

QCAT 2026 Review conducted by the Hon David Thomas

Submission by QCAT President in respect of Issues
paper 8: Tenancy and Community Living Disputes

17 April 2026

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Issues Paper 8: Tenancy and community living disputes

Introduction to response

1. I observe that many of the issues raised, 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 (the Hon David Thomas) 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.

¹ *Queensland Civil and Administrative Tribunal Act* ('**QCAT Act**') s 172(3)(b). See also QCAT Act s 240(2)(d) 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).

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:
 - the QCAT Act to change its objects if its currently stated objects do not remain valid; and/or
 - the QCAT Act or an enabling Act or Acts to assist QCAT to be able to meet, or better meet, its objects. This may include changes that give QCAT the ability to enhance operational efficiency, such as removing legislative hurdles to that 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:
 - section 3(a) of the QCAT Act states that one of the objects is to establish an independent Tribunal;
 - 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;
 - Section 172(5) provides that the President is not subject to the direction or control of 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.

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

13. The issues set out in the Terms of Reference turn on provisions of the Act and are consistent with an examination of whether legislative reform is called for:

- whether the current legislation creates hurdles to procedural efficiency within the Tribunal;
- QCAT senior leadership structure (set out in Chapter 4, Part 3 of the QCAT Act), with comparison to tribunals in other states and the Commonwealth (including whether the President and Deputy President should be appointed to the Supreme and District Courts, and including Heads of Division);
- the role and functions of the QCAT President and Deputy President (sections 172 to 174 of the QCAT Act);
- the current appeal structure for QCAT decisions (Chapter 2, Part 1, Division 4 of the 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); and
- 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 s 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 s 240 of the QCAT Act.
 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

⁴ Pursuant to QCAT Act s 172(5). 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.

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.

High-level overview of my views in respect of the themes advanced in Issues Paper 8

20. Many of the issues identified, particularly those relating to delay, triaging, vulnerability, safety, accessibility, and case management, primarily raise operational and resourcing issues, rather than deficiencies in the existing statutory framework. As the Reviewer will recall from his time as President, under resourcing of QCAT is the cause of a great deal of problems.
21. QCAT already has broad powers to manage proceedings flexibly and fairly across social housing, community living, and retail tenancy jurisdictions. The Tribunal is generally able, within its current legislative framework, and subject to resource constraints, to prioritise urgent matters, accommodate vulnerable parties, manage safety concerns, and make use of appropriate dispute resolution processes. Where pressures arise, they are more often attributable to increased caseloads, complexity of disputes, and resource constraints.
22. I respectfully caution against prescriptive legislative intervention in areas such as triaging, case management, listing priority, hearing format, and the use of ADR. These matters have traditionally, and appropriately, fallen within the Tribunal’s responsibility to control its own processes. Formalising such matters by statute risks reducing flexibility, diverting resources, and potentially exacerbating delays.
23. Questions about who should perform triaging or assess urgency turn, in substance, on whether those tasks involve administrative screening or substantive legal judgment. Where triaging requires assessing jurisdictional issues, risk, or the consequences of delay for the parties, those functions are generally best exercised by judicial officers rather than by registry staff.
24. Across the jurisdictions considered, I stress the importance of jurisdictional coherence and institutional expertise. Fragmenting related tenancy or community living jurisdictions, or retaining discrete sub-jurisdictions in isolation, would risk inefficiency, inconsistency, and deskilling, without any corresponding benefit. I note some general criticisms across a number of different areas. In the absence of specific details or examples, it is not possible to interrogate the assertions in any meaningful way or provide a meaningful response beyond observing that it is difficult to achieve specialisation in a Tribunal where the established cohort of in-house Members and

Adjudicators is low when one takes into account the breadth of matters QCAT needs to deal with. Specialisation is achieved to the extent possible within the current establishment framework and legislative framework. Creating a third presidential layer, with heads of division, is likely to assist in many areas.

25. Improvements in accessibility, support for vulnerable parties, and dispute resolution outcomes are more likely to be achieved through operational measures, including digitisation, targeted use of compulsory conferences, improved litigant education, and adequate funding of registry and decision-making functions, rather than through amendments to the QCAT Act or enabling legislation.
26. Some targeted legislative changes, for example, clarifying how parties may engage the jurisdiction of the Tribunal in retail tenancy matters and granting the Tribunal the power to waive pre-proceeding mediation requirements in manufactured homes and retirement village disputes, may assist the Tribunal in seeking to achieve its statutory objects.
27. QCAT would be happy to provide feedback on any draft legislative proposal for reform in the event the Review or Government proceeds to that point.

Issues

Part 1 – Social housing

Q1: Should urgent social housing tenancy matters be triaged for priority listing?

28. This question is asked in Question 11 of Issues Paper 3 (MCDs). Please see my response to Issues Paper 3 in respect of same.
29. The Issues Paper states that 'QCAT does not actively case manage minor civil disputes and does minimal triaging' and that this 'can contribute to delays'.⁵ It is not clear what delay the Issues Paper is referring to here. While QCAT is not currently resourced to undertake formal triaging and case management of minor civil disputes ('MCDs'), tenancy matters, including social housing matters are in fact triaged. As such, social housing matters are not subject to delays as a consequence of what is suggested in the Issues Paper.
30. When an application relating to a residential tenancies matter, including an application related to a social housing matter, is received by the registry, the registry will:

⁵ The Honourable David Thomas, 'Tenancy and community living disputes' (Issues Paper 8, Queensland Civil and Administrative Tribunal Act Statutory Review 2025–26, February 2026) at [45].

- review the application
 - identify whether the filing fee has been paid;
 - identify whether the application is 'urgent';⁶
 - list the application for final hearing;
 - only if a defect in the application is identified or there is an interlocutory application to be determined that has accompanied the tenancy application, prepare a memorandum to the Tribunal;
 - refer the file to an Adjudicator or the Senior Member list manager (collectively, the Tribunal).
31. When the Registry receives an application for interim or interlocutory relief (such as applications for a stay), Registry Officers refer those applications to the Tribunal as soon as possible.
 32. The Tribunal will then review the matter and, having regard to its urgency, make directions and list the matter for hearing. It is at this stage that priority can be given to more urgent applications, such as applications to terminate a tenancy where a tenant has engaged in illegal or dangerous behaviour. In practice, urgent social housing matters are typically listed and heard within approximately five to six weeks, and matters involving allegations of violence, dangerous conduct, or serious risk to neighbours are prioritised and listed more quickly than that.
 33. Ultimately, how the Tribunal triages and gives priority to particular applications or types of applications is an operational matter for the Tribunal.
 34. To the extent that the Review may be considering whether changes to the QCAT Act or the *Residential Tenancies and Rooming Accommodation Act 2009* (Qld) ('RTRA Act') are desirable to formalise a triaging process, it is likely that such changes will be undesirable, with the prospect of leading to inadvertent consequences.
 35. Introducing an additional, formalised triage layer for urgent tenancy applications may not improve timeliness and may, in fact, risk delays in other jurisdictions unless accompanied by substantial additional resourcing. Any triaging system capable of meaningfully differentiating between types of urgent tenancy matters would require appropriately experienced and qualified registry officers or Adjudicators to assess applications on receipt. This would be resource-intensive. If Adjudicators were legislatively required to undertake a more formal triaging process, it would divert them from hearing matters, thereby increasing, rather than reducing, overall delay.

⁶ As defined in *Residential Tenancies and Rooming Accommodation Act 2009* (Qld) s 415 – 'urgent' tenancy matters are, for the most part, those involving termination of the tenancy by lessor or tenant and those involving emergency repairs.

