

QCAT Act Review 2026 conducted by the Hon David Thomas

**Submission on mediation powers under the
*Queensland Civil and Administrative Tribunal
Act 2009***

*Clarifying the Tribunal's Power to Order Mediation by the QCAT
Mediation Panel*

09 July 2026

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Mediation powers under the *Queensland Civil and Administrative Tribunal Act 2009*

Introduction

1. This submission addresses two related questions about the *Queensland Civil and Administrative Tribunal Act 2009 (Qld)* ('the Act') and the operation of mediation under that Act:
 - Whether the Act as presently drafted provides the Tribunal with sufficient power to order a mediation to be conducted by a mediator drawn from the QCAT Mediation Panel, including where that order requires the parties to meet the mediator's fees; and
 - Whether amendments are necessary to section 79 of the Act to provide adequate recognition of the QCAT Mediation Panel¹ as a category of external mediators who may be appointed.
2. At present, mediations are conducted internally through the Compulsory Conference ('Coco') process and, to a much lesser extent, by the QCAT external mediators' panel.
3. When a mediation is conducted through a CoCo, QCAT funds it. The internal mediations have been highly effective, but require the allocation of resources to them, and therefore away from the process of decision making.
4. The recently established external Mediation Panel has great potential but has been under used. Part of the reason for that is uncertainty amongst QCAT decision makers about the content of QCAT's power to order mediation. QCAT's Mediation Panel comprises over 50 accredited mediators. The potential to improve QCAT's efficiency is significant. Some matters are more appropriate for external mediation than others, and that will be a matter for the discretion of the Member, but the important thing is to remove doubt about the power so that, in appropriate circumstances, it will be exercised.
5. The appropriate exercise of a power to order external mediation is consistent with the objects of the QCAT Act, because mediations promote the accessible, fair, just, economical, informal and quick resolution of disputes. In other jurisdictions, the introduction of effective processes of alternative dispute resolution have significantly reduced costs, improved efficiency, reduced wait times and, consequently, improved access to justice.
6. The proposed draft amendments are set out below.

¹ The QCAT Mediation Panel was established in August 2025: Queensland Civil and Administrative Tribunal, *Practice Direction No 8 of 2025: QCAT Panel Mediations*, 25 August 2025.

The Current Mediation Framework

Referral power – section 75

7. The primary mediation referral power is conferred by section 75 of the Act, which provides:

75 Referral by tribunal or principal registrar

- (1) *The tribunal or the principal registrar may refer the subject matter, or a part of the subject matter, of a proceeding for mediation by a mediator appointed by the tribunal or principal registrar.*
- (2) *A referral under subsection (1) may be made with or without the consent of the parties to the proceeding.*
- (3) *The principal registrar must give each party to the proceeding written notice of the referral for mediation as stated in the rules.*
- (4) *If the tribunal or principal registrar decides to refer the subject matter or part for mediation by a mediator under the Dispute Resolution Centres Act 1990, it is sufficient if the tribunal or principal registrar appoints the director of a specified dispute resolution centre as mediator.*

8. Section 75 confers a broad, compulsory referral power. A referral can be made regardless of whether the parties consent. On its face, the power is not limited to free or in-house mediation - there is no express requirement that the mediator be a QCAT employee or that the mediation be conducted without charge to the parties.
9. Section 75(4) makes specific provision for referral to a mediator under the *Dispute Resolution Centres Act 1990* (Qld) ('DRC Act'). That specific reference is necessary because DRC mediators are government employees providing a free service administered under that separate Act. Its presence does not imply that the only external mediators contemplated by section 75 are DRC mediators.

