

QCAT Act Review 2026 conducted by the Hon David Thomas

Principal Registrar's Power to Delegate

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Principal Registrar's Power to Delegate

Submission

1. This submission relates to the Principal Registrar's power to delegate under the *Queensland Civil and Administrative Tribunal Act 2009* (Qld) ('the Act').
2. Section 61 of the Act (Relief from procedural requirements), section 62 (Directions), section 63 (Obtaining a document or thing from third parties) and section 64 (Amending particular documents) contain powers. Each of those powers are exercisable "only by (a) the tribunal as constituted for the proceeding; or (b) if the tribunal has not been constituted for the proceeding – a legally qualified member, an adjudicator or the principal registrar."
3. Section 210 of the Act (Principal registrar's functions and power to delegate) states:
 - 1) The principal registrar has the functions conferred on the principal registrar under this Act or an enabling Act that is an Act.
 - 2) The principal registrar may delegate a function mentioned in subsection (1) to—
 - (a) a registry staff member; or
 - (b) a Magistrates Court staff member.
 - 3) However, the principal registrar may delegate a function under subsection (2) only to a person the principal registrar is satisfied is appropriately qualified to perform the function.
 - 4) Also, the principal registrar can not delegate a function delegated to the principal registrar by the president or deputy president under section 182.
 - 5) A person performing a function mentioned in subsection (1) is, in performing the function, subject to the direction of the president.
 - 6) A person performing a function mentioned in subsection (1) may do all things necessary or convenient to be done for the performance of the function.
 - 7) A function delegated to the clerk of a Magistrates Court under subsection (2)(b) is a duty of the clerk for the *Justices Act 1886*, section 23.
 - 8) In this section—

appropriately qualified, for a function, includes having the qualifications, experience or standing appropriate to perform the function.
4. "Function" is defined in Schedule 3 of the Act as "function includes power". Power is not defined.
5. The Acts Interpretation Act 1954 (Qld) ('AI Act') defines function as "function includes duty"¹ and "appropriate qualified as:
 - (a) For a function or power – means having the qualifications, experience or standing appropriate to perform the function or exercise the power; or
 - (b) For appointment to an office – means having the qualifications, experience or standing appropriate to perform the functions of the office.

¹ *Acts Interpretation Act 1954* (Qld) Schedule 1.

Example of standing - *a person's classification level in the public service.*

6. Views differ as to whether the powers in sections 61 – 64 are delegable by the Principal Registrar to appropriately qualified Registry staff pursuant to section 210(3) or otherwise exercisable by a Registrar pursuant to section 211. Section 211 (Registrar's functions) provides:
 - (1) A registrar may perform the functions of the principal registrar subject to the direction of the president and the principal registrar.
 - (2) The registrar may do all things necessary or convenient to be done for the performance of the registrar's functions.
7. On one view, they are not delegable and not exercisable by a Registrar: the use of the word "only" in the final sub-section of each of sections 61-64 evinces a legislative intention that those powers are exercisable only by the persons expressly listed. On the other view, if the legislative intention was to limit the delegation in section 210 then that could have been achieved expressly by specifically carving out sections 61 – 64 from section 210, or by a legislative approach which specifically designates which powers are delegable, with those powers not designated as delegable having to be exercised personally.²
8. If the first view is correct, then this means that even a straightforward unopposed application for extension of time to comply with a programming direction of the Tribunal (e.g. to file submissions by X date) is not able to be exercised by an appropriately qualified registry officer, but rather has to be referred to a Tribunal member or adjudicator for action. (Obviously the Principal Registrar doesn't have time to deal with such matters given the enormity of the remit of that role.)
9. The ambiguity has led to concerns, particularly given that if the powers are non-delegable or not able to be exercised pursuant to section 211, the immunity provision in section 237 does not attach to the Registry staff purportedly exercising the power.
10. Considerable efficiencies could be achieved if the ambiguity in the legislation is removed: that is, that the legislation makes plain that these powers, particularly section 61(1)(b) and section 62, are delegable by the Principal Registrar and/or capable of being exercised by a Registrar pursuant to section 211.
11. The sooner this could be done, particularly regarding section 61(1)(b) and section 62, the sooner the efficiencies can be crystallised. As such, it is respectfully submitted that an amendment via a JOLAB or other comparatively quick means, might be considered.

For your consideration,

Justice Mellifont

President, Queensland Civil and Administrative Tribunal

² See for example the model used in section 50 of the *Gaming Machine Act 1991* (Qld).