for waiver of compliance with procedural requirement”](#).
14. A copy of the Form 42 must also be given to the Commission and any other party.
15. The Commission and any other party that receives a Form 42 must file and give to each other party a copy of any submissions in response within 14 days of receiving the Form 42.
16. The application to extend time will usually be decided “on the papers” that is, on the basis of the written submissions filed by the parties.
17. A matter should not proceed to a conference until any outstanding application for an extension of time to file the application for review has been decided.

¹ Section 19(2)(c) of the QCAT Rules 2009 (Qld).

THE STATEMENT OF REASONS FOR THE DECISION

18. The Commission must provide to QCAT and the applicant the following documents within 28 days of receiving the application to review:²
- a) a written statement of reasons; and
 - b) an indexed and page numbered bundle in date or other logical order of the documents and other material in its possession or under its control that may be relevant to the review of the decision.

HOW TO JOIN A PARTY

19. The Commission must give the application to review to any other person affected by the reviewable decision.
20. If the applicant, Commission or other person considers a person should be joined to the proceeding then an Application for Joinder should be made using a [Form 45 – “Application to be joined to a proceeding”](#).
21. The Form 45 and any accompanying submissions should be given to each party to the proceeding.
22. Each party must file and give to each other party a copy of any submissions in response to the Form 45 within 14 days after receiving the Form 45.
23. The application for joinder will usually be determined “on the papers,” on the basis of the written submissions of the parties.
24. A matter should not proceed to a conference until any outstanding application/s for joinder have been decided.

HOW TO APPLY FOR LEAVE TO BE LEGALLY REPRESENTED

25. With limited exceptions, the parties must obtain leave if they wish to be legally represented.
26. Any party who wishes to apply for leave to be legally represented must file and give to the other parties an application using [Form 56 – “Application for leave to be represented”](#), addressing the factors in section 43(3) of the QCAT Act.

² Provision of these documents to the Tribunal is required by section 21(2) of the QCAT Act.

CONFERENCE DIRECTIONS

WHAT IS THE ROLE OF THE CONFERENCE ADJUDICATOR

27. A conference will be held in a QBCC review matter after:
 - a) the Initial Directions have been complied with; and
 - b) any applications for an extension of time, or to join a party to the proceeding, have been determined.
28. The conference will usually be conducted by a Conference Adjudicator at QCAT in Brisbane. Sometimes the conference may be conducted by a Member, and so where the term "Conference Adjudicator" is used, the words "or Member" should be read in.
29. QCAT will advise the parties of the date and time for the conference if a date has not been allocated in the Initial Directions.
30. The parties must come to the conference prepared to discuss the proposed Conference Directions which are attached as Annexure B to this Practice Direction.
31. Some applications to review decisions of the Commission are capable of resolution at mediation or further compulsory conference. The parties and/or the Conference Adjudicator may recommend such a course be taken. A successful mediation or compulsory conference saves the parties time, cost and the inevitable stress associated with litigation.
32. Mediation is a process by which all parties contribute to the cost of a mediator, who will mediate the matter (generally) over the course of a half a day or a day, or in some cases, longer.
33. If the Conference Adjudicator forms the view that a further compulsory conference or mediation may resolve the matter or result in a narrowing of the issues, QCAT may direct the parties to attend a further compulsory conference, or recommend the parties participate in a mediation. The Conference Adjudicator may consider this issue on his/her own initiative, or on the request of a party.

HOW TO PREPARE STATEMENTS OF EVIDENCE

34. QCAT's website contains an information sheet on the preparation of statements. A sample template is also available on QCAT's website at <https://www.qcat.qld.gov.au/going-to-the-tribunal/preparing-statements>.
35. Parties who give a statement in a matter and/or who provide a statement from other witnesses must be prepared to attend and have their witnesses attend the hearing to be cross-examined by the other party, if required.

IS AN EXPERTS' CONCLAVE REQUIRED

36. If a party wishes to call evidence from an expert, then the parties may wish to have the Conference Adjudicator issue directions about convening an experts' conclave.
37. The parties should refer to [QCAT Practice Direction No. 4 of 2009 – Expert Evidence](#).