Who may be a mediator – section 79

10. Section 79 limits who may act as a mediator in a QCAT proceeding:

79 Who may be a mediator

- (1) *A person may be a mediator for a proceeding only if the person is-*
 - (a) *a member; or*
 - (b) *an adjudicator; or*
 - (c) *the principal registrar; or*
 - (d) *a mediator under the Dispute Resolution Centres Act 1990; or*
 - (e) *a person, including, for example, a registrar or registry staff member, approved by the principal registrar as a mediator for the tribunal.*
 - (f) *The principal registrar may approve a person as a mediator for the*

tribunal only if the principal registrar is satisfied, having regard to the person's qualifications and experience, the person is a suitable person to conduct mediation.

11. Members of the QCAT Mediation Panel are individually approved by the Principal Registrar and therefore fall within section 79(1)(e) as "approved" persons. The Panel currently comprises approximately 50 experienced practitioners, including Senior Counsel and specialist barristers, across practice areas including building disputes, body corporate matters, retirement village and manufactured home disputes, retail shop leases, anti-discrimination, motor vehicle consumer complaints, elder law, and neighbourhood disputes.

Other relevant provisions

12. Sections 76 to 83 of the Act deal with attendance directions (s 76), the purpose of mediation (s 77), procedure (s 78), disclosure of interests (s 80), restrictions on Members or Adjudicators who have conducted mediation from later constituting the Tribunal for the same proceeding (s 81), notification of outcome (s 82), and the inadmissibility of mediation communications (s 83). None of these provisions address mediator fees or the allocation of the costs of mediation between the parties.
13. Section 100 states the default costs rule: each party bears its own costs for the proceeding. That provision was designed to deal with legal costs incurred by the parties themselves; it does not address fees payable to an independently retained mediator, and it confers no power to apportion such fees. There is no other provision of the Act that deals with mediator remuneration.

The Problem: Ambiguity Regarding Paid External Mediation

Does section 75 authorise an order that parties pay mediator fees?

14. The key ambiguity in the current Act is this: while section 75 empowers the Tribunal to compulsorily refer a matter to mediation, the Act is entirely silent as to what happens when the mediator appointed is a private practitioner who charges fees. The Act does not:
 - expressly authorise the Tribunal to require the parties to enter into a fee arrangement with an external mediator;
 - specify how the mediator's fees are to be apportioned between the parties;
 - confer on the Tribunal any power to order one party to bear the whole or a proportion of the mediator's fees; or
 - empower the Principal Registrar or the Tribunal to fix or approve the mediator's rates.

15. A party ordered to attend a QCAT Mediation Panel mediation may therefore argue that the Tribunal has no statutory authority to compel them to incur the expense of a private mediator's fees. QCAT can make an order that it mediate a matter, without its consent, but if one, or another party refuses because it is required to pay a fee, there is a stalemate. There is a sensible argument to that effect and, that being so, the ambiguity needs to be removed. Legislative clarification is therefore necessary as a matter of practical importance to the Tribunal's ability to use the panel effectively.

Is section 79 adequate for the QCAT Mediation Panel?

16. Section 79(1)(e) is technically broad enough to accommodate the QCAT Mediation Panel: panel members are individually approved by the Principal Registrar, satisfying the statutory requirement. In that limited sense, no amendment is strictly necessary as a precondition to panel mediators conducting QCAT mediations.

17. However, the current drafting has two significant shortcomings:

First, section 79(1)(e) is directed at individual approvals. It does not recognise a "panel" as an institution and confers no express power on the Principal Registrar to establish a panel or administer a panel appointment process. The QCAT Mediation Panel presently operates by administrative practice without explicit statutory authority. A challenge to the validity of a panel appointment - or to the panel process itself - cannot be answered by reference to any provision of the Act.

Secondly, the absence of any express reference to the Panel means there is no statutory mechanism for matters specific to external paid mediators: the terms of engagement, the procedure for selection from the panel, and the consequences of non-payment of fees. By contrast, the DRC Act mediator is addressed specifically in section 75(4) because the DRC Act provides the necessary surrounding legislative framework. No equivalent framework exists for the QCAT Mediation Panel.

