

QCAT 2026 Review conducted by the Hon David Thomas

Submission by QCAT President in respect of Issues
paper 6: Health practitioner disciplinary jurisdiction

31 March 2026

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Issues Paper 6: health practitioner disciplinary jurisdiction

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

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).

meet, its objects. This may include changes giving QCAT the ability to enhance 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);

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

- the current appeal structure for QCAT decisions (Chapter 2, Part 1, Division 4 of the 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.

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.

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.

High-level overview of themes advanced in Issues Paper 6

22. Whether health practitioner disciplinary matters remain at QCAT, in whole or in part, and if so, whether the Tribunal to hear such matters must be constituted by a judicial member, are ultimately matters of policy for Government. So too are a number of the other consultation questions posed by this issues paper.
23. 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,⁵ and that the President may do all things necessary or convenient to be done for the performance of the President's functions.⁶
24. 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.
25. 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.

Summary

26. Whether or not a judicial member is required to sit on health practitioner disciplinary matters, QCAT is an appropriate forum for the hearing and determination of such matters. QCAT has significant experience and demonstrated ability to hear and determine occupational disciplinary matters to a high standard.
27. Lengthy times to finalisations in health matters are not as a consequence of matters being handled inefficiently by QCAT. A matter can be handled efficiently, yet still take a long time. Rather, resource constraints have been a significant contributor to times to finalisation.
28. If all or part of the jurisdiction remains within QCAT, the Government may wish to give consideration to amelioration of the current mandatory constitution requirements which currently can often operate as impediments to operational efficiency.

Some observations and corrections with respect to issues paper 6

29. As to paragraph 27 of Issues Paper 6, referrals to the Tribunal are made by the Director of Proceedings, on behalf of the Health Ombudsman, in accordance with s 103(1)(a) of the *Health Ombudsman Act 2013* (Qld) (**HO Act**). The Director of Proceedings is a staff

⁵ *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.

⁶ QCAT Act s 172(4).

member of the Office of the Health Ombudsman who is responsible for taking proceedings against health practitioners before QCAT.⁷ The Director of Proceedings is not subject to the direction of the Health Ombudsman or anyone else about a decision whether or not to refer a matter concerning a registered health practitioner to QCAT or about the conduct of a matter before QCAT.⁸

30. The table at paragraph 38 of the issues paper appears to contain a typographical error. Section 199(1)(c) of the *Health Regulation National Law Act 2009* (Qld) (National Law) confers a power to review *a decision by a National Board to refuse to renew the person's registration*.
31. At paragraph 59 of Issues Paper 6, the Issues Paper sets out the circumstances where it is not necessary for the Tribunal to be constituted by a judicial member. The Tribunal understands this to be a reference to s 97(2) of the HO Act. In that regard, s 97(2) does not include any reference to decisions by the Health Ombudsman to take immediate registration action and associated undertakings, as posited in dot point 3 of the Issues Paper. The Tribunal must be constituted by a judicial member when hearing such matters.
32. At paragraph 61, the issues paper makes reference to the power of QCAT to exclude witnesses or complaints from hearings. On this topic, section 99 of the HO Act provides:

QCAT may exclude witnesses from hearing

(1) This section applies if—

- (a) a complainant or other witness is to give evidence to QCAT in a disciplinary proceeding; and
- (b) QCAT reasonably believes the attendance of the complainant or witness before giving evidence would seriously prejudice the fairness of the hearing.

(2) QCAT may direct that the complainant or other witness be excluded from a part or all of the hearing until the complainant or witness gives evidence.

33. As to paragraphs 90 and 91 of Issues Paper 6, any analysis of case management of the health practitioner list will show that QCAT has been handling these matters as efficiently as possible within its resources and having regard to the mandatory constitution requirements of the various types of matters which fall within the health list. It is noted that times to finalisation are affected by several matters outside the Tribunal's control, including:
 - a) service of the referral taking longer than the 28 days specified in the QCAT Act;⁹
 - b) frequent requests by parties for extensions of time to undertake procedural steps or engage in without prejudice discussions, often more than once and often by consent. This occurs in matters where both parties are represented by lawyers familiar with the jurisdiction. Applications for extensions of time to undertake procedural steps are sometimes made by the relevant regulator, sometimes attributed to the pressure of competing work commitments of the relevant practitioner, and sometimes due to the

⁷ HO Act s 12.