36. On the other hand, fully resourcing QCAT to triage across the board in MCD's is extremely desirable.
37. I note that paragraph 43 of the Issues Paper says that in relation to social housing matters, *"the Review has also heard that appeals can contribute significantly to these delays, sometimes taking up to 18 months to finalise"*. As stated above, typically, an urgent tenancy application will be heard within five to six weeks. As the bulk of urgent tenancy applications are for tenancy terminations, an application for leave to appeal and to appeal these decisions is almost always accompanied by an application to stay the decision, because without it, the execution of a warrant of possession in the intervening period would render the appeal process nugatory. Many appeals of decisions terminating a tenancy have been found to lack merit because they do not rely on an error in the termination decision or defect in process, but rather, repeat arguments made at first instance, or seek an extension of time before the warrant takes effect. Where an application for leave to appeal lacks merit, an application to stay is often refused, and the application for leave to appeal is often withdrawn or dismissed once the warrant has taken effect. It is my understanding that appeals do not ordinarily take something in the order of 18 months.
38. In the absence of the Review providing specific examples of an urgent residential tenancy matter taking 18 months to finalise, I cannot interrogate the assertion more specifically. I can say that where the appeal is from a decision of a Magistrate, the appeal ordinarily takes longer than when the appeal is from an Adjudicator. This is because appeals from decisions of Magistrates must, as a matter of statute, be heard and determined by a Judicial Member, and QCAT does not have sufficient Judicial Members to hear and determine these appeals in a timely manner.
39. The anecdotal observation of some Members is that urgent applications make up a larger proportion of social housing matters than they do private residential tenancy matters.
40. The Tribunal is undergoing a process of expanding its existing digitisation of minor civil dispute matters to all of its civil lists (including appeals of minor civil disputes). This is addressed in my response to Issues Paper 3. With respect to appeals of minor civil disputes, it is anticipated that, operationally, this process will improve delays, some of which are attributable to physical files being physically moved around QCAT's office and manually tracked. The effect of digitisation is that tasks can be sent to Members instantly. It turns a process involving several individual staff and several hours into one that can involve one staff member, one Tribunal Member, and only a few minutes. Minor civil disputes, including social housing matters, have already been digitised.
41. Paragraph 43 of the Issues Paper also says that the Review has heard concerns that the Department's new 'Antisocial Behaviour Policy' may increase the number of applications made by the Department to terminate social housing tenancies and lead to further delays.' As a matter of logic, if the Tribunal's resources remain constant, introducing policies that increase applications to the Tribunal will lead to delays.

42. If the anticipated effect of the new Antisocial Behaviour Policy is an increase in applications to the Tribunal, as for any legislative or policy change which is likely to result in additional matters coming before the Tribunal, the implementation of the policy should be accompanied by an increase in resources for the Tribunal. This was the case with respect to the 'rental reforms' introduced by the previous Government: there was consultation with QCAT as to the extent to which QCAT might be impacted by additional work, and an analysis of additional resources needed to shoulder the burden (including additional Registry resources, an additional Senior Member and additional Adjudicators). Absent that analysis and resource allocation, QCAT would be in a worse position. It is a good example of how important it is to identify potential increases in QCAT's workload and to conduct a realistic and proper analysis of the additional resources needed to accommodate that increase.
43. The Tribunal, which is already resource-strained, cannot be expected to absorb a larger caseload from any new legislation or policy that increases its workload. It certainly cannot do without delays and other problems.

Q2: Who should conduct triaging of social housing matters: Adjudicators or registry staff?

44. This question is asked in Question 12 of Issues Paper 3 and I have responded to it in my submissions in response to it. As I expressed in response to Question 1, it is not correct to say that triaging does not occur in respect of social housing matters. It does. Further, triaging and case management are operational matters for the Tribunal. However, if the Review is considering legislative reform to prescribe triaging in residential tenancy or social housing matters, the answer to this question will depend on what exactly is meant by 'triaging'. There is a substantial difference between an exercise in 'box ticking' to ensure that basic procedures have been complied with and making a substantive assessment about jurisdictional issues or the extent to which the parties' positions and interests may be affected by the passage of time while the proceeding is on foot.
45. If triaging means assessments about jurisdictional issues and the urgency of listing matters and consequential assignment of priority, in my view, such matters are more properly determined by the Tribunal. Those obligations would need to be accompanied by an increase in resources to meet those obligations.
46. Making assessments about jurisdictional issues requires the application of legal skill and knowledge. Assessments about the urgency of matters and consequential assignment of priority are matters that have traditionally fallen within the implied power

of inferior Courts and Tribunals to control their own processes.⁷ While those implied powers are ultimately subject to overriding legislative provisions governing practice and procedure,⁸ the responsibility to ensure that proceedings are conducted fairly should necessarily remain with the Tribunal's judicial or quasi-judicial decision-makers. It follows in my view that decision-makers who constitute the Tribunal for minor civil disputes are best placed to determine, as a matter of fairness to parties and in the interests of justice, which matters should be prioritised.

47. Unlike some other adjudicative bodies, QCAT does not employ judicial registrars. My understanding is that when the framework for QCAT was developed, the concept of the then-existing judicial registrars in the Magistrates Courts was replaced by the concept of Adjudicators.⁹ In responses to other issues papers, I have mooted the introduction of Judicial Registrars/legally qualified Registrars. This is not to perform the role of Adjudicators, but to be vested with the power to consider some matters which would traditionally fall to Adjudicators or Members, for example, some applications for leave to be represented.
48. There are a variety of functions that judicial/legally qualified Registrars could very helpfully perform if they were introduced at QCAT. QCAT's registry staff work diligently to support the Tribunal, and I very much appreciate the effort they put in daily. However, it is important to recognise that few Registry Officers are legally trained, and among those who are, even fewer have practised law. There is certainly room for the introduction of Judicial/legally qualified Registrars to perform high-end work within the registry, including that which requires the application of legal skill and judgement.
49. For the time being, however, decisions which require the application of legal skill and knowledge should be the remit of Tribunal decision-makers and the Principal Registrar. Given the size of the Principal Registrar's job, i.e., the Principal Registrar does not have any time at all to be triaging matters, the practical reality is that this type of work falls to Adjudicators and Members.

⁷ *Nicholas v The Queen* [1998] HCA 9; (1998) 193 CLR 173, 188 [23] (Brennan CJ).

⁸ *Nicholas v The Queen* [1998] HCA 9; (1998) 193 CLR 173, 188 [23] (Brennan CJ).

⁹ Tribunals Review Independent Panel of Experts, *Queensland Civil and Administrative Tribunal: Stage 3 report*, Report (October 2009) 8; The Honourable David Thomas, 'Minor civil disputes', Issues Paper 3, Queensland Civil and Administrative Tribunal Act Statutory Review 2025–26 (November 2025) 14.

Q3: Should additional measures be introduced to protect the safety of government staff in social housing proceedings?