18. Accordingly, while section 79 does not need to be amended as a strict precondition to panel operation, amendments expressly recognising the panel and the Principal Registrar's power to establish it would provide a secure statutory foundation and eliminate current uncertainty.

Instructive Comparisons with Other Jurisdictions

19. A survey of the mediation provisions in the enabling legislation of the other Australian civil and administrative tribunals, together with comparable court-based regimes, illuminates both the nature of the problem and the type of amendment that would be appropriate.

Other approaches

20. The mediation regimes established by the enabling Acts of the other Australian civil and administrative tribunals share several features with the QCAT Act but diverge in important respects, particularly in the treatment of mediator fees.

Victorian Civil and Administrative Tribunal Act 1998 (Vic) - VCAT, section 88

21. VCAT's mediation provision is the most directly instructive for present purposes. Section 88 of the *Victorian Civil and Administrative Tribunal Act 1998* (Vic) expressly addresses the issue that is absent from the QCAT Act. It provides that the Tribunal or Principal Registrar may refer a proceeding for mediation with or without the consent of the parties (ss 88(1)-(2)), and then in section 88(4) states: 'A party must pay the prescribed fee (if any) for mediation, whether or not the party consented to the referral for mediation.' Section 88(5) goes further: 'The Tribunal may refuse to continue with a proceeding if a fee payable for mediation has not been paid.' These provisions give VCAT both clear authority to require payment and a coercive mechanism to enforce that obligation.
22. Notably, section 88 does not impose a separate prior approval requirement for the mediator: the Tribunal nominates the person, and the procedure is otherwise at the mediator's discretion subject to the rules (s 88(7)). This is the model which most directly addresses the gap in the QCAT Act, and it supports the approach proposed in section 5 below.

South Australian Civil and Administrative Tribunal Act 2013 (SA) - SACAT, section 51

23. Section 51 of the *South Australian Civil and Administrative Tribunal Act 2013* (SA) empowers SACAT to refer a matter for mediation with or without the consent of the parties (ss 51(1), (3)). The mediator must be a person approved by the President of the Tribunal (s 51(2)), a requirement equivalent to QCAT's section 79(1)(e) but with the approval function vested in the President rather than the Principal Registrar. Section 51(5) provides that 'the rules may specify ... the fees to be paid by a party to the mediation.' The fee question is thus delegated to subordinate legislation, rather than addressed on the face of the Act. This approach is workable but less direct than the VCAT model: the power to require payment depends on whether rules have been made, and the Act itself does not expressly confirm the obligation to pay. Section 51 is otherwise comprehensive, addressing inadmissibility (s 51(11)), the mediator-member bar (s 51(12)), and the power to make settlement orders (s 51(8)).
24. The following table summarises the key mediation provisions across the Australian civil and administrative tribunals:

Jurisdiction	Referral without consent	Mediator approval	Fees provision
QCAT (Qld) QCAT Act 2009, s 75	Yes (s 75(2))	Principal registrar (s 79(1)(e))	None - complete silence
VCAT (Vic) VCAT Act 1998, s 88	Yes (s 88(2))	Tribunal nominates (no separate requirement)	Express: party must pay; tribunal may refuse to continue if unpaid (ss 88(4)-(5))
SACAT (SA) SACAT Act 2013, s 51	Yes (s 51(3))	President approval (s 51(2))	Delegated to rules (s 51(5))

Jurisdiction	Referral without consent	Mediator approval	Fees provision
SAT (WA) SAT Act 2004, s 54	Yes (s 54(3))	President approval (s 54(2))	Delegated to rules (s 54(5))
NCAT(NSW) CAT Act 2013, s 37	Yes (broad resolution process power)	President's List (administrative)	Not addressed in Act
ACAT (ACT) ACAT Act 2008, s 35	Suitability test applies	National accreditation register	Via Court Procedures Act 2004, Pt 5A
NTCAT (NT) NTCAT Act 2014, ss 117-118	Yes (s 118(2))	President may maintain list (s 117)	Delegated to rules (s 118(3))

