

# **QCAT 2026 Review conducted by the Hon David Thomas**

Submission by QCAT President in respect of  
Issues Paper 1, QCAT Objects and  
Procedures

Response to Question 24 Enforcement

12 June 2026

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# Issues paper 1: QCAT Objects and Procedures, Enforcement

## Introduction to response

1. I observe that some of the issues raised in Issues paper 1, and questions posed, go to matters of policy, and thus are ultimately matters for Government, not something about which a sitting judge would ordinarily express a view.
2. However, the *Queensland Civil and Administrative Tribunal Act 2009* (Qld) ('QCAT Act') provides that one of the functions of the President is to advise the Minister about how the QCAT Act or the enabling Acts could be made more effective,<sup>1</sup> and that the President may do all things necessary or convenient to be done for the performance of the President's functions.<sup>2</sup>
3. Although a Reviewer has been appointed, I note that this is a statutory review by the Minister, of the QCAT Act, pursuant to section 240, directed to whether or not there should be legislative amendment of the Act and enabling Acts.
4. I consider it necessary in order to properly discharge my statutory functions to respond to the Minister's review. In addition, since this will be the only response made on behalf of QCAT, I wish to provide as much assistance as possible to the Review team to enable it to make informed recommendations to the Minister.
5. I have not, however, purported to respond to, or verify the accuracy of, everything said in the Issues Paper.

## Remit of the section 240 Review

6. As in other issues papers, some of the consultation questions posed in this paper might give the impression that the Reviewer intends to make recommendations to the Minister about non-legislative operational change. I am sure this is not the Reviewer's intent, given QCAT's status as an independent Tribunal and the terms of section 240 of the QCAT Act.
7. Section 240 of the QCAT Act, entitled 'Review of Act', requires the Minister to review the Act, not the practice of the Tribunal. The section is, rather, directed to whether there needs to be legislative change to:
  - a) the QCAT Act, to change its objects if its currently stated objects do not remain valid; and/or

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<sup>1</sup> *Queensland Civil and Administrative Tribunal Act 2009* (Qld) s 172(3)(b) ('QCAT Act'). See also section 240(2)(d) of the QCAT Act which provides that one of the objects of the statutory review is investigate any specific issue recommended by the Minister or the President, including, for example, whether any provision of an enabling Act affects the effective operation of the Tribunal.

<sup>2</sup> QCAT Act s 172(4).

- b) 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 giving QCAT the ability to enhance operational efficiency, such as removing legislative hurdles to such efficiency.
8. The Ministerial review contemplated by the provision does not, on its clear language, concern non-legislative operational changes.
9. It is trite to say that QCAT, as an independent Tribunal, is free from the direction of the Executive as to the way in which it conducts its operations. So much is plain from convention, the separation of powers doctrine, and the Act itself:
- a) section 3(a) of the *QCAT Act* states that one of the objects is to establish an independent Tribunal;
  - b) section 162 provides that in exercising its jurisdiction, the Tribunal must act independently and is not subject to direction or control by any entity, including any Minister;
  - c) section 172(5) provides that the President is not subject to direction or control by the Minister.
10. These provisions are consistent with the Explanatory Memorandum to the QCAT Bill which states that the objectives of the Bill are to 'establish an independent tribunal' and that:
- The independence of QCAT will be achieved by providing for the appointment of a Supreme Court Judge as president of the tribunal and by providing that the tribunal is not subject to direction or control by the executive.<sup>3</sup>
11. I recognise that section 240(2)(d) includes among the objects of the Review 'investigating any specific issue recommended by the Minister or the President, including, for example, whether any provision of an enabling Act affects the effective operation of the Tribunal'. This provision must be read, however, in the context of section 240's focus on the Act itself, and of course, having regard to the independence of both Tribunal and President from Ministerial direction.
12. The issues and statement of 'Scope' in the Terms of Reference appear to have been drafted with these obvious propositions in mind.
13. The issues set out in the Terms of Reference turn on provisions of the Act and are consistent with an examination of whether legislative reform is called for:
- whether the current legislation creates hurdles to procedural efficiency within the Tribunal;
  - QCAT senior leadership structure (set out in Chapter 4, Part 3 of the QCAT Act), with comparison to tribunals in other states and the Commonwealth (including whether the President and Deputy President should be appointed to the Supreme and District Courts, and including Heads of Division);

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<sup>3</sup> Explanatory Memorandum, *Queensland Civil and Administrative Tribunal Bill 2009* (Qld).