50. I acknowledge the Department's responsibility to protect the safety and well-being of its staff. As to whether additional measures should be introduced to protect the safety of the Department's staff, in the absence of concrete legislative proposals, this question is difficult to engage with meaningfully.
51. It seems likely that staff safety issues are not unique to government. Private real estate agencies frequently prosecute proceedings in the Tribunal on behalf of their clients. Private real estate agencies, like government, have a responsibility to protect their staff from workplace hazards.
52. As I have submitted in response to questions in various issues papers, including questions 7 and 8 in Issues Paper 1, whether hearings are conducted remotely or in person is an operational matter for the Tribunal and should be left to the presiding Member or Adjudicator to decide. A variety of factors, including safety and security, should inform that decision. A party that needs a remote hearing for any reason, including safety and security reasons, may apply to the Tribunal for the hearing to be conducted remotely.
53. Paragraph 53 of the Issues Paper provides that "*the Review has heard that non-publication orders are only granted in exceptional circumstances*". The source of this statement is unclear and does not reflect the true situation. Applications for a non-publication order are decided by the Tribunal according to s 66 of the QCAT Act. Each application is decided on its merits. There is no requirement in s 66 of the QCAT Act or otherwise for exceptional circumstances to be demonstrated before the Tribunal can make a non-publication order. The power to make a non-publication can be exercised whenever the statutory test is met.
54. I note that the Office of the Information Commissioner considers that the names of employees of Government Departments are, in the context of the *Right to Information Act 2009* (Qld), 'routine work information' and 'accountability and transparency factors generally favour disclosure of public sector employees' routine work information'.¹⁰ The Tribunal frequently receives statements of evidence in applications for termination orders from the Department. Those statements of evidence reveal that the staff Members involved in Tribunal proceedings are often the same who interact with tenants before an application for a termination order is filed. In the circumstances, it seems unlikely that being identified by name in Tribunal proceedings is the only way a tenant may learn the identity of a Department staff member. Put another way, it may be

¹⁰ *Kelson and Queensland Police Service* [2017] QICmr 7 [41].

that not being identified by name in Tribunal proceedings may not remedy the mischief being spoken of.

55. Any proposed legislative amendment which results in the deidentification of witnesses, and/or redaction of material needs to be considered against the need to ensure that procedural fairness is given. Any proposal would need to consider whether the tenant will be unfairly prejudiced – for example, prevented from properly testing or making a submission about the weight that should be given to matters contained within a statement of evidence by an unidentified individual. That is, care would need to be taken as to how to protect the safety of individuals while not abrogating procedural fairness.
56. Paragraph 54 of the Issues Paper says that safety can also be compromised when a staff member's name is mistakenly entered as the party name, rather than the Department. This appears to be a matter of how the form is being completed, rather than a system error. It does not reveal an issue that can be resolved by a statutory amendment, but perhaps does speak to the need for additional training within the Department. Should the Department have any suggestions as to the information it would like to see available on QCAT's website concerning processes, including how to complete Forms, QCAT would be very happy to receive such suggestions by email to the Principal Registrar and/or the President.
57. If the Department or the Review identifies a specific legislative proposal, QCAT would welcome the opportunity to comment on the proposal at that time.

Q4: If safety measures are required, what specific protections should be implemented?

58. As noted in response to Question 3, QCAT would be happy to provide feedback on any suggested legislative amendment. For the time being, it is noted that the concerns raised by the Department largely relate to operational matters, not deficiencies in the QCAT Act or enabling legislation. The Department, like any litigant concerned about safety, can make an application to the Tribunal in any given matter for the mode or method of hearing and/or non-publication order that it considers necessary to protect its staff. Again, QCAT would welcome any specific suggestions the Department has in respect of operational matters by writing, as a stakeholder, to the Principal Registrar and/or President. QCAT welcomes stakeholder suggestions, particularly those which specifically identify the mischief sought to be addressed by operational measures. QCAT also welcomes specific suggestions as to how to address the mischief and those which include, where possible, specific suggestions.

Q5: If MCDs move to the Magistrates Courts, should QCAT retain jurisdiction over social housing disputes?

59. The answer to this question depends largely on the broader policy decision about the future of the MCD jurisdiction. See my response to Issues Paper 3 in that respect.
60. If the residential tenancy jurisdiction were transferred to the Magistrates Courts, it would be less than ideal for QCAT to retain only social housing tenancy disputes. Adjudicators sitting in the Tribunal's MCD jurisdiction currently hear both private and social housing matters, and the volume of social housing disputes is comparatively small. Retaining only social housing matters would risk deskilling decision makers and fragmenting what is presently a unified tenancy jurisdiction. As noted at paragraph 70 of Issues Paper 8, *"Stakeholders have reported confidence in the expertise of Adjudicators in hearing both private tenancy disputes and social housing tenancy disputes."*
61. Paragraph 66 of the Issues Paper states that the Review heard that social housing decisions take longer to be heard and decided than private residential tenancy matters. I am not aware of the source of that information provided to the Review or the basis upon which that information was provided. It is difficult to respond to these very general statements in the absence of underpinning information. In any event, feedback from Adjudicators and Members suggests this does not reflect their experience. Urgent social housing matters, particularly those involving violence or objectionable behaviour, are listed and heard promptly, typically within five to six weeks, and some within a shorter time frame. Even if there were differences in time to finalisation between private tenancy matters and social housing matters, it is difficult to see how that alone might be sufficient to justify splitting the jurisdiction. A more practical means of 'hurrying up' specific types of matters is to provide project-specific funding and resources, which can (subject to the availability of hearing facilities) result in earlier times to finalisation.
62. I have received the following suggestion from a Member as to an alternative approach: if the Review concludes that social housing matters should be treated differently from private residential tenancies, a preferable approach to splitting the housing jurisdiction between QCAT and the Magistrates Court, would be to remove social housing matters from the RTRA Act altogether and confer them as an administrative review jurisdiction. This would align the jurisdiction with the nature of the underlying decision-making, which is more governmental than commercial, and would avoid treating social housing decisions as private contractual disputes subject to the statutory consumer protection regime in the RTRA Act. This reflects the Tribunal's experience that many social housing disputes arise from departmental decisions about eligibility and conduct

management, matters that sit more naturally within a review framework. Any such review jurisdiction must be adequately resourced so that reviews and appeals arising from them can be dealt with on an urgent basis.

63. The suggestion that 'QCAT adjudicators might transition to hear those matters as Judicial Registrars in that court or tribunal' warrants further examination. It appears to assume that Adjudicators would want to 'transition' to judicial registrars in the Magistrates Court. Some may. Some may not. Particularly if they do not want to perform the general roles and functions of a judicial registrar. Some may not be eligible for appointment.
64. Section 53(3) of the *Magistrates Act 1991* (Qld) provides that a person can be appointed as a Judicial Registrar only if they are qualified to be appointed to act as a Magistrate under section 6(1). Relevantly, that includes a person eligible for appointment as a Magistrate.¹¹ A person is eligible for appointment as a Magistrate only if they are under 70 years of age.¹² Accordingly, if an Adjudicator is over 70 years of age, the Adjudicator cannot be appointed as a Judicial Registrar unless the Adjudicator falls within one of the other categories of individuals who may be appointed as an Acting Magistrate (e.g., the Adjudicator is a Clerk of the Court).¹³ Thus, if 'transitioning' Adjudicators to be Judicial Registrars is what Government lands on, then consideration would need to be given to expanding the category of persons eligible to be judicial registrars. A possible alternative is to create the role of 'Adjudicator' in the Magistrates Courts, but that might unnecessarily complicate matters.

Q6: If QCAT retains this jurisdiction, which decision-makers should hear social housing matters?

65. Tribunal decision-makers should hear social housing matters. That is, Adjudicators or Members, as constituted under section 165 of the QCAT Act. Again, I note paragraph [70] of Issues Paper 8 which states that "*stakeholders have reported confidence in the expertise of adjudicators in hearing*" social housing matters.
66. If social housing matters are taken out of the RTRA Act and form part of a new review jurisdiction, those review matters would ordinarily be heard by Members consistent with the approach in the Tribunal's review jurisdiction.