⁸ HO Act s 260.

⁹ QCAT Act s 37; *Queensland Civil and Administrative Tribunal Rules 2009* (Qld) (QCAT Rules) r 19.

availability of witnesses, including experts, to complete evidence. It also occurs in matters where the health practitioner is self-represented and parties may require more time to facilitate the self-represented practitioner's participation in the process.

Matters regularly proceed on statements of agreed or substantially agreed facts, which reduces the need for contested hearings. The Tribunal is not critical of parties for the time which may be taken to achieve agreement. It is important to understand, however, that any or all of these matters has an impact on the time taken to resolve health practitioner disciplinary matters, which is not in the Tribunal's control;

- c) where appropriate, hearing dates being allocated to accommodate the availability of counsel briefed by one or more parties, or witnesses, including expert witnesses, which can be some time into the future;
- d) insufficient Judicial Members to hear health practitioner matters since the inception of QCAT;¹⁰
- e) insufficient hearing rooms and Registry resources to support hearings; and
- f) difficulties sometimes experienced in securing a full panel of assessors.

Response to Issues raised by the Review

Consultation question 1

Q1 Should a judge continue to be required to hear health practitioner disciplinary proceedings?

¹⁰ When health practitioner disciplinary work was performed by the Health Practitioner Tribunal (**HPT**) prior to the creation of QCAT, all District Court Judges were members of the HPT until 30 November 2009. In the five months prior to the transfer of the work, 12 matters were lodged with the HPT and 14 were disposed of. In 2008-2009, a total of 31 matters were disposed of. When the HPT's work was rolled into QCAT, 17 matters were transferred to QCAT on 30 November 2009. The source of this information is the District Court Annual Report 2009-2010. Since its inception, the Deputy President of QCAT has also been allocated to undertake work in the District Court. The lodgements and finalisations of health practitioner disciplinary matters over the years 2020-2021 to 2024-2025 are set out in Table 2 of Issues Paper 6. It is apparent that lodgements have ranged between 87 matters and 126 matters annually over that period, with no additional appointment of permanent judicial members.

Constitution of the Tribunal

35. Ultimately it is a matter of policy as to whether or not the law should provide whether a judge should be required to hear health practitioner disciplinary proceedings (whether that be all or some of such proceedings).
36. As Issues Paper 6 states, no other civil and administrative tribunal in Australia requires a judicial member to hear all such matters. Outside Queensland, the only state which mandates that a judicial member determine health practitioner disciplinary proceedings is New South Wales, and that is only for medical practitioners.
37. QCAT members, non-judicial and judicial, are well-equipped to hear and determine health practitioner disciplinary matters, including matters involving complex factual and expert evidence. Members of the Tribunal routinely determine occupational disciplinary matters of comparable seriousness and complexity.
38. If a decision were made by Government to remove the statutory mandate for judicial members to sit on health practitioner disciplinary matters, this would bring the constitution provisions in line with most of Australia, and the current situation with respect to some related health practitioner disciplinary decisions in QCAT. That is:
 - a) a judicial member is not required to constitute the Tribunal for a proceeding for the review of a decision by the Health Ombudsman to take immediate registration action, or issue an interim prohibition order to a health practitioner, or not to vary an immediate registration action in relation to a registered health practitioner, or not to vary an interim prohibition order issued to a health practitioner, or to refuse an application to vary or revoke an undertaking given by a registered health practitioner and accepted by the health ombudsman as an immediate registration action;¹¹ or
 - b) to issue a prohibition order to a health practitioner;¹² or
 - c) to vary a prohibition order issued to a health practitioner on the Health Ombudsman's own initiative¹³, or
 - d) to vary a prohibition order issued to a health practitioner in a way different to the way requested in an application by the practitioner,¹⁴ or
 - e) not to vary a prohibition order issued to a health practitioner in a way different to the way requested in an application by the practitioner,¹⁵ or
 - f) not to vary a prohibition order issued to a health practitioner in response to an application by the practitioner;¹⁶ or
 - g) to make or revise a public statement about a person under part 8AA;¹⁷ or

¹¹ HO Act s 97(2).