HOW TO FILE AND GIVE MATERIAL

38. The preferred method of filing and service of material is via email.
39. The email address for the Respondent Commission is: QBCC.LegalBranch@qbcc.qld.gov.au.
40. The email address for filing the initiating application and any application for an extension of time is EnquiriesQCAT@justice.qld.gov.au.
41. The email address for all material filed after the initial application is QCATCivil@justice.qld.gov.au.
42. If the applicant does not have an email address, then service on the applicant is to be by the next most efficient means, for example, by post.
43. Parties are advised that it can take several days between when a document is emailed to QCAT, and when it makes its way to the QCAT file. Therefore, parties should ensure they provide any material they are filing **at least five (5) business days in advance**, and in accordance with the dates directed in the directions issued by QCAT.

HOW TO APPLY TO EXTEND TIME TO COMPLY WITH DIRECTIONS

44. Parties should work on the basis that directions must be complied with.
45. However, it is acknowledged that compliance may sometimes not be possible and that a party will need to apply to extend time to comply with directions.
46. The QCAT decision maker may, where appropriate, extend the time for a reasonable period. An extension of time is not assured and will depend on the circumstances of each case.
47. In extending time, the QCAT decision maker may also extend the time for the other party to comply with a subsequent direction.
48. The QCAT decision maker will also consider whether granting the extension of time will put the hearing date at risk of not being able to proceed. This may influence the decision, one way or another.

49. Where a party seeks an extension of time to comply with a direction made by QCAT, the request for extension should ordinarily be made before the relevant step falls due. A party can seek an extension of time by filing a [Form 42 – “Application to extend or shorten a time limit or for waiver of compliance with procedural requirement”](#).
50. Even though a party may apply for an extension of time to comply with a direction, the party should not assume it will be granted. The QCAT decision maker must consider all the material supporting the application as well as any response from the other party or parties, and then determine the outcome of the request.

FINAL DIRECTIONS

IS A DISPUTE SCHEDULE REQUIRED

51. The parties may be directed to file a Dispute Schedule.
52. The Dispute Schedule will ordinarily comprise the following columns: item number; item description; applicant’s position (in summary); respondent’s position (in summary).

NOTICE TO PRODUCE APPLICATIONS AND APPLICATIONS REQUIRING A PERSON TO ATTEND THE HEARING

53. Sometimes a party may want to obtain documents from a third party or seek to have a person attend the hearing to give evidence where that person is not cooperating with the party and is not proposed to be called by another party. When that happens, the party must make an application setting out what it is that they seek.
54. If a person is willing to attend or produce a document to a party, the party will usually not need to apply to QCAT for an order.
55. To apply to QCAT for an order, a party must file a [Form 38 – “Hearing Notice: application for notice requiring witness to attend a hearing or produce document/thing at hearing”](#).
56. A Form 38 application must be filed no later than 14 days prior to the Hearing.
57. Only QCAT can order a person to attend a hearing or to produce documents by issuing an attendance notice. QCAT may charge a fee for this service. However, you cannot assume it will automatically be granted. The decision about whether to grant such an application and in what form it is granted is a decision for the QCAT decision maker in the exercise of their independent judicial function.

PREPARING A HEARING BOOK

58. Parties may be required to prepare a Hearing Book, indexed and paginated, which should include the following material in so far as each party intends to rely upon it:

- a) formal documents;
- b) applicant's statements of evidence, including reports;
- c) respondent's statements of evidence, including reports;
- d) dispute schedule;
- e) submissions.

59. The composition of the Hearing Book is important because it is the material in the Hearing Book to which the QCAT decision maker will have regard in determining the matter.

60. Any objections to the material contained in the Hearing Book should be filed and given to the other party/parties at least 7 days prior to the hearing. The objections will be determined at the hearing by the QCAT decision maker.

61. No party will be permitted to rely on any evidence not contained in the Hearing Book without the leave from QCAT.

PREPARING A HEARING PLAN

62. The parties may be required to file a proposed Hearing Plan which includes the names and contact details of all witnesses to be called by either party not less than 14 days prior to the hearing.

THE PROCESS AT HEARING

63. The process that generally applies at the hearing is that set out in [QCAT Practice Direction No. 3 of 2013 – Hearings in Administrative Review Proceedings](#).

NOTICE OF TRIBUNAL HEARING

64. The directions made at a conference or a directions hearing that lists a date for a further conference, directions hearing or the final hearing, **will serve as the required provision of notice of that further conference, directions hearing or final hearing, whatever the case may be.**³

65. The parties **must** ensure they read all directions that are made in the matter and ensure they record the hearing date in their own records, and appear at that hearing date at the time specified (which will commonly be at 9.30 am).

66. If a party does not appear at the hearing the matter may proceed to determination in their absence.

³ Section 92 of the QCAT Act.

PARTIES ARE REQUIRED TO KEEP QCAT INFORMED OF THEIR CONTACT DETAILS

67. At the pre-hearing Directions Hearing both parties will be required to confirm their correct email addresses and contact details. These details will be presumed by QCAT and the QCAT decision maker to be correct unless changed in accordance with this Practice Direction.
68. Should a party's contact details change at any time throughout the proceedings, that party must update QCAT and the other party as soon as possible.
69. Accuracy and currency of contact details are solely the responsibility of the applicant and the respondent individually and not a matter for QCAT to monitor. For the above reasons it is important to keep contact details up to date.
70. When the parties are provided with a copy of the directions, they will also be provided with an Attendance Advice.
71. That Advice sets out the current telephone details that QCAT has for the party.
72. That is the telephone number that QCAT will use to contact the party.
73. If the party's telephone number is different to that shown on the Attendance Advice, then the party must fill out their new telephone number on the Attendance Advice and send it back to QCAT as early as possible, but at least five (5) business days before the hearing date. The email address to send any change of contact details is: QCATCivil@justice.qld.gov.au
74. Contact details are important. A failure to provide new contact details, or their late receipt, may mean that QCAT is not able to contact the party when required. Further, the substantive hearing may proceed in that party's absence.
75. The party needs to make sure that they are available to answer their telephone when QCAT telephones the party on the date of a compulsory conference, directions hearing or hearing. If the party does not answer, the matter may proceed in the party's absence.

AVENUES OF APPEAL FROM A DECISION OF QCAT

76. There are avenues of appeal from a decision of QCAT.
77. The first is to the Queensland Civil and Administrative Tribunal Appeals Tribunal (QCATA).
78. The second avenue which is available to you after a decision is made by the QCATA, is to appeal the QCATA decision to the Court of Appeal (and, in some cases, only with leave of the Court of Appeal).

WHERE TO LOOK TO FIND SOME OTHER QBCC REVIEW MATTERS QCAT HAS DECIDED

79. If you would like to read some QCAT decisions about QBCC reviews, or some decisions by the Court of Appeal about QBCC reviews, these are available on the internet.
80. For example, some QCAT decisions and Court of Appeal decisions about QBCC reviews are kept by the Supreme Court Library. The Supreme Court Library is accessible at <https://www.sclqld.org.au/caselaw>.



*Hon Justice Kerri Mellifont
President*

4 July 2022

ANNEXURE A: INITIAL DIRECTIONS

[INSERT STANDARD QCAT HEADER FOR DRAFT DIRECTIONS]

PARTIES ARE TO NOTE:

You will **not** receive reminders of the steps you need to take as set out in these directions from QCAT.

You will **not** receive reminders of the date set for the compulsory conference, directions hearing or final hearing date.

Please make sure you keep a copy of these directions. If you have a camera, you may wish to make an extra copy for yourself by taking a photograph of these directions.

Review documents

1. **[insert applicant]** must give a copy of the application to review a decision to the **Queensland Building and Construction Commission**, by:
4:00pm on [+ 7 days from today's date]
2. Not more than 28 days after receiving a copy of the application to review, the **Queensland Building and Construction Commission** must file in the Tribunal two copies and give to **[insert applicant]** one (1) copy of the following documents pursuant to section 21(2) of the *Queensland Civil and Administrative Tribunal Act 2009 (Qld)*:
 - a) a written statement of reasons; and
 - b) an indexed and sequentially page numbered bundle in date or other logical order of the documents and other material in its possession or under its control that may be relevant to the Tribunal's review of the decision.