¹¹ *Magistrates Act 1991* (Qld) s 6(1)(b).

¹² *Magistrates Act 1991* (Qld) s 4(1).

¹³ *Magistrates Act 1991* (Qld) s 6(1)(a).

Part 2 – Community Living Disputes

Manufactured homes and retirement villages disputes

67. I note the observation at paragraph 96 of the Issues Paper that residential (manufactured home) parks and retirement village industries have experienced significant growth in recent years and will continue to grow. This will obviously likely result in more proceedings coming before the Tribunal. Government will need to ensure that the Tribunal is adequately resourced to absorb additional filings in this jurisdiction.

Q7: Does QCAT adequately identify and manage vulnerabilities of manufactured homeowners, retirement village residents and onsite managers?

Q8: If not, what improvements are needed to ensure vulnerabilities are properly identified and managed?

68. These jurisdictions routinely involve elderly residents, individuals with cognitive or physical impairments, and, in some cases, large groups of residents with varying levels of capacity or understanding. The Tribunal's current processes are sufficiently flexible to accommodate these vulnerabilities on a case-by-case basis.
69. The QCAT Act provides broad procedural powers enabling the Tribunal to modify its processes to ensure fairness and accessibility. The Tribunal also has the implied power to control its own processes.¹⁴ In practice, Members regularly exercise these powers to accommodate vulnerable parties. For example, it is not unusual for a family member to be granted leave to represent an elderly or infirm relative under s 43(2)(b) of the QCAT Act. The Tribunal also has the ability to adjust hearing formats, allow remote participation, manage group proceedings through the lead-applicant model, and tailor directions to the parties' needs.
70. To the extent the Review may be considering whether additional legislative intervention may be required, QCAT would welcome the opportunity to comment on any specific proposal that is drafted.

¹⁴ *Nicholas v The Queen* [1998] HCA 9; (1998) 193 CLR 173,188; [23] (Brennan CJ).

71. If legal representation continues to be only with leave of the Tribunal for this category of cases, consideration might be given to expansion of the section 43(3) factors (see response to Issues Paper One – Legal Representation), coupled with increased resourcing to free legal services for QCAT litigants.
72. One issue that arises that is related to accessibility relates to compliance with pre-proceeding mediation provisions in both manufactured homes and retirement village disputes. Unless an application is brought under an exempt provision, an applicant who is a party to a manufactured homes dispute must comply with the pre-proceeding mediation process.¹⁵ For retirement village dispute applicants, unless the dispute is a building work dispute or a mandatory buyback dispute, the pre-proceeding mediation process must be complied with.¹⁶ The issue that often arises, especially in disputes over manufactured homes (though the same considerations apply in retirement village disputes), is that some applicants attempt to ‘piggyback’ off a core group who have complied with the pre-proceeding mediation process, without themselves having done so.
73. The Tribunal has held that ‘piggybacking’ is not allowed.¹⁷ As a result, residents with similar or identical issues must also go through the pre-proceeding Alternative Dispute Resolution. This approach is neither cost-effective nor efficient. Members with significant experience in the area have suggested that QCAT should have discretion to waive compliance with the mandatory pre-proceedings process if the interests of justice demand it.

Q9: What has been your experience with delay in manufactured home and retirement village disputes?

Q10: What are the causes of delay in these matters, and how can delays be reduced?

¹⁵ See *Manufactured Homes (Residential Parks) Act 2003* (Qld) s 116(2).

¹⁶ *Retirement Villages Act 1999* (Qld) s 167(2).

¹⁷ See *Eastwell & Ors v Ingenia Communities Group, Ingenia Communities Holdings Limited* [2026] QCAT 141 [37] (Member Deane), following *Nicholson v Hometown Australia Sandstone Pty Ltd* [2025] QCAT 180 [26] (Senior Member Brown) Although a different approach was taken in *Vandreike (lead applicant) v Serenitas Community Holdings Pty Ltd ATF Serenitas Community Trust & Anor* [2025] QCAT 522 (Member McVeigh) [209]-[212].

74. Where delays have arisen in recent years, they appear to be attributable to operational challenges rather than deficiencies in the statutory framework (for example, the COVID-19 pandemic).
75. Feedback from Members suggests that the principal contributors to delay have been:
- disruption caused by COVID-19;¹⁸
 - jurisdictional and pre-proceeding issues (for example, a dwelling improperly characterised as a manufactured home, applicants who have not completed pre-proceeding mediation); and
 - proceedings with multiple applicants (for example, if not all applicants have complied with the mandatory pre-proceeding mediation requirements, particularly if this is not identified immediately after the application is filed, or if some, but not all applicants agree to a resolution); and
 - an insufficient cohort of Members to be able to dedicate more time to case management.

Q11: Should manufactured home and retirement village matters be triaged and case managed before hearing?

Q12: Should triage be performed by QCAT decision-makers or delegated to registry staff?

76. Manufactured home and retirement village matters are case-managed and triaged, although it is accepted that historical under resourcing, including an insufficient cohort of Members, has spread List Managers very thin.
77. In manufactured home and retirement village matters, registry staff conduct an initial assessment to identify any obvious jurisdictional issues, including whether or not pre-

¹⁸ The pandemic interrupted established practices—particularly the use of on-site compulsory conferences and early engagement with large groups of residents. The Tribunal has not returned to the same processes that were in place pre-COVID-19.

proceeding mediation has been conducted and whether the application is accompanied by a mediation certificate. Generally, once this is done, the file will be referred to the Tribunal with a memorandum from the Registry Officer. In some cases, a Registry Officer may exercise powers under the QCAT Act or the *Queensland Civil and Administrative Tribunal Rules 2009* (Qld) ('QCAT Rules') to reject or refuse to file the application. If a file is referred to the Tribunal, the Tribunal Member (the Member managing the list) will read the application and supporting material, consider jurisdictional matters, and make appropriate initial directions. A common jurisdictional issue that arises in manufactured homes disputes is whether the dispute concerns a manufactured home within the meaning of the *Manufactured Homes (Residential Parks) Act 2003* (Qld). As set out earlier, another common jurisdictional issue is whether pre-proceeding mediation has been completed.

78. When the Registry receives an application for interim or interlocutory relief (such as applications for a stay), Registry Officers refer those applications to the Tribunal as soon as possible.
79. In addition to registry processes, matters are case-managed by a Member who is the list manager for manufactured home and retirement village matters. The List Manager conducts directions hearings and makes directions to progress matters. To the extent that resources permit, registry staff monitor compliance with directions and refer files to the List Manager in the event of non-compliance.
80. Triaging and case management are operational matters. I refer to my responses to Questions 1 and 2 and adopt those responses here with necessary changes. That is to say that if the Review does consider it appropriate to prescribe triaging or case management functions, who those functions are conferred on will depend on what is meant by 'triating'. If triaging involves assessments of jurisdictional issues or the urgency of listing matters and consequential assignment of priority, such functions should be conferred on the Tribunal.

Q13: Is QCAT an accessible forum for manufactured home and retirement village disputes?

81. The QCAT Act contains several provisions directed towards achieving accessibility, including provisions that:
 - require the Tribunal to ensure that parties understand the proceeding;¹⁹

¹⁹

QCAT Act s 29.