¹² HO Act s 97(2).

¹³ HO Act s 97(2).

¹⁴ HO Act s 97(2).

¹⁵ HO Act s 97(2).

¹⁶ HO Act s 97(2).

¹⁷ HO Act s 97(2).

- h) to review an appealable decision under section 199 of the National Law, that is registration of a health practitioner;¹⁸ or
 - i) to review an appealable decision in section 199(1)(ha) or (hb) of that Law (that is, a decision by a regulatory body to issue or extend an interim prohibition order under Division 7A) or a decision by a regulatory body to make or revise a public statement under Division 7B.¹⁹
39. Not requiring a judicial member to sit would also be consistent with the approach taken by section 6 of the *Health Practitioner Regulation National Law and other Legislation Amendment Act 2025* (Qld). That provision is yet to commence in Queensland,²⁰ but if it does, there will be no requirement for the hearing and determination of a reinstatement application by a person who was a health practitioner whose registration has previously been cancelled by the Tribunal or who has been disqualified by the Tribunal from applying for registration or being registered. A reinstatement order is a precursor to a person seeking to obtain registration as a registered health practitioner. Thus, if the current general requirement for health practitioner disciplinary proceedings to be constituted by a judicial member remains, this will have the arguably peculiar result that although a judicial member will be required to determine questions of cancellation or disqualification, it will not be necessary for a judicial member to determine whether a reinstatement order is appropriate.
40. Further, the removal of the requirement for judicial members to sit on health practitioner disciplinary matters will alleviate the significant difficulty that QCAT has faced in not having sufficient judicial members in order to discharge the various types and substantial amount of work that QCAT has.
41. All current sessional judicial members are retired judges who generously contribute their time and expertise to the Tribunal's work. Sessional judicial members are sessional. Whilst they bring invaluable judicial experience, and the Deputy President and I are incredibly grateful for what they bring to QCAT, they are, quite understandably, not seeking full-time workloads.
42. The role of the Deputy President carries a broad set of responsibilities within the Tribunal. In addition to managing the health practitioner disciplinary list and hearing health practitioner disciplinary matters, those who hold the role continue to also sit in the District Court throughout the year. This means that the Deputy President is not at QCAT full time. The role also requires, in addition to adjudicating in the Tribunal, that the Deputy President assist the President in carrying out the President's leadership and administrative responsibilities, including managing the business of the Tribunal and managing the members of the Tribunal and the adjudicators. These various obligations necessarily limit the proportion of the

¹⁸ HO Act s 97(2).

¹⁹ HO Act s 97(2).

²⁰ It is due to commence on 10 April 2026 under s 15DA(2) of the *Acts Interpretation Act 1954* (Qld) (unless proclaimed earlier or the time for commencement is extended by regulation).

Deputy President's time that can be dedicated to hearing health practitioner disciplinary matters.²¹

43. Not having sufficient full-time judges and sufficient sessional judicial members and to carry out the large amount of work has practical implications for all matters at QCAT which require a judicial member to preside, including health practitioner disciplinary matters.
44. For these reasons, while the Tribunal uses all available resources, the breadth of responsibilities borne by the Deputy President and the variable availability of retired judicial members affect the Tribunal's availability and capacity to hear matters.
45. Removing the mandatory requirement for the constitution of the Tribunal by a judicial member would improve listing flexibility and thereby help to reduce times to finalisation, subject to hearing room availability and other resource constraints.

Consultation question 2

Q2 If not, how should the tribunal be constituted to hear health practitioner disciplinary proceedings?

46. Health practitioner disciplinary matters could be constituted in accordance with the ordinary provisions of the QCAT Act, including ss 165–167. That is, the President (or delegate) would determine the appropriate constitution for each health practitioner disciplinary matter.
47. This approach preserves flexibility, assists proportionality in resource allocation, and allows judicial members to be allocated where the nature of the matter genuinely requires it, and the Tribunal's available resources permit it.