Application for joinder

3. The **Queensland Building and Construction Commission** must serve a copy of the application to review and these directions on any affected party named in the decision under review, by:
4:00pm on [+ 2 weeks from Direction 1]
4. Any application for joinder in respect of an affected party referred to in the preceding direction, including any accompanying submissions, whether brought by a party to these proceedings or the affected party, must be filed in the Tribunal and given to each other party, by:
4:00pm on [+ 2 weeks from Direction 3]

5. Any party who receives an application for joinder referred to in the preceding direction, must file in the Tribunal one copy and give to each other party and, if the application was made by an affected party, the affected party, one copy of any submissions in response, by:

4:00pm on [+ 2 weeks from Direction 4]

6. The application for joinder will be determined by the Tribunal on the papers, without an oral hearing, **after [DATE IN PRECEDING DIRECTION]**.

Compulsory Conference

7. The application is listed for a Compulsory Conference in Brisbane at a time and date to be advised, but after any application for joinder has been determined, at which the parties should be in a position to make any submissions they wish to make on the standard directions to follow the Compulsory Conference.
8. The standard directions to follow a Compulsory Conference are attached to these directions as **Attachment 1 to the Initial Directions**.

Practice Direction

9. The process that applies to QBCC Reviews is set out in Practice Direction 9 of 2022 which is available on QCAT's website and attached to these directions as **Attachment 2 to the Initial Directions**.

Attachment 1 to the Initial Directions

10. **[insert applicant]** must file in the Tribunal two (2) copies and give to the **Queensland Building and Construction Commission** one (1) copy of all material upon which they intend to rely at the hearing. The material must:
- contain statements of all witnesses;
 - each witness statement must have attached to it all relevant documents with an explanation in the statement as to how they are relevant; and
 - all attachments must be sequentially page numbered and must be referred to in the statements, by:

4:00pm on [INSERT DATE]

11. The **Queensland Building and Construction Commission** must file in the Tribunal two (2) copies and give to **[insert applicant]** one (1) copy of any additional material upon which it intends to rely. The material must:
- contain statements of all witnesses;
 - each witness statement must have attached to it all relevant documents with an explanation in the statement as to how they are relevant; and
 - all attachments must be sequentially page numbered and must be referred to in the statements, by:

4:00pm on [INSERT DATE]

12. **[insert applicant]** must file two (2) copies in the Tribunal and give one (1) copy to the **Queensland Building and Construction Commission** of any material in reply, by:

4:00pm on [INSERT DATE]

13. The application is listed for a Directions Hearing in Brisbane at a time and date to be advised, **after [DATE IN PRECEDING DIRECTION]**.

Attachment 2 to the Initial Directions – Practice Direction 9 of 2022 can be found here: <https://www.qcat.qld.gov.au/resources/practice-directions#2022>

ANNEXURE B: CONFERENCE DIRECTIONS

1. **[insert applicant]** must file in the Tribunal two (2) copies and give to the **Queensland Building and Construction Commission** one (1) copy of all material upon which they intend to rely at the hearing. The material must:
 - a) contain statements of all witnesses;
 - b) each witness statement must have attached to it all relevant documents with an explanation in the statement as to how they are relevant; and
 - c) all attachments must be sequentially page numbered and must be referred to in the statements, by:

4:00pm on [+ 4 weeks from date of conference]

2. The **Queensland Building and Construction Commission** must file in the Tribunal two (2) copies and give to **[insert applicant]** one (1) copy of any additional material upon which it intends to rely. The material must:
 - a) contain statements of all witnesses;
 - b) each witness statement must have attached to it all relevant documents with an explanation in the statement as to how they are relevant; and
 - c) all attachments must be sequentially page numbered and must be referred to in the statements, by:

4:00pm on [+ 4 weeks from Direction 1]

3. **[insert applicant]** must file two (2) copies in the Tribunal and give one (1) copy to the **Queensland Building and Construction Commission** of any material in reply, by:

4:00pm on [+ 2 weeks from Direction 2]

4. The application is listed for a Directions Hearing in Brisbane at a time and date to be advised, after **[DATE IN PRECEDING DIRECTION]**.