- require the Principal Registrar to help parties and potential parties;²⁰
 - enable proceedings to be conducted remotely or on the papers;²¹
 - permit parties and witnesses to be helped by an interpreter and for the Tribunal to arrange such assistance;²²
 - permit the Tribunal to conduct compulsory conferences during which the Tribunal may identify questions of fact and law to be decided in the proceeding;²³ and
 - empower the Tribunal to make orders about how vulnerable special witnesses give their evidence.²⁴
82. The use of those measures is an operational matter for the Tribunal, which is limited by its resourcing constraints.
83. The Tribunal has also adopted the 'lead applicant' model, which is discussed in response to question 17. The lead applicant model allows groups of applicants to approach the Tribunal for relief in an efficient and cost-effective way without each individual needing to appear and represent themselves.
84. As to paragraph 119 of the Issues Paper, I am told by Members who hear manufactured homes and retirement villages disputes that it is not uncommon for family members to be granted leave by the Tribunal to represent their elderly relatives. As noted above, consideration might be given to expanding the section 43(3) QCAT Act factors, and to providing additional resources to free legal services for QCAT litigants.
85. I am also told that before the COVID-19 pandemic, QCAT held on-site compulsory conferences at retirement villages and in manufactured home parks. Where appropriate, on-site compulsory conferences could be used to address residents' accessibility needs. Organising these on-site compulsory conferences is a matter that has been and can be achieved within the current statutory framework.

Q14: If not, what changes would improve accessibility?

²⁰ QCAT Act s 30.

²¹ QCAT Act s 32.

²² QCAT Act s 44.

²³ QCAT Act s 69(c).

²⁴ QCAT Act s 99.

86. It is anticipated that with a shift to QCase, the material filed in a proceeding will become more accessible to parties. Even if parties are unable to access QCase themselves due to limited digital literacy, registry staff will be able to access the material and provide it to them in an appropriate format.
87. It is also not the experience of Members of the Tribunal that most elderly parties are digitally illiterate. Many elderly parties quite capably use information technology systems and smartphones, and can access remote hearings. For those who find these things difficult, other means of access can and are provided.
88. Should the Review identify any specific suggestions for legislative amendment, QCAT would be happy to provide feedback in respect of the same.

Q15: Does QCAT have sufficient specialist expertise in manufactured home and retirement village matters?

Q16: If not, how should specialist capability be strengthened?

89. The stakeholder feedback to the Review, as set out in paragraphs 122 and 123 of the Issues Paper, is very general, and in the absence of particular examples, for example, decisions which demonstrate insufficient specialist knowledge, or inconsistent outcomes, or a lack of 'soft skills', it is not possible to provide a meaningful response. What I can say is that QCAT has a robust training program for its Members that covers both so-called 'soft skills', for example, dealing with self-represented litigants and vulnerable litigants and witnesses, and 'black letter' legal skills, hearing craft, and decision-making.
90. I note that a suggestion has been made *"that the Tribunal should provide greater support to self-represented litigants in this jurisdiction to explain what they will need to show to make out their claim, what types of evidence they might require and the types of questions they may want to ask witnesses."*²⁵ This suggestion appears to go beyond what is required by s 28 of the QCAT Act and arguably traverses, at least in some respects, into the giving of legal advice, which is, of course, not permissible and creates unfairness for the other litigant.

²⁵ Issues Paper 8 at [123].

91. If stakeholders have specific suggestions of the type of information that they would like to see on the QCAT website in respect of these types of matters, or in practice directions, then QCAT would be happy to receive and consider such suggestions. If the Review has any suggestions for legislative amendment, QCAT would be happy to provide feedback in respect of the same.

Q17: What has been your experience with group proceedings for retirement village and manufactured home disputes in QCAT?

92. Paragraph 113 of the Issues Paper states that the QCAT rules provide a way in which a group of applicants can appear in a proceeding. It further states that these types of group proceedings are regularly used by residents in disputes involving manufactured homes and retirement villages, where the disputes arise from the same or similar facts or circumstances. This is not the basis on which QCAT's 'lead applicant' model operates.
93. QCAT has developed a 'Lead Applicant' Model that is used exclusively in manufactured homes and retirement villages disputes to give effect to s 131 of the *Manufactured Homes (Residential Parks) Act 2003* (Qld) and s 173 of the *Retirement Villages Act 1999* (Qld). Those provisions allow a group of residents to apply jointly to the Tribunal in relation to a matter arising from the same or similar facts or circumstances. The 'lead applicant' model was developed and operates under s 28 of the QCAT Act and the Tribunal's implied power to control its own processes rather than a particular statutory provision. The model operates as follows:²⁶
94. A group of home owners may carry out negotiations, take part in a mediation or apply to the Tribunal for an order. A group of home owners may appoint a lead applicant. In most cases, the Tribunal will require the appointment of a lead applicant.
95. The Lead Applicant represents all applicants in the proceeding before the Tribunal. The lead applicant's address is the address for service of the applicants. A final resolution of the proceedings, other than by way of a final decision of the Tribunal after a hearing, may be authorised by the lead applicant.

²⁶ See *Application for a tribunal hearing – general: Manufactured Homes (Residential Parks) Act 2003*, Form 30A, Queensland Civil and Administrative Tribunal, 5; *Application for a tribunal hearing – general: Retirement Villages Act 1999*, Form 30B, Queensland Civil and Administrative Tribunal, 5.

96. The Lead Applicant is required to ensure:
 - all applicants are informed promptly of the receipt of directions, notices, correspondence and other documents from the Tribunal;
 - all applicants are provided with copies of Directions from the Tribunal on request;
 - all applicants are informed of Tribunal hearing dates including dates for Directions Hearings, Compulsory Conferences and final Hearings as soon as reasonably practicable after the lead applicant is notified of such dates;
 - any Directions made by the Tribunal requiring the provision of documents to applicants, or the lead applicant on behalf of the applicants making documents available for inspection, are complied with as soon as reasonably practicable.
97. When residents commence an application to the Tribunal in relation to a residential park dispute or a retirement village dispute, the Lead Applicant signs the application form accepting the responsibilities and obligations of the lead applicant.²⁷ Other applicants in the proceeding sign a part of the form that authorises the lead applicant to represent them in the proceeding as the lead applicant sees fit.²⁸ If an applicant does not agree to the lead applicant representing their interests, that applicant must pursue a separate proceeding in the Tribunal.²⁹
98. The Lead Applicant Model differs from the joint applicant or group proceeding provisions in the QCAT Rules in that the lead applicant is the representative for the group and may bind them to a resolution. For example, the lead applicant may agree to settle the matter at a compulsory conference, and that outcome will bind each member of the group.
99. The Tribunal also makes initial directions to give effect to the Lead Applicant Model.
100. The Lead Applicant Model reflects the reality that disputes in manufactured home parks and retirement villages often begin with a resident leading the cause before a proceeding commences in the Tribunal. That same individual resident often becomes the Lead Applicant. It also reflects the reality that manufactured homes and retirement village disputes can involve multiple applicants, in some cases, over 100.

Q18: Are group proceedings useful in these jurisdictions?

²⁷ See *Application for a tribunal hearing – general: Manufactured Homes (Residential Parks) Act 2003*, Form 30A, Queensland Civil and Administrative Tribunal, 5.

²⁸ See *Application for a tribunal hearing – general: Manufactured Homes (Residential Parks) Act 2003*, Form 30A, Queensland Civil and Administrative Tribunal, 6.

²⁹ See *Application for a tribunal hearing – general: Manufactured Homes (Residential Parks) Act 2003*, Form 30A, Queensland Civil and Administrative Tribunal, 6.