Consultation question 3

Q3 Should there be different constitution requirements for different types of health practitioner disciplinary matters?

48. The Tribunal submits that no differentiated constitution requirements are necessary for different types of health practitioner disciplinary matters. The existing discretion under the QCAT Act is sufficient to ensure appropriate constitution on a case-by-case basis. The President and delegates are well-placed to exercise that discretion appropriately.

²¹ I note that the question of whether or not there should be judges in leadership positions is the subject of Issues Paper 7. I have provided a response to that issue in my response to Issues Paper 7.

Consultation question 4

Q4 Should QCAT be able to continue with a proceeding in certain circumstances where assessors are unavailable? If so,

- (a) What circumstances should apply?
- (b) Should there be additional safeguards where assessors are not used. For example, if the proceeding relates to an Aboriginal Torres Strait Islander Health Practitioners Panel of Assessors, should there be additional safeguards in lieu of the assessor?

Panel of Assessors

49. The Tribunal understands this question relates to a proceeding the hearing of which has already commenced.
50. Presently, the Tribunal **must** be assisted by two assessors chosen from the professional panel of assessors for the practitioner's profession and one assessor from the public panel of assessors if the health disciplinary matter involves a registered health practitioner "*... in conducting a hearing of a disciplinary proceeding...*" (emphasis added).²² The sole statutory exception that allows proceeding without assessors is the urgency of the matter.²³
51. The Tribunal submits that there should be a broad discretion to the constituted Tribunal member to continue to proceed without one or more assessors, for the final hearing of a health practitioner disciplinary matter, where it is in the interests of justice to do so.
52. This would enable the Tribunal to commence, or continue, a hearing where a lack of available assessors would mean that a matter would need to be delayed. Sometimes an assessor is not able to attend because of illness or a personal reason, and this illness or reason might arise at a time which makes it too late to find another assessor to take their place. In many cases, the Tribunal is well able to proceed and administer justice in the absence of an assessor. The guiding principle for whether it does so is whether it is in the interests of justice.
53. The Tribunal has not identified specific additional statutory safeguards that would be necessary where assessors are unavailable. The Tribunal would, in considering what is in the interests of justice, consider cultural and contextual factors in determining whether assessors are required in a particular case. However, if the Review has identified a specific proposal or proposals in this regard, QCAT would be happy to provide feedback in respect of same.

²² HO Act s 126(1).

²³ HO Act s 126(2).

Consultation question 5

Q5 Should the tribunal be permitted to decide certain matters on its own, without the assistance of any assessors (either public or professional)? If yes, in which matters (for example, in matters that do not relate to a question of fact)?

54. There would be operational benefits in QCAT having to decide health practitioner disciplinary matters without assessors where the Tribunal is satisfied that it can do proper justice without their assistance. This arises in two contexts:
 - (a) final hearings; and
 - (b) all matters prior to final hearings.
55. Presently, as already noted, the Tribunal **must** be assisted by two assessors chosen from the professional panel of assessors for the practitioner's profession and one assessor from the public panel of assessors if the health disciplinary matter involves a registered health practitioner "*... in conducting a hearing of a disciplinary proceeding ...*" (emphasis added).²⁴ The sole statutory exception that allows proceeding without assessors is the urgency of the matter.²⁵
56. The Tribunal should have a broad discretion to determine to proceed without assessors for the final hearing of a health practitioner disciplinary matter, where it is in the interests of justice to do so.
57. Some examples in which this discretion might appropriately be exercised include:
 - (a) where proceeding without assessors will alleviate delay in hearing and determining the matter (by way of example, it can be extremely challenging to get professionally qualified assessors who are available to sit on multi-day matters because of regular work commitments); and/or
 - (b) where the Tribunal considers that the assistance of assessors is not required to properly determine the factual issues (for example, where there are agreed facts proposed by the parties, such that no factual issues arise for determination, or where the factual issues which may arise for determination relate to non-clinical matters and, as such, are not related to the expertise offered by the professional assessors); and/or
 - (c) where the lack of available assessors would cause prejudice to the parties or undermine the protective purpose of the jurisdiction.
58. However, if Government decides to retain the mandatory requirements in respect of assessors, then there would be benefit in the legislation stating expressly that these

²⁴ HO Act s 126(1).

