QCAT

Queensland Civil and Administrative Tribunal

QCAT 2026 Review conducted by The Honourable David Thomas

Submission by QCAT President in respect of Issues paper 10: Occupational Regulation

24 April 2026

Contents

Issues Paper 10: Occupational Regulation

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.

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[1] 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 <u>or the President</u>, including, for example, whether any provision of an enabling Act affects the effective operation of the Tribunal.

[2] Section 172(4) QCAT Act.

7. Section 240 of the QCAT Act, entitled 'Review of Act', requires the Minister to review the Act, not the practice of the Tribunal. The section is, rather, directed to whether there needs to be legislative change to:

   (a) the QCAT Act to change its objects if its currently stated objects do not remain valid; and/or

   (b) the QCAT Act or an enabling Act or Acts to assist QCAT to be able to meet, or better 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:

   (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 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.

18. As stated above, I am sure it is not the Reviewer's intent to make recommendations to the Minister about non-legislative change, that is, about matters concerning which the Minister is expressly prohibited from directing the President of the Tribunal.[4] I accept, however, that it would be reasonable to have regard to budget and resourcing, in the context of the reference in the Terms of Reference to 'identifying the implications for other forums if transfer of jurisdiction is proposed, the key cost drivers, and any potential savings and efficiencies' and to 'the capacity of QCAT to hear matters, with reference to the available Tribunal Members and physical meeting or hearing room space'.

19. Accordingly, in providing responses to the consultation questions, I have taken the questions to be directed to whether changes to the QCAT Act or the enabling Act would be desirable in order for QCAT to better achieve its objects, taking into account any resource implications of the options posited.

General observations in respect of the themes advanced in Issues Paper 10

20. Paragraph 27 of the Issues Paper sets out the occupations over which the Tribunal has regulatory jurisdiction. The Tribunal also deals with reviews of decisions of the Councillor Conduct Tribunal under the Local Government Act 2009 (Qld).[5]

21. As a general principle, it is important to distinguish between time to finalisation and delays. Matters take time to finalise. That is a reality in litigation. Simply because a matter takes a long time to finalise does not mean that it was affected by delay. In my view, delay occurs only when the time to finalisation is adversely affected by circumstances beyond those inherent in litigation. Some matters take a long time to finalise because the Tribunal lacks the resources to expedite the process. Delays within the Review's remit are those caused by procedural inefficiencies arising from the statutory framework.

22. As paragraph 39 of the Issues Paper properly acknowledges, even if QCAT is operating optimally, there is a limit to how quickly disciplinary proceedings can be progressed while affording procedural fairness.

23. As to whether 'action powers' and the review rights associated with them are appropriate, that is a policy matter for Government.

24. As paragraph 84 of the Issues Paper acknowledges, the relatively low number of lodgements in the occupational regulation jurisdiction as a percentage or proportion of overall matters lodged does not reflect the workload associated with the matters.

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4 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 <u>or the President</u>, including, for example, whether any provision of an enabling Act affects the effective operation of the Tribunal.

5 *Local Government Act 2009* (Qld) s 150AT.

25. In 2024-25, 277 occupational regulation files were lodged in QCAT.[6] The clearance rate for occupational regulation matters was 96 per cent, and the Tribunal had 375 matters pending at the end of the financial year.[7]

26. Since the time issues paper 10 was released, more current figures are available:

(a) As at 31 January 2026, 158 occupational regulation matters had been lodged in the Tribunal in the current financial year. As at 31 January 2026, the clearance rate for occupational regulation matters in financial year 2025-26 was 130 per cent, and there were 326 matters pending.

(b) QCAT categorises occupational regulation matters as ‘health’, ‘legal’ or ‘other’. As at 31 January 2026, 84 “other” occupational regulation matters had been lodged in financial year 2025-26. As at 31 January 2026, the clearance rate for other occupational regulation matters was 144 per cent and there were 52 matters pending.

27. Figure 1, below, shows a breakdown of applications made to QCAT by occupational category based on data compiled by QCAT. I note that the numbers include applications by accreditation holders for the review of regulators' decisions.