ANNEXURE C: FINAL DIRECTIONS

1. The parties are to agree and file two (2) copies in the Tribunal of an indexed and paginated **Hearing Book** which contains all of the material upon which each party intends to rely, the Hearing Book to be filed not less than 14 days prior to the Hearing.
2. The **Hearing Book** should include the following material in so far as each party intends to rely upon it:
 - a) formal documents;
 - b) applicant's statements of evidence, including reports;
 - c) respondent's statements of evidence, including reports;
 - d) dispute schedule;
 - e) submissions.
3. Any objections to any material contained in the Hearing Book should be filed and served at least 7 days prior to the Hearing. The objections will be determined at the Hearing by the Presiding Member.
4. No party will be permitted to rely on any evidence not contained in the **Hearing Book** without the leave of the Tribunal.
5. The parties must file a proposed **Hearing Plan** which includes the **names and contact details of all witnesses** to be called by either party not less than 14 days prior to the Hearing.
6. Unless the Tribunal otherwise orders all witnesses must attend the Hearing in person for cross examination. Any application for a witness to attend the Hearing by a remote means or by remote conferencing must be made, not less than 14 days before the Hearing.
7. The application is listed for a ____ () day Tribunal Hearing in Brisbane on a time and date to be advised.

FURTHER INFORMATION FOR THE PARTIES:

A. INFORMATION ABOUT HOW TO ATTEND THE COMPULSORY CONFERENCE

The compulsory conference will be by telephone, unless the Tribunal has ordered otherwise.

You will be given an “Attendance Advice”.

That Advice sets out the current telephone details that QCAT have for you. That is the telephone number that QCAT will use to call you to join you to the compulsory conference. If your telephone number is different to that shown on the Attendance Advice, then you must fill out your new telephone number on the Attendance Advice and send it back to QCAT as early as possible, but at least 5 business days before the scheduled date for the compulsory conference. Late receipt of the notice may mean that QCAT is not able to contact you for the compulsory conference at the scheduled date and time. The Conference Adjudicator may proceed in your absence and, if all the parties present agree, a decision and orders adverse to the absent party may be made (including as to costs), or the absent party may be removed from the proceeding.

The email address to use is: QCATCivil@justice.qld.gov.au

If you have any enquiries, please contact a case manager on _____.

B. INFORMATION ABOUT HOW TO ATTEND THE PRE-HEARING DIRECTIONS HEARING

The Directions Hearing will be by telephone.

You will be given an “Attendance Advice”.

That Advice sets out the current telephone details that QCAT have for you. That is the telephone number that QCAT will use to call you at the next directions hearing. If your telephone number is different to that shown on the Attendance Advice, then you must fill out your new telephone number on the Attendance Advice and send it back to QCAT as early as possible, but at least 5 business days before the directions hearing date. Late receipt of the notice may mean that QCAT is not able to contact you on the directions hearing date and that the matter might proceed in your absence.

The email address to use is: QCATCivil@justice.qld.gov.au

If you have any enquiries, please contact a case manager on _____.

C. INFORMATION ABOUT HOW TO ATTEND THE FINAL HEARING

Please ensure that you arrive no later than 10 minutes prior to the time set for your hearing.

If you fail to appear at the hearing, the Tribunal may proceed and make orders in your absence.

Your witnesses (i.e., all persons who have provided statements) must attend the hearing if the other party has advised you that they are required for cross-examination.

You must bring to the hearing, a copy of the Hearing Book or, if a Hearing Book has not been directed to be provided, a copy of all statements and documents relevant to the matter.

You must also ensure that your witnesses have with them copies of their statements and any documents that are relevant to the evidence they will be giving.

If you have any enquiries, please contact a case manager on _____.