²⁵ HO Act s 126(2).

requirements apply only in respect of final hearings, and not with respect to interlocutory matters.

59. Presently, aspects of a matter such as determination of questions of law, strike out applications, interlocutory applications (such as, for example, rulings on evidence, making of non-publication orders, compulsory conferences, issuing of non-party notices to produce documents or give evidence), directions hearings and costs applications are dealt with by the Tribunal sitting without assessors (as [119] of Issues Paper 6 records currently occurs). It would pose largely insurmountable operational challenges if assessors were required for all these matters.
60. The Tribunal submits a statutory formulation addressing the considerations summarised at [120] - [121] of Issues Paper 6 sets out the types of considerations that any new provisions should deal with. QCAT would be happy to provide more specific feedback on any legislative proposal of Government. This would be particularly important in order to provide feedback on how to maximise operational efficiency while maintaining the high standard of justice, and in reducing the potential for unintended operational consequences.

Consultation question 6

Q6 How many professional assessors should be required to assist the tribunal? For example, should the requirement for 2 professional assessors be changed to 1?

61. The Tribunal considers that the requirement for two professional assessors should be reduced to one.
62. This would reduce challenges with listing and administrative arrangements and consequently reduce delay and maintain appropriate professional input.
63. The Tribunal should have a broad discretion to proceed without assessors where the interests of justice require, as discussed above.

Consultation question 7

Q7 Are there any other changes that should be made to the use of assessors to assist the tribunal?

64. At this stage, the Tribunal does not propose additional legislative changes beyond those identified above.

Consultation question 8

Q8 Should there be any changes to the costs order arrangements for health disciplinary proceedings?

Awarding of Costs

65. I have provided a response on the issue of costs generally in response to Q21 in Issues Paper 1.
66. While ultimately a matter of policy, the Tribunal does not consider that the current cost provisions pose any difficulty specifically in relation to health practitioner disciplinary matters.
67. I observe, in relation to [126] of Issues Paper 6, that at a level of abstraction, the members of the professions which are registered ultimately bear at least some measure of the funding costs of the regulators in that:
- (a) registered practitioners fund the Australian Health Practitioner Regulation Agency (AHPRA) and,²⁶ in respect of the Health Ombudsman performing its functions in relation to complaints about registered health practitioners in Queensland, the Health Ombudsman out of registration fees;²⁷ and
 - (b) professional indemnity premiums are doubtless set based on actual calculations consequent upon, in part, the legal costs incurred in funding registered health practitioners in bringing and responding to health practitioner disciplinary matters.
68. If the Review were to recommend that the Tribunal be constituted in accordance with the standard provisions of the QCAT Act to hear health practitioner disciplinary matters, this would align the health practitioner disciplinary list with other QCAT jurisdictions. In those circumstances in particular, it seems that it would be sensible for the ordinary provisions of the QCAT Act regarding costs to apply.

Consultation question 9

Q9 How should alternative dispute resolution, such as compulsory conferences, be utilised in health practitioner disciplinary matters?

²⁶ National Law s 26.

²⁷ National Law s 26A; see e.g., the 2025-2026 Health Profession Agreement for the medical profession online at <https://www.medicalboard.gov.au/News/Health-Profession-Agreements.aspx> (accessed 25 January 2026).

Alternative Dispute Resolution

69. The QCAT Act already confers a broad discretion to direct parties to compulsory conference. The Tribunal has established internal processes for determining when ADR is appropriate, including where:
- (a) there is a reasonable prospect of full or partial resolution;
 - (b) a conference would advance case management; and
 - (c) the respondent's personal circumstances mean that the obligations under ss 28-29 of the QCAT Act are better discharged in a conference setting.
70. The decision to convene a compulsory conference is properly a matter for the independent decision-maker. That power is used in the health list in cases as appropriate.
71. Parties may also utilise external ADR.
72. The QCAT Act, as presently drafted, adequately empowers the Tribunal to facilitate ADR appropriately in health practitioner disciplinary matters. Should the Review identify any specific legislative proposal in this topic, QCAT would be happy to provide feedback in respect of same. Beyond that, the question as to how ADR should be utilised in health practitioner matters is an operational matter for the Tribunal.