25. The table confirms that the QCAT Act is the only enabling Act among the Australian civil and administrative tribunals that makes no provision whatsoever for mediator fees - not even by delegation to rules. Every other jurisdiction has addressed the issue at some level of particularity. VCAT provides the most complete statutory answer; the South Australian Civil and Administrative Tribunal ('SACAT'), State Administrative Tribunal (WA) ('SAT'), and Northern Territory Civil and Administrative Tribunal ('NTCAT') delegate to rules; NCAT relies on administrative practice; and the ACT Civil and Administrative Tribunal ('ACAT') imports an external framework by cross-reference. The QCAT Act's complete silence is an anomaly that warrants correction.

Court-based comparison

26. The approach taken in comparable court legislation provides further context for the type of amendment that would be appropriate.
27. The *Federal Court of Australia Act 1976* (Cth), section 53A - The Federal Court may refer a proceeding to mediation with or without the parties' consent. Where the mediation is by a mediator other than a Registrar, the court may make orders as to the payment of the mediator's fees and expenses. This model expressly contemplates both the appointment of external paid mediators and a judicial power to deal with their fees.
28. The *Civil Procedure Act 2005 (NSW)*, sections 26-27 - The court may order mediation by a mediator agreed by the parties or appointed by the court, and may make orders about the costs of mediation, including who bears the mediator's fees. The Act distinguishes between court registrar-conducted mediation (free) and accredited external mediators (fees the court may apportion).
29. The *Uniform Civil Procedure Rules 1999 (Qld)*, Rule 323 expressly empowers the Supreme Court to make orders about mediator remuneration when referring a matter to an external mediator, and provide in rule 351 that such costs are costs in the proceeding unless the court otherwise orders.

30. The court-based regimes reinforce the conclusion drawn from the tribunal comparison: a legislative power to refer to mediation is incomplete without an express or delegated power to deal with the mediator's fees. The QCAT Act stands alone in providing neither.

Proposed amendments

Amendment to section 75 - power to order payment of mediator fees

31. Section 75 should be amended by inserting new subsections (4A) and (4B) after the existing subsection (3) and renumbering the existing subsection (4) as subsection (5).
32. The following draft amendment is proposed:

Section 75 - Referral by tribunal or principal registrar

[Existing subsections (1)-(3) unchanged]

After section 75(3), insert:

(4A) If the tribunal or principal registrar refers a matter for mediation by a mediator who is a member of the QCAT Mediation Panel or is otherwise a person approved by the principal registrar under section 79(1)(e) or (f), the tribunal or principal registrar may, as part of or in connection with the referral, direct-

(a) that the parties to the proceeding are jointly and severally liable to pay the mediator's fees and expenses as agreed between the mediator and the parties or, failing agreement, as assessed by the principal registrar having regard to the mediator's scheduled rates; and

(b) the proportions in which the parties are to bear those fees and expenses as between themselves.

(4B) A direction under subsection (4A)(b) does not affect the joint and several liability of the parties to the mediator under subsection (4A)(a).

[Existing subsection (4) renumbered as subsection (5)].

33. The effect of proposed subsection (4A) is to confirm:
- (i) that the Tribunal can order parties to pay an external panel mediator;
 - (ii) that the starting-point for fees is the agreed rate, failing which the Principal Registrar may assess; and
 - (iii) that the tribunal may allocate the fees between the parties (for example, equally, or on an unequal basis if the circumstances warrant). Subsection (4B) preserves the mediator's right to recover against any party regardless of how the Tribunal has divided liability inter partes.

Amendment to section 79 - recognition of the QCAT Mediation Panel

34. Section 79 should be amended to expressly recognise the QCAT Mediation Panel and to confirm the Principal Registrar's power to establish and maintain it.