- 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);
  - the capacity of QCAT to hear matters, with reference to the available Tribunal Members and physical meeting or hearing room space (this would properly entail considering the ability of QCAT to carry out what is currently within its statutory remit pursuant to the *QCAT Act* and the enabling Acts; in this context it would be relevant to consider budget and resourcing); and
  - the extent to which previous statutory review recommendations still apply and may assist in addressing issues (the single previous review, conducted by then Minister D'Ath was confined, as section 240 requires, to legislative reform).
14. The statement of scope also makes plain that the remit of the Review is to examine whether legislative reform is necessary, with a consideration of resourcing relevant in that context:

The review will take a genuine look at QCAT to identify ways to alleviate the significant pressures QCAT is currently facing, including an examination of any systemic operational or legislative issues impacting on the ability for QCAT to perform its statutory functions, in an accessible, economical and timely manner. 'Systemic operational considerations' are those linked to how the legislation is

currently framed and whether there should be changes in order to alleviate the significant pressures that QCAT is facing.

15. The reference to 'systemic operational considerations', 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 as intended to extend to the Reviewer making recommendations to the Minister about how QCAT should run its business. (Nor, I am sure, would anyone think that a limited life, desk-top review, by an external person or group, without the requisite comprehensive and current understanding of operations, would be well-placed to make recommendations about non-legislative operational change).
17. The Terms of Reference, read as a whole, demonstrate no intent to depart from the restricted form of Ministerial review contemplated by section 240.
18. As stated above, I am sure it is not the Reviewer's intent to make recommendations to the Minister about non-legislative change, that is, about matters concerning which the Minister is expressly prohibited from directing the President of the Tribunal.<sup>4</sup> I accept, however, that it would be reasonable to have regard to budget and resourcing, in the context of the reference in the Terms of Reference to 'identifying the implications for other forums if transfer of jurisdiction is proposed, the key cost drivers, and any potential savings and efficiencies' and to 'the capacity of QCAT to hear matters, with reference to the available tribunal Members and physical meeting or hearing room space'.
19. Accordingly, in providing responses to the consultation questions, I have taken the questions to be directed to whether changes to the QCAT Act or the enabling Act would be desirable, in order for QCAT to better achieve its objects, taking into account any resource implications of the options posited.
20. As always, I encourage any stakeholders who have suggestions for operational reform, to write to the Principal Registrar and/or the President of QCAT with those suggestions, and to do so by providing as much specificity as possible of any problem encountered so that there can be a proper interrogation of the matter raised, and an informed view reached as to the best course of action moving forward. As the Reviewer would appreciate from his time as President, very generalised complaints which do not provide QCAT with sufficient information to explore the issue and get to

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<sup>4</sup> Pursuant to section 172(5) of the QCAT Act. I acknowledge that section 240(2)(d) states that the objects of the review include investigating any specific issue recommended by the Minister or the president, including, for example, whether any provision of an enabling Act affects the effective operation of the Tribunal. This provision must be read together with the limitation in section 172(5) in determining its ambit.

the root of any problem (or perceived problem) are, unfortunately, not helpful vehicles for operational reform.

21. In those limited instances where the issues papers have set out assertions of non-legislative and non-budgetary concerns in a way which provides sufficient detail for QCAT to interrogate the concerns, the Minister can be assured that QCAT has taken notice.

## Enforcement

### Consultation question 24

**Q24** Should changes be made to ensure QCAT orders can be enforced more directly? If so what changes should be made?

23. Issues Paper 1 raises the issue of enforcement of QCAT decisions.<sup>5</sup>
24. Issues Paper 1 identifies that the enforcement of QCAT orders can be difficult and can result in significant delays. It is said that the process of obtaining an enforcement order from the courts can be time-consuming and frustrating for parties, who have already spent considerable time resolving the dispute in QCAT.
25. However, Issues Paper 1 also identifies that establishing an enforcement framework within QCAT itself would be a costly and lengthy process, which would ultimately be duplicative of the system of enforcement through the courts. It is noted that all other civil and administrative tribunals in Australia rely on the enforcement frameworks of the courts.
26. Issues Paper 1 asks whether changes should be made to ensure QCAT orders “can be enforced more directly” and, if so, what changes should be made.

### Legislative provisions

27. QCAT does not currently have powers to enforce final decisions made in Tribunal proceedings.<sup>6</sup> Enforcement of the Tribunal’s decisions must be undertaken through the Magistrates, District or Supreme Courts.
28. The pathway by which that is to occur largely depends on the type of decision made by the Tribunal.