Figure 1: Breakdown of applications made to QCAT by occupational category

Case Type	**2021/22**	**2022/23**	**2023/24**	**2024/25**	**Total**
Adjudicator		1			1
Agents Financial Admin		2			2
Architect		2	1		3
Contempt					1
Debt Collect				1	1
Engineer	4	2	1		9
General application	6	4	5	22	44

6 Queensland Civil and Administrative Tribunal, *Annual Report 2024–25* (Report, 2025) 19.

7 Queensland Civil and Administrative Tribunal, *Annual Report 2024–25* (Report, 2025) 19.

Health	86	96	109	96	462
Legal	12	18	51	40	138
Motor Dealer - Chattel Auctioneers	4	1	1	1	7
Nurse	4	10	17	4	47
Police	15	11	27	8	78
Property Occupations	3		2		8
QBCC	29	30	27	16	131
Racing	109	110	2	3	413
Surveyor	2			1	3
Tattoo Parlour		1		2	3
Teacher	45	52	61	82	281
Veterinary	2	1	2		5
Grand Total	**321**	**341**	**306**	**276**	**1637**

28. QCAT keeps data on the number and age of pending occupational regulation matters. This data may be helpful in understanding current matters. Figure 2, below, shows the number and age of pending occupational regulation matters (including legal and health matters). The numbers for financial year 2025-26 are year-to-date as at 31 January 2026. Matters that are over 12 months old are considered to form the Tribunal’s backlog.

Financial Year	Pending	< 6 months	6-9 months	10-12 months	13-18 months	19-24 months	< 24 months
2020/21	328	129	58	28	37	23	53
2021/22	317	125	46	41	33	16	56
2022/23	318	108	59	34	37	20	60
2023/24	366	140	70	36	52	13	55
2024/25	374	120	74	38	59	26	57
2025/26*	326	105	54	34	38	41	54

29. As to table 3 in paragraph 90 of the Issues Paper, QCAT does not collect data in a way that differentiates between suspension applications and disciplinary applications for teachers. QCAT's data only identifies the number of matters lodged per year. Figure 3, below, shows the number of teacher matters lodged per year.

Figure 3: Number of teacher matters lodged per year

Financial Year	2020/21	2021/22	2022/23	2023/24	2024/25
Total lodged	41	45	52	61	82

30. Figure 4 shows the number of police-related applications lodged for the last four financial years. I note that review applications include applications by the officer who is the subject of the disciplinary decision.

Figure 4: Number of police matters lodged per year

Type	2021/22	2022/23	2023/24	2024/25
Original	2	0	0	0
Review	13	11	27	8
Grand Total	**15**	**11**	**27**	**8**

31. As to paragraph 93 and 94 of the Issues Paper, the Review has not consulted, prior to the issues paper being released, consulted with QCAT on the matters contained in the Issues Paper. As such, there are various matters which need to be corrected and /or contextualised.

32. Paragraph 95 of the Issues Paper refers to a submission of the Crime and Corruption Commission to the Parliamentary Crime and Corruption Committee in 2025. The Crime and Corruption Commission submitted that "there is no sensible expectation of a resolution to disciplinary matters for several years after the conduct occurs'". As to this submission, it is relevant to note that it is not uncommon for disciplinary proceedings to be commenced in the Tribunal only after a significant period of time has passed since the conduct occurred.

33. I also observe that there were 33 OCR matters finalised between 1 July 2020 and 30 June 2025 to which the Crime and Corruption Commission was a party. These matters took an average of 1.8 years to finalise. Figure 5, below, shows data for CCC matters for the five-year period ending on 30 June 2025.

Figure 5: Data for CCC matters for the five-year period ending on 30 June 2025

Occupational Regulation List	Average of Years Open	Cases Finalised
Police	**1.8**	**33**
Original	2.4	4
Review	1.7	29

34. This data will be discussed below in more detail.

35. I raise the data at this juncture because of the impression that might be gleaned by the assertion of "no sensible expectation of a resolution to disciplinary matters for several years after the conduct*"* might be that QCAT is the cause of that. Given an average time to finalise of 1.8 years to finalise once the matter reaches QCAT, if the CCC's true experience is that there is no sensible expectation of a resolution to disciplinary matters for several years after the conduct occurs, then it would seem that the gap in time between conduct and referral to QCAT is likely to be a significant factor in that experience.