101. The Lead Applicant Model is highly effective in these jurisdictions due to the frequency with which multiple residents are involved in the same dispute and the number of applicants (which sometimes exceeds 100). Group proceedings under r56 of the QCAT Rules are not used in these jurisdictions. Members have provided feedback that they regard the Lead Applicant Model as providing the significant advantage that the lead applicant is authorised to resolve the proceeding on behalf of other applicants, rather than simply representing them. Member feedback is that this allows justice to be accessible to residents, the matter to proceed more efficiently, and the proceeding to be resolved more quickly. These outcomes are consistent with the Tribunal's statutory objects.

Q19: If so, what improvements should be made to the group proceedings framework?

102. The experience of members who hear proceedings in these jurisdictions is that there is no mischief in the current Lead Applicant Model that requires legislative intervention. For example, the Tribunal has not encountered a dispute about the authority of the lead applicant to make decisions on behalf of the group.

Q20: Is ADR effective in resolving manufactured home disputes, retirement village disputes, and merits review matters?

Q21: What has been your experience with the pre-claim dispute resolution processes under the Manufactured Homes Act and Retirement Villages Act?

Q22: Should the ADR and pre-claim processes be improved, and if so, how?

103. Paragraph 148 of the Issues Paper provides that mandatory mediations are currently handled by Members and Adjudicators who are qualified as mediators (when available). This is not correct, mandatory mediations are currently handled by private mediators appointed by the Principal Registrar to mediate on a case-by-case basis under s 108 of the *Manufactured Homes (Residential Parks) Act 2003* (Qld) or s 158(1)(a) of the *Retirement Villages Act 1999* (Qld).
104. As President, it is difficult for me to comment on the success of mandatory pre-proceeding mediation in manufactured homes and retirement village disputes. Neither members of the Tribunal nor I are involved in that process.
105. Mediations often take 3-4 months to organise. Part of the reason is that the Tribunal needs to have physical space available to accommodate such mediations. That can contribute to delays in resolving the underlying dispute.
106. Registry staff identified issues related to the service of applications for mediation (issues with which the Tribunal is familiar across its jurisdictions). However, given the time between when an application for mediation is received and when the mediation takes place, this does not tend to result in delays.
107. These types of matters generally proceed to a compulsory conference.
108. Members of the Tribunal who have heard manufactured homes and retirement villages disputes have told me that those disputes often involve interpersonal relationships between residents and park owners and scheme operators and their staff. Those interpersonal relationships are generally ongoing and will not end, but could become more adversarial, as litigation progresses and concludes with a determination of the Tribunal. In other words, the parties will need to learn to 'live in harmony'. Some members have expressed the view that compulsory conferences are useful because they can help restore broken-down relationships and allow parties to speak directly, offering intangible outcomes such as apologies. This can both resolve disputes and decrease the likelihood of future disputes.
109. Members also report that compulsory conferences in manufactured homes and retirement villages disputes are a useful opportunity for Members to identify issues, ensure that parties understand the Tribunal's role in the proceeding, and make directions to progress matters. Compulsory conferences are also useful for ensuring understanding of the proceedings and the roles of the lead applicant and the Tribunal when group proceedings are commenced under the Lead Applicant Model. Some Members are of the view that compulsory conferences are more beneficial than mediations in this regard. Members and Adjudicators are also encouraged to adopt an evaluative approach to compulsory conferences, which is likely helpful in a jurisdiction where long-term interpersonal relationships are at play.
110. While there are few merits review proceedings related to manufactured homes, retirement villages, body corporates and community management, Member feedback is that compulsory conferences can be useful in those proceedings. Compulsory

conferences can be useful in such proceedings to identify the issues and help parties understand the Tribunal's role and the orders it can make. Sometimes, this can result in proceedings being resolved.

111. Ultimately, the decision of whether or not to hold a compulsory conference is one to be made by the Tribunal in a discreet proceeding having regard to the likely costs and benefits. As I have expressed in my responses to several issues papers, I do not consider that a statutory prescription or presumption that a compulsory conference should be held is either necessary or desirable.
112. One issue that has been raised is that, as in other jurisdictions, the mandatory pre-proceeding mediation poses difficulties. In this jurisdiction, the most common difficulty is that an application will be made to the Principal Registrar for mediation by a lead applicant on behalf of a group. That same lead applicant will later file an application in the Tribunal on behalf of the group. Sometime after the mediation has concluded, additional residents sometimes come forward seeking to join the proceeding before the Tribunal. Those additional residents are then required to go and take part in mediation before filing a separate application. This is a source of some inconvenience for the registry, the Tribunal, and, importantly, parties. It also results in delays, as the proceeding filed in the Tribunal may be adjourned to allow other applicants to participate in mediation.
113. In this regard, there is scope for statutory reform. Some Members have suggested reform that would allow the Tribunal to waive the pre-proceeding mediation requirements in the *Manufactured Homes (Residential Parks) Act 2003* (Qld) and the *Retirement Villages Act 1999* (Qld) when it is in the interests of justice to do so. Such reform may be beneficial in assisting the Tribunal to achieve its statutory objects.
114. Others have suggested that the pre-proceeding mediation should be dispensed with entirely, allowing applications to be made directly to the Tribunal. The Tribunal could then, if appropriate to do so, list the matter for a compulsory conference.

Q23: Should QCAT retain jurisdiction over retirement village disputes and manufactured home disputes?

115. Yes.
116. These matters have a long history in QCAT and the former Commercial and Consumer Tribunal.³⁰ The Tribunal is generally familiar with these jurisdictions and the matters

³⁰ *Commercial and Consumer Tribunal Act 2003* (Qld) ss 157, 169, sch 1 (as enacted); *Manufactured Homes (Residential Parks) Act 2003* (Qld) sch 2 'tribunal' (as enacted).

specific to them. QCAT continues to provide a low-cost, informal venue for resolving disputes in circumstances where the parties tend to be of limited financial means and are often vulnerable. QCAT's registry staff also frequently provide help to parties and are familiar with assisting vulnerable parties.

117. Interstate civil and administrative tribunals have jurisdiction over similar matters.³¹
118. Paragraph 154 of the Issues Paper appears to suggest that if QCAT were found by a Superior Court not to be a 'court of a state', it may not be able to apply the Australian Consumer Law (ACL). Both the New South Wales Civil and Administrative Tribunal ('NCAT') and the Victorian Civil and Administrative Tribunal ('VCAT') continue to apply the ACL. I note that the ACL 'applies as a law of [Queensland]' and forms part of the *Fair Trading Act 1989* (Qld) under s 16(1) of the *Fair Trading Act 1989* (Qld).
119. If QCAT were found not to be a court of a State, QCAT would be happy to provide feedback in respect of any proposed legislative amendment.

Community titles schemes

120. Paragraph 163 of the Issues Paper states that the QCAT Appeal Tribunal also has appeal jurisdiction to hear appeals on questions of law from decisions of specialist Adjudicators in complex disputes. I note that the QCAT Appeal Tribunal also has jurisdiction to hear appeals from an Adjudicator on a question of law.³²

Q24 – What issues have you experienced in community titles scheme disputes, and how should they be addressed?

Q25 – Should QCAT retain its concurrent jurisdiction to hear complex disputes in community titles schemes?

121. As the Issues Paper identifies at paragraph 165, the Community Titles Scheme is a relatively small jurisdiction. Consultation with Members who hear matters in this

³¹ See, for example, *Residential (Land Lease) Communities Act 2013* (NSW) s 4; *Retirement Villages Act 1999* (NSW) s 4, pt 8 div 2; *Retirement Villages Act 1986* (Vic) s 3, pt 5A.