35. The following draft amendment is proposed:

Section 79 - Who may be a mediator

Omit section 79(1)(e), substitute:

- (e) a member of the QCAT Mediation Panel established under subsection (3); or*
- (f) a person, including, for example, a registrar or registry staff member, approved by the principal registrar as a mediator for the tribunal.*

[Section 79(2) unchanged].

After section 79(2), insert:

- (3) The principal registrar may establish and maintain a panel of persons to be known as the QCAT Mediation Panel.*
- (4) A person is eligible for appointment to the QCAT Mediation Panel only if the principal registrar is satisfied, having regard to the person's qualifications and experience, that the person is suitable to conduct mediation of the types of proceedings that may be referred under section 75.*
- (5) A member of the QCAT Mediation Panel may be appointed as mediator for a proceeding by the tribunal or the principal registrar under section 75(1).*

36. The proposed amendment preserves the existing catch-all category (now paragraph (f)) while carving out QCAT Mediation Panel members as a distinct and expressly recognised category (paragraph (e)). The new subsections (3)-(5) give the Principal Registrar a clear statutory mandate to establish the panel, set eligibility criteria, and appoint members to mediate specific proceedings.

Consequential consideration - section 80 (disclosure of interests)

37. Section 80 requires a mediator who has a conflicting interest to disclose it to the President. That provision was plainly designed with in-house mediators (Members and Adjudicators) in mind: the President has authority over those persons. For external panel mediators, disclosure to the President remains appropriate, but consideration should be given to also specifying the Principal Registrar as a disclosure recipient, given that panel members are approved by and accountable to the Principal Registrar rather than the President. This amendment is desirable but not strictly essential.

Summary of Proposed Amendments

38. The table below represents a summary of the proposed amendments:

Provision	Current Position	Proposed Amendment
s 75(4A)-(48) (new)	No provision for mediator fees on referral to external mediator; parties may dispute obligation to pay.	Express power for Tribunal/Principal Registrar to direct parties to pay panel mediator fees and to apportion liability between them; joint and several liability to mediator preserved.
s 79(1)(e) (amended)	Panel mediators accommodated only as "approved persons"; no institutional recognition of the panel.	New paragraph (e) expressly refers to members of the QCAT Mediation Panel; existing catch-all becomes new paragraph (f).
s 79(3)-(5) (new)	No express statutory power to establish the QCAT Mediation Panel.	Principal Registrar expressly empowered to establish and maintain the panel; eligibility criteria codified; appointment mechanism for individual proceedings confirmed.
s 80 (consider)	Disclosure of conflicts to President only; suited primarily to in-house mediators.	Consider adding the Principal Registrar as a disclosure recipient for external panel mediators.

Conclusion

39. The QCAT Act already empowers the Tribunal to refer proceedings to mediation without the parties' consent (s 75(2)). Members of the QCAT Mediation Panel are authorised to conduct such mediations as persons approved by the Principal Registrar (s 79(1)(e)). In that narrow sense, the Act already supports the ordering of panel mediation.
40. However, the Act is wholly silent on mediator fees. That silence means a party ordered to attend panel mediation may resist payment, and means the Tribunal lacks clear authority to compel or apportion payment. The proposed amendment to section 75 to insert subsections (4A) and (4B) is therefore the most important reform identified in this submission. It removes the ambiguity, aligns the QCAT regime with that of the Federal Court and the NSW Supreme Court, and enables the Tribunal to use the panel with confidence.
41. The proposed amendments to section 79 are desirable but not strictly essential. The QCAT Mediation Panel presently operates by administrative practice without explicit statutory authority. The proposed new subsections 79(3)-(5) would give the panel a firm legislative foundation, confirm the Principal Registrar's power to establish and administer it, and provide a clear basis for appointment of individual panel members to specific proceedings.
42. Taken together, the proposed amendments would: confirm the Tribunal's power to compel attendance at and payment for panel mediation; provide a secure statutory basis for the panel's ongoing operation; and align the QCAT Act with comparable legislative regimes in other Australian jurisdictions.