<sup>5</sup> The Honourable David Thomas, ‘QCAT’s objects and procedures’ (Issues Paper 1, Queensland Civil and Administrative Tribunal Act Statutory Review 2025-26, October 2025) [196]-[200].

<sup>6</sup> In this context, a “final decision” of the Tribunal in a proceeding includes an interim order under s 58 of the QCAT Act, an injunction under s 59 of the QCAT Act and a monetary decision made other than as part of the Tribunal’s final decision in the proceeding.

29. If the Tribunal's decision is a monetary decision,<sup>7</sup> then to the extent it requires payment of an amount to a person, it may be enforced by filing a copy of the decision in the registry of the appropriate court.<sup>8</sup> Upon its filing, the decision is taken to be a money order of the court in which it is filed, which may then be enforced through the processes of that court.<sup>9</sup> The amount of money the subject of the decision determines which court is the appropriate court in which to file.<sup>10</sup>
30. If the Tribunal's decision is a non-monetary decision, it may be enforced by filing a copy of the decision in the registry of the relevant court.<sup>11</sup> Upon its filing, the decision is taken to be a non-monetary order of the court in which it is filed, which may then be enforced through the processes of that court.<sup>12</sup> The relevant court for a decision relating to a minor civil dispute is a Magistrates Court,<sup>13</sup> and for another decision it is the Supreme Court.<sup>14</sup>
31. Sections 131 and 132 of the QCAT Act were amended in 2017 to remove the requirement for a QCAT decision to be certified by the Principal Registrar of QCAT prior to filing in the relevant court, and the filing of an affidavit about non-compliance with the decision.<sup>15</sup>

## Summary of response

32. As identified in Issues Paper 1, establishing an enforcement framework within QCAT would be a costly and lengthy process, and would duplicate the existing system of enforcement through the courts. It would also represent a departure from the enforcement frameworks of all other civil and administrative tribunals in Australia, which utilise the established systems of the courts.
33. In saying this, it is acknowledged that some parties have expressed frustration about needing to go to another court in order to enforce a QCAT decision. It is also acknowledged that has, and can, cause distress, with very strong views being held by some that it is QCAT's responsibility to ensure that they receive the payment ordered in a decision, even though this not correct as a matter of law. In fact, the behaviour of

<sup>7</sup> A "monetary decision" means a decision of the Tribunal in a proceeding requiring a person to pay an amount to someone else, whether or not the decision is, or is a part of, the Tribunal's final decision in the proceeding (see QCAT Act, Schedule 3 Dictionary).

<sup>8</sup> QCAT Act s 131(1)-(2).

<sup>9</sup> QCAT Act s 131(3). See also, for example, Chapter 19 of the *Uniform Civil Procedure Rules 1999* (Qld) which deals with enforcement of money orders.

<sup>10</sup> For amounts up to and including \$150,000 – a Magistrates Court; for amounts from more than \$150,000 up to \$750,000 – the District Court; for amounts more than \$750,000 – the Supreme Court.

<sup>11</sup> QCAT Act s 132(1)-(2). This applies where the Tribunal's final decision is either: not a monetary decision (s 132(1)(a)); or, where the decision is a monetary decision, to the extent the decision does not require payment of an amount to a person (s 132(1)(b)).

<sup>12</sup> QCAT Act s 132(3). See also, for example, Chapter 20 of the *Uniform Civil Procedure Rules 1999* (Qld) which deals with enforcement of non-money orders.

<sup>13</sup> The meaning of "minor civil dispute" is extensively defined in the QCAT Act, Schedule 3 Dictionary.

<sup>14</sup> QCAT Act s 132(6). The Supreme Court may transfer the proceeding to a lower court, to be enforced by that court (see: s 132(4)-(6)).

<sup>15</sup> *Court and Civil Legislation Amendment Act 2017* (Qld), s 217.

some parties over this issue has become so escalated as to result in threats to QCAT staff.

34. Ultimately, it is a policy question for Government, as to whether or not QCAT should have an enforcement framework for its decisions, and determination of that question will ultimately involve carefully identifying the actual benefits<sup>16</sup> of such a framework, against the costs of duplicating existing systems of enforcement through the courts.
35. In the meantime, when time and resources permit, QCAT will seek to review the information it provides parties in respect of how to enforce decisions and make any improvements it considers appropriate.

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<sup>16</sup> Ie, not proceeding on an assumption that such a framework would ameliorate difficulties being experienced.