Consultation question 10

Q10 Are there any other issues with QCAT's health practitioner disciplinary jurisdiction you would like to tell the Review about? If so, how could those issues be addressed?

Other Matters

73. Consideration should be given to enacting a statutory non-publication provision that would prohibit the publication of the identity of or any information likely to reveal the identity of any patient of a health care practitioner who is a party to a disciplinary proceeding before the Tribunal. Information regarding the health and/or treatment of patients is properly regarded as either confidential information or as information whose publication would be contrary to the public interest.²⁸ The discretion to make a non-publication order is exercised in such cases, and such orders are commonly, if not invariably, made to protect patients' identities.²⁹ There are strong policy reasons for protecting patients' identities.
74. When a health practitioner disciplinary matter is filed in the Tribunal, it is almost invariably accompanied by or quickly followed by an application for a non-publication order protecting

²⁸ QCAT Act s 66(2)(d).

²⁹ *Ha v Nursing and Midwifery Board of Australia* [2021] QCAT 91 at [6].

the identity of a patient or patients. Under the current statutory framework, each application must be considered on its merits.

75. Interlocutory applications, including applications for non-publication orders, consume significant resources of the Tribunal's registry and judicial members who hear health practitioner disciplinary matters.
76. A statutory provision prohibiting the publication of the identity of any patient of a health care practitioner who is a party to a disciplinary proceeding before the Tribunal would conserve significant registry and Tribunal resources.

Consultation question 11

Q11 Should the health practitioner disciplinary jurisdiction remain in QCAT?

Forum

77. This is ultimately a policy question for the Government, however the Tribunal possesses a depth of experience and skill in occupational matters and is well placed to hear and determine health practitioner disciplinary matters.
78. Considerations which support the jurisdiction remaining at QCAT include:
 - (a) QCAT is well-equipped to determine disciplinary matters;
 - (b) removing the mandatory judicial member requirement will improve timeliness and efficiency;
 - (c) the Tribunal's members will, in any case, be determining reinstatement matters;
 - (d) comparable tribunals across Australia exercise this jurisdiction.

Consultation question 12

Q12 If not, which forum should hear and determine health practitioner disciplinary matters? For example:

- (a) the District Court (managed as a list), or
- (b) a specialised tribunal established within the District Court?

79. Considerations in the transfer of this jurisdiction away from QCAT would include:

- (a) ensuring consistency in the management of matters, given the commonly appearing regulators who are repeat litigants; and
- (b) giving the District Court sufficient flexibility to allocate the work, consistent with its other work;
- (c) providing additional District Court Judges to the District Court to facilitate the hearing and determination of the additional caseload;
- (d) providing additional registry support to the District Court registry to enable the registry to manage the matters. There is significant administrative work in this list because of matters including:
 - i. a number of self-represented litigants who engage heavily with registry personnel;
 - ii. the scheduling of assessors to sit;
 - iii. the provision of necessary materials to assessors in advance of the hearing of matters;
- (e) it would be manifestly inefficient if the health practitioner disciplinary matters were managed at QCAT but heard in the District Court. Reasons for this include:
 - i. that issues on health practitioner matters involving the registry would need to be interrogated by a District Court Judge unfamiliar with the Tribunal;
 - ii. that the Tribunal and the District Court do not use the same IT systems for file management or court hearings; and
 - iii. whoever at the Tribunal was charged with managing the matters would be unfamiliar with the District Court's practices and procedures.

80. Given these considerations, if the policy decision is to transfer the work from QCAT, the District Court (managed as a list) with necessary extra judges and registry support would be an appropriate alternative forum, however this is a matter for consultation with the Chief Judge. The need for a thoroughly and carefully considered assessment of the additional

resources that the District Court would need by way of additional judges, Registry staff and ancillary resources can't be understated.

Conclusion

81. The Tribunal supports targeted reforms to standardise and provide more flexibility in the constitution of the Tribunal and assessor requirements for health practitioner disciplinary matters, while retaining the jurisdiction within QCAT.
82. 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