³² *Body Corporate and Community Management 1997* (Qld) ss 290, 229(3)(b).

jurisdiction did not identify issues which would require statutory amendment in order to better assist the Tribunal in achieving its statutory objects.

122. As to whether QCAT should retain its concurrent jurisdiction to hear complex disputes in community titles schemes, that is a policy question for Government. However, I note that QCAT has developed a body of knowledge in community title matters.

Part 3 – Retail Tenancy Disputes

Q26 – What issues have you experienced in retail shop lease disputes in QCAT?

Q27 – What is the cause of those issues and what can be done to address the issues?

123. I have addressed triaging and case management in relation to both social housing matters and disputes involving manufactured homes and retirement villages. I adopt those submissions here.
124. As is the case across many jurisdictions, parties often have difficulty preparing submissions and statements of evidence that address the matters in issue. There are also frequent misunderstandings about the Tribunal's processes and procedures. These issues are time-consuming to resolve. As an operational matter, and subject to resourcing, the Tribunal could develop greater information resources for litigants and potential litigants. Some members have suggested that a video about retail shop lease disputes and the Tribunal's role in resolving them could be useful.
125. Another difficulty is uncertainty about whether the only route to QCAT for parties to retail tenancy disputes is to comply with ss 63 and 64 of the *Retail Shop Leases Act 1994 (Qld)* ('RSL Act'), or whether parties who are in the process of dispute resolution or have yet to engage in dispute resolution can apply to QCAT directly by relying the 'broad jurisdiction' conferred by s 103 of the RSL Act.³³
126. Section 63 of the RSL Act provides that if a retail tenancy dispute is within QCAT's jurisdiction and certain circumstances apply, the mediator appointed to mediate the

³³ See *McDonald's Australia Ltd v Emaas Pty Ltd* [2011] QCAT 293 [17].

dispute must refer the matter to QCAT. Section 64 of the RSL Act provides that a party to a retail tenancy dispute may, in particular circumstances, apply to QCAT including if a mediation agreement has not been complied with, a mediator refuses to refer the dispute to QCAT on jurisdictional grounds, or a court has ordered that a proceeding started in the court for the dispute be removed to QCAT or another tribunal.

127. Section 103 of the RSL sets out QCAT's broad jurisdiction to hear retail tenancy disputes, subject to certain qualifications and limitations. Section 103(1) begins with 'QCAT has jurisdiction to hear retail tenancy disputes, other than a retail tenancy dispute...'.³⁴
128. Section 63 of the RSL Act was amended by the *Small Business Commissioner Act 2022* (Qld), ('SBC Act') which commenced on 3 May 2022.³⁵ Before the commencement of the SBC Act, mediations were overseen by the Director-General of the Department of Justice and Attorney-General. In practice, this function was delegated to the Principal Registrar of QCAT.
129. In *McDonald's Australia Ltd v Emaas Pty Ltd [2011] QCAT 293*, President Wilson ruled that the Tribunal has the power to grant urgent injunctive relief notwithstanding that the requirements in ss 63 and 64 of the RSL Act had not been met.³⁵ His Honour held that QCAT had the power to grant such relief under ss 58 and 59 of the QCAT Act and the jurisdiction to grant such relief under s 103 of the QCAT Act, and that jurisdiction was not excluded by ss 63 and 64 of the RSL Act.³⁶
130. In *Burinpipat Pty Ltd v FFTOA Pty Ltd [2016] QCAT 100*, a Senior Member dismissed an application for 'interim' relief seeking, relevantly, a declaration that a notice to remedy breach was void, an order dispensing with mediation of the dispute, and that the matter proceed to a final determination at a Tribunal hearing.³⁷ The Senior Member distinguished *McDonald's* on the basis that the applicant was seeking to dispense with the mediation, which was not a relief within the broad jurisdiction of the Tribunal in s 103 of the RSL Act.
131. This approach of Alan Wilson J in *McDonald's* was endorsed by Kelly J in *Wagners Properties Pty Ltd v Atlas House Removers Pty Ltd [2023] QSC 40*.³⁸ In that case, Kelly J concluded that the Tribunal had jurisdiction to deal with a substantive application under s 103 of the RSL Act, notwithstanding non-compliance with ss 63 or 64.³⁹
132. In *Contract PPS Pty Ltd t/as Petals & Pinecones v Ciranni [2025] QCAT 72*, the same Senior Member as in *Burinpipat Pty Ltd* considered whether the Tribunal had power to

³⁴ *Small Business Commissioner Act 2022* (Qld) ss 2, 60.

³⁵ *McDonald's Australia Ltd v Emaas Pty Ltd [2011] QCAT 293* [6]-[19].

³⁶ *McDonald's Australia Ltd v Emaas Pty Ltd [2011] QCAT 293* [6]-[19].

³⁷ *Burinpipat Pty Ltd v FFTOA Pty Ltd [2016] QCAT 100* [4] (Senior Member Brown).

³⁸ *Wagners Properties Pty Ltd v Atlas House Removers Pty Ltd [2023] QSC 40* [60]

³⁹ *Wagners Properties Pty Ltd v Atlas House Removers Pty Ltd [2023] QSC 40* [61].

make an interim order in a retail tenancy dispute in the absence of compliance with ss 63 or 64 of the RSL Act. The Senior Member concluded that an order could only be made by the Tribunal pursuant to s 58 or 59 of the QCAT Act upon an application being made in an existing substantive proceeding.

133. In *The Estate of Sonia Tubaro (Deceased) v Ratakhin* [2026] QCATA 30, ⁴⁰ following *Wagners Properties Pty Ltd v Atlas House Removers Pty Ltd* [2023] QSC 40, the Appeal Tribunal decided that ss 63 and 64 do not expressly qualify the broad jurisdiction under s 103 of the RSL Act.⁴¹ The Appeal Tribunal noted that the mediation process appears in a different division of the RSL Act from the provision that gives QCAT jurisdiction to determine retail tenancy disputes.⁴² The Appeal Tribunal stated that no words in the Act say that mediation is a mandatory precondition to the exercise of the Tribunal's jurisdiction.⁴³
134. Some Members suggest that clarifying this matter by clearly defining in the RSL Act when an application can be made to the Tribunal and for what relief would assist the Tribunal in achieving its statutory objects. This includes:
 - (a) whether a substantive application can be made to the Tribunal under s 103 of the RSL Act without compliance with ss 63 and 64; and
 - (b) whether an application for interim relief can be made to the Tribunal without compliance with ss 63 and 64, or whether an application for interim relief can only be made to a court.⁴⁴

Q28 – Should retail shop lease disputes over \$25,000 continue to be heard by a three-member panel?

135. Ultimately this is a policy matter for Government, but feedback is that Retail Shop Lease disputes over \$25,000 are not of such complexity that a three-Member panel is required. One QCAT Member is capable of determining retail shop lease matters. There are other jurisdictions of the Tribunal in which single members constitute the Tribunal, and in which disputes concern equal or greater monetary sums, and/or equal

⁴⁰ *The Estate of Sonia Tubaro (Deceased) v Ratakhin* [2026] QCATA 30, (Senior Member Fitzpatrick).

⁴¹ *The Estate of Sonia Tubaro (Deceased) v Ratakhin* [2026] QCATA 30 [60].

⁴² *The Estate of Sonia Tubaro (Deceased) v Ratakhin* [2026] QCATA 30 [60].

⁴³ *The Estate of Sonia Tubaro (Deceased) v Ratakhin* [2026] QCATA 30 [60].

⁴⁴ See *Retail Shop Leases Act 1994* (Qld) s 94(1) and 94(2)(c).

or greater complexity. For example, there is no limit to the Tribunal's building dispute jurisdiction.⁴⁵

136. Panel requirements in enabling Acts create logistical challenges for the Tribunal. This includes listing three members who meet the constitution requirements at times when the Members are available and listing matters in hearing rooms that are sufficiently large to accommodate three-Member panels. Of QCAT's limited hearing rooms, few are able to accommodate a panel of three Members.
137. Paragraph 184 of the Issues Paper states that the Review understands that the role of the industry representatives on the panel is to advise rather than to serve as direct decision-makers. This is incorrect. Under s 102 of the RSLAct, for a proceeding for a retail shop lease, QCAT is to be constituted by a legally qualified Member, a person representing lessors under retail shop leases, and a person representing lessees under retail shop leases, all of whom must be QCAT Members. Pursuant to s 115 of the QCAT Act, if the Tribunal for a particular matter is constituted by 3 Members and the decisions of the Members differ, the Tribunal's decision is the decision of the majority. However, a decision on a question of law is the decision of the legally qualified Member.⁴⁶

Q29 – If not, who should hear and determine retail tenancy disputes?

138. Retail tenancy disputes could properly be heard and determined by a single QCAT Member regardless of the quantum of the amount in dispute.

Q30 – Is ADR effective in resolving retail shop lease disputes?

⁴⁵ However, in major commercial building disputes (claims over \$50,000), the parties must Consent before the Tribunal will have jurisdiction to determine the matter (See *Queensland Building and Construction Commission Act 1991* (Qld) s 78).

⁴⁶ QCAT Act s 116.

Q31 – What has been your experience with mandatory mediation under the Retail Shop Leases Act?

Q32 – Should retail tenancy mediations occur in person or remotely?

139. As President of the Tribunal, I cannot speak to the mediation conducted by the Queensland Small Business Commissioner. However, QCAT welcomes ADR that resolves matters in a timely manner, resulting in fewer proceedings in the Tribunal.
140. As to ADR conducted within the Tribunal and given that in retail shop lease disputes, mediation will ordinarily have already occurred, the Tribunal does not ordinarily refer matters to mediation. However, some Members have indicated that compulsory conferences can be useful. In compulsory conferences, Members who hear retail shop lease matters and are familiar with the relevant principles can identify issues and reality-test the parties' positions in ways that may not be achievable in private panel mediations. Members who hear Retail Shop Lease disputes have told me that litigants in that jurisdiction frequently do not understand what is expected of submissions, what is expected of statements of evidence, and what to expect at a Tribunal hearing. Compulsory conferences can enable the Tribunal to address these issues, which may, in turn, allow the proceeding to progress more efficiently.
141. Consistent with my responses to several questions in multiple issues papers, whether to hold compulsory conferences is an operational matter for the Tribunal. In circumstances where the Tribunal has only limited resources, the Tribunal must be in a position to determine how to use those resources in a way that maximises the overall benefit. This includes targeting resources for compulsory conferences on matters that will benefit from a compulsory conference by narrowing or identifying issues, resolving the matter, or achieving other outcomes that are beneficial to the parties and productive to the Tribunal in achieving its statutory objects.

Q33 – After a failed mediation, should parties commence proceedings themselves or should automatic referral to QCAT continue?

142. Some Members are of the view that parties should be responsible for commencing action in QCAT following an unsuccessful mediation. This is what occurs in disputes under the *Manufactured Homes (Residential Parks) Act 2003 (Qld)* and the *Retirement Villages Act 1999 (Qld)*, where mandatory pre-proceedings provisions apply.
143. An automatic referral by the Mediator does not assist the parties in properly identifying the issues in dispute or in turning their minds to the nature of the application they are bringing. When matters are automatically referred, the resulting applications often do not clearly articulate the issues, the relief sought, or the factual basis for the claim.

Q34 – Should QCAT retain jurisdiction to hear and decide retail tenancy disputes?

144. Yes.
145. QCAT Members have developed the necessary body of knowledge to deal with retail tenancy disputes. (However, I note that QCAT does not have exclusive jurisdiction over retail tenancy disputes and that QCAT can exercise power under s 52 of the QCAT Act to transfer proceedings where appropriate.)
146. If QCAT were found not to be a court of a State, consideration might be given to whether it would be appropriate to amend the QCAT Act to insert provisions similar to those in interstate legislation. However, that could be considered in more detail if and when the need arises.

Part 4 – General Issues

Q35 – Should legal representation be ‘as of right’ in social housing, community living and retail tenancy disputes?

147. Yes, legal representation should be ‘as of right’ in each type of proceeding.
148. In my response to Issues Paper 1, I stated that there would be a benefit in there being ‘as of right’ legal representation in all Civil, Administrative and Disciplinary Divisions (‘CAD’) jurisdictions, except MCDs. Allowing legal representation as of right would reduce the burden on the Tribunal and the registry of managing and deciding applications for legal representation. The Tribunal has concluded that the presence of legal representatives assists the Tribunal in achieving its statutory objects.⁴⁷
149. I acknowledge that park owners and scheme operators may be in a much better financial position to afford privately funded legal representation than residents. However, legal practitioners who bring professional independence and their ethical duties to the administration of justice are of value not only to their clients but also to the Tribunal and to the Tribunal’s role in doing justice between the parties.
150. I also note that there is some incongruence between the rules applying to legal representation in Tribunal proceedings and legal representation in the pre-proceeding mediation processes provided for under the *Manufactured Homes (Residential Parks) Act 2003* (Qld) and the *Retirement Villages Act 1999* (Qld). Parties to manufactured homes and retirement villages proceedings in the Tribunal may be represented only with the Tribunal’s leave, pursuant to s 43 of the QCAT Act. However, parties to pre-proceeding mediations can be represented at a mediation conference by a lawyer unless the mediator is satisfied that the party should not be represented.⁴⁸
151. This incongruence appears to be a relic of the statutory regime in place when the *Retirement Villages Act 1999* (Qld) commenced. Upon the commencement of the *Retirement Villages Act 1999* (Qld), disputes were heard by a tribunal convened by the chief executive under that Act.⁴⁹ Parties were permitted to be legally represented before

⁴⁷ See, for example, *Repine v Queensland Building and Construction Commission* [2026] QCAT 91 [31] (Member Benjamin); *DTJ v State of Queensland* [2024] QCAT 615 [16] (Senior Member Traves); *Chand v Queensland Building and Construction Commission & Anor* [2024] QCAT 492 [9] (Senior Member Traves).

⁴⁸ *Manufactured Homes (Residential Parks) Act 2003* (Qld) s 109; *Retirement Villages Act 1999* (Qld) s 159.

⁴⁹ *Retirement Villages Act 1999* (Qld) s 168 (as enacted).

that Tribunal 'as of right'.⁵⁰ That ceased when the *Commercial and Consumer Tribunal Act 2003* (Qld) came into force, and jurisdiction to hear disputes concerning retirement villages was conferred on that Tribunal.⁵¹

152. It is not apparent to me that there is any practical justification for this incongruence. It should be resolved by allowing legal representation 'as of right'.



The Honourable Justice Kerri Mellifont

Supreme Court of Queensland

President of the Queensland Civil and Administrative Tribunal

⁵⁰ *Retirement Villages Act 1999* (Qld) s 179 (as enacted).

⁵¹ *Commercial and Consumer Tribunal Act 2003* (Qld) s 157, 169, sch 1 (as enacted).