36. As to paragraph 96 of the Issues Paper, refers to an extract from the CCC report which stated that "[d]espite a relatively constant number of disciplinary review applications in QCAT, the number of proceedings before the tribunal has gradually increased from year-to-year" (see Table 5). They say this 'is essentially due to a decrease in clearance rates of these matters in QCAT", however, on reviewing table 5, the data there set out shows a gradual increase from 18 in 2020-21 to 21 in 2023-24, followed by a decrease to 14 in 2024-25. It is difficult to understand the CCC's statement that there had been an increase from year to year (when there hadn't been when one looks at the final year in the period under consideration), and thus difficult to understand a statement connecting an increase in numbers with a decrease in clearance rates (given the last figure showed a decrease in matters before the Tribunal).

37. In any event, while the number of disciplinary review applications may be relatively constant, the time to finalisation of matters across the Tribunal is affected by the Tribunal's overall workload, which continues to increase, as well as by resourcing. Pressures on hearing room space, members, and registry staff are not list-specific.

38. Returning now to the data. Generally, the average time to finalise police matters for the five-year period ending on 30 June 2025 was 1.8 years. Some matters took three years or more. The longest time that it took to finalise a single matter was 4.8 years.

39. In recent years, there have been some specific factors contributing to long time to finalisation in police matters. Proceedings taken to the Court of appeal in *Willmott v Carless [2024] QCA 115* (as to the nature of the Tribunal's review power) and the Supreme Court in *Johnston v Carroll [2024] QSC 2* (decision-maker failed to give proper consideration to human rights under the *Human Rights Act 2019* (Qld) in making a decision directing police officers and staff to receive doses of a COVID-19 vaccination) have resulted in greater times to finalisations than would otherwise be expected whilst those issues were being litigated.

40. The times to finalisation are impacted not only by constraints on the Tribunal, but also by the available resources of regulators and the limited capacities of unrepresented parties. For at least some regulators, it is evident that limited resources affect their availability and capacity to deal with matters expeditiously. Unrepresented litigants often have difficulty understanding what is required of them, even with guidance from the Tribunal and, at times, the regulator. Also, often unrepresented parties have difficulty meeting timelines due to their

work, family, and other commitments. Not uncommonly, these factors lead to non-compliance with directions and consequent applications for extensions of time. Another factor contributing to the time to finalisation is the time taken for compliance with orders for notice to produce, which are commonly issued in disciplinary matters as going to the grounds for disciplinary action.

41. As to paragraph 98 of the Issues Paper, since 2021, one disciplinary matter involving the Board of Professional Engineers of Queensland has been filed that proceeded to determination in the Tribunal. That matter took 19 months to finalise. In relation to architects, since 2021, one matter has been filed that proceeded to determination. That matter also took 19 months to finalise. There were other engineer and architect matters that were filed and withdrawn. With one exception, they were withdrawn within one year of filing.

42. It is not possible to respond to paragraph 99 in any meaningful way given the generality of the assertions therein, including no examples of any cases where it is said these things have occurred which can be interrogated and a proper response provided. I do not suggest that things are perfect. As the Reviewer will understand from his time as President, the Tribunal operates under enormous challenges in terms of resourcing and other matters, but sometimes, when a stakeholder points out an operational issue to the Tribunal with sufficient clarity and specificity, that issue is able to be interrogated, and not uncommonly, reform implemented. The generalised list set out in paragraph 99 is incapable of a meaningful response. I make some broad observations though. With respect to the last dot point, I do note that if a regulator is involved in review litigation before QCAT, and is aware of relevant case law which will assist the Tribunal, then it is incumbent on the person appearing to bring that to the attention of the Tribunal. It is correct that some matters are listed for on the papers hearings, however, that is assessed on a case by case basis; and if a particular matter has been listed as an on the paper hearing, and the member allocated to hear and determine the matter forms the view that the matter is best dealt with by an oral hearing, it can be relisted as an oral hearing. This does occur (I speak more on this below). In so far as the dot point which reads "in some professions, parties being incentivised not to meet deadlines as there is no expectation that the matter will be dealt with quickly", it would be quite alarming if that is feedback about regulators and/or lawyers (of others and self-represented parties) given model litigant duties and duties of lawyers to the tribunal. I make further comments on this below.

Use of on the papers hearings

43. The Issues Paper records a proposition, attributed to stakeholders, that delay is leading to matters being dealt with on the papers at QCAT, where otherwise a full oral hearing would be conducted. I do not consider that proposition to accurately reflect the Tribunal's practice. Members who preside over matters in the occupational regulation jurisdiction have told me that, on the papers hearings are conducted only when the parties agree to that format and an on the papers hearing is appropriate for that particular matter. I do not agree that time to finalisation pressures are resulting in matters being heard on the papers in circumstances where a full hearing would otherwise be held in so far as that assertion carries with the

connotation that it is not appropriate for those matters to be dealt with on the papers. I do accept that some matters are equally capable of being dealt with by way of oral hearing or on the papers ('OTP'), and that the shortage of hearing rooms leads to some of those matters being dealt with on the papers. This means that more matters across the Tribunal can be heard and determined than if the Tribunal only relied on oral hearings.

44. That is, I reiterate, though, that if the member considers that the matter should be dealt with by way of oral hearing, the expectation is that, even if the matter was scheduled as an OTP, it should be rescheduled as an oral hearing. That is, decisions about whether a matter is to be determined on the papers or by way of an oral hearing are not determined by time to finalisation pressures. They are made because a determination on the papers is considered procedurally appropriate, having regard to the nature of the issues, the scope of the factual dispute (if any), whether any findings of credibility will need to be made, whether the matter involves legal issues in relation to which the Tribunal would benefit from oral submissions, and the interests of justice.

45. I address issues related to on the papers hearings in response to questions 4 and 5 from paragraph 72 of this response.

Compliance with directions and incentives to delay

46. The Issues Paper also records the proposition that, in some professions, parties are "incentivised not to meet deadlines as there is no expectation that the matter will be dealt with quickly". I consider that proposition to be particularly troubling.

47. Directions of the Tribunal are mandatory, not aspirational. Lawyers appearing before the Tribunal should not require any incentive to comply with directions. Wilful non-compliance with Tribunal directions by a legal practitioner may amount to professional misconduct or unsatisfactory professional conduct. Similarly, wilful non-compliance by a party may constitute an offence under the QCAT Act.[8] Further, regulators are bound by model litigant principles.

48. From the Tribunal's perspective, non-compliance with directions, late filing of evidence, and repeated applications for extensions of time are very material contributors to delay. They also impose a significant additional burden on the Tribunal's scarce resources, because time is diverted to managing procedural matters rather than progressing matters to a final hearing. Every time a file has to be actioned for non-compliance with a direction, or deal with an application for extension of time to comply with directions, significant work is generated for both the Registry and the Tribunal. It might not seem much from the outside – but it is – and if you were only talking about a few, would not make much of a mark, but when you are talking about thousands, it is an enormous resource drain.

[8] QCAT Act s 213.

Backlogs and influence of incorrect decisions

49. The Issues Paper refers to "backlogs at QCAT and for original decision makers in review jurisdictions", and suggests that incorrect decisions may influence other decisions for extended periods before being corrected. It is difficult to address this in the absence of specific examples to support the proposition. As I noted above, regulators and lawyers are expected to bring relevant case law to the attention of the Tribunal. If the reference is to some matters being held in abeyance pending an appeal, the result of which may have systemic application, then QCAT is not alone in this. It makes sense for some matters to be placed on "hold" pending determination of a legal issue by a higher court.

Causes of 'delay'

50. Paragraph 100 of the Issues Paper identifies a series of factors that the Review has been told cause delay. No specific examples are provided to support many of the assertions made about the causes of delay. In the absence of that detail, it is difficult to provide a meaningful response to some of the propositions. What I can say though, is that QCAT welcomes stakeholder input into the type of additional information or procedures in place that they feel would assist the smooth fly of litigation, and as always, we very much welcome useful and considered feedback, and suggestion for reform.

51. I address issues related to case management in response to questions 1-3 from paragraph 57 below.

52. I address issues related to instruction material in response to question 11 from paragraph 115 below.

53. The Issues Paper suggests that a lack of expertise at the Tribunal is a contributor to delay. In paragraphs 123 and 124 of this response, I touch briefly on the capability of QCAT's decision-makers. It is unclear to me what is meant by 'lack of expertise'. I observe that with veterinary surgeon and teacher matters, members who are registered in those professions must constitute the Tribunal.[9] That is not the case with other disciplinary matters.

54. The Issues Paper suggests that, specifically in relation to licence review proceedings, delay is caused by abuse of process, with parties filing many and vexatious interlocutory applications in order to extend proceedings. No examples are provided to support this claim or enable me to provide feedback of any specific value. However, it appears to be based on regulators' feedback on licensees' conduct, but I am not sure.

55. In response to question 4 on Issues Paper 1, I submitted that the Tribunal would benefit from more power to deal with vexatious litigants. Otherwise, regulators can apply for

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9 *Veterinary Surgeons Act 1936* (Qld) s 15B(1); *Education (Queensland College of Teachers) Act 2005* (Qld) s 124(1).

vexatious interlocutory applications to be struck out or dismissed under s 47 of the QCAT Act.

56. Otherwise, I observe that parties in occupational regulation matters often seek that matters be adjourned so that they can negotiate facts or an agreed position on sanction. These requests are considered on a case by case basis. While there is a great deal of value in parties being able to resolve as many issues between themselves, care must not be taken to allow inordinate amounts of time, or repeated extensions of time, in order for those resolution discussions to take place.

Case management and community engagement

57. As to the suggestion at paragraph 105 of the Issues Paper that a single experienced Case Manager be responsible for occupational regulation matters, that is an operational matter for QCAT that falls outside the remit of the Review. It is also not clear what is meant by a "single experienced case manager for occupational regulation". One person could not "case manage" all the occupational regulation matters. If what is really meant is a type of Senior Registrar as a communication point, that is conceivably possible, subject to resourcing, (further comment on judicial/legally qualified Registrars below) but it would be of value to QCAT for the stakeholders to provide detailed and specific feedback to QCAT about issues they are experiencing, and suggested solutions so that they might be considered. I note that some stakeholders are very good in engaging with QCAT with a view to working collaboratively (but maintaining proper boundaries and protocol) towards process reform, for example, the Legal Services Commissioner.

58. To the extent that the Review is considering statutory reform, the Tribunal would certainly benefit from judicial/legally qualified Registrars who can conduct case management tasks (as I raised in response to question 20 on Issues Paper 1). However, judicial/legally qualified Registrars should be authorised under the QCAT Act to work across QCAT's jurisdictions. They should have the power to exercise certain judicial functions, such as case management, deciding interlocutory applications, and making consent orders. QCAT would welcome such reform; however, it would need to be funded by Government. The Tribunal would not be able to operationalise judicial/legal Registrars at current funding levels or current FTE allocations.

59. As to paragraph 106 of the Issues Paper, responsibilities in the registry are operational matters. I note that the registry now has jurisdictional teams. If stakeholders are unaware of who to contact within the registry, I invite them to write to the Principal Registrar. I am also not clear as to what "process of assignment" is being referred to? Is it assignment to a Tribunal member or something else. As to the suggestion that a specific list for each occupation should be established, I note that this is not particularly practical given how some occupations have very low lists. The jurisdictional teams approach taken by Registry will likely alleviate what I perceive to be the concerns underpinning paragraph 106. This is subject to adequate numbers of adequate Registry staff.

60. I address issues related to case management further in response to questions 2 and 3 from paragraph 63 below.

Responses to consultation questions

Consultation question 1

Q1 Whether occupational regulation disciplinary matters are currently being dealt with in a manner that is accessible, fair, just, economical, informal and timely.

61. I have addressed some matters relevant to this question below.

62. If the Review has draft proposed legislative amendments, QCAT would be happy to provide feedback in respect of same.

Consultation question 2

Q2 If not, what changes or reforms are needed to improve how occupational regulation matters are dealt with in QCAT.

63. I have mentioned the benefit of judicial/legally qualified Registrars. As stated in response to Issues Paper 7, introduction of Heads of Division is likely to have far reaching benefits, so too the increase in the number of Senior Members to be able to increase the members specialising in complex cases, and in subject matters, and increasing the overall number of members, which would also provide greater ability to create areas of specialisation.[10]

64. Should the Review identify any specific suggestions for legislative amendment, QCAT would be happy to provide feedback in respect of the same.

[10] I do not mean specialisation in one and only one area. That approach has many pitfalls. I do think, though, that with enough Members a greater number of subject matter specialists is achievable.

Consultation question 3

Q3 How case management, communication and engagement could be improved in occupational regulation matters to reduce delay and improve efficiency.

65. Questions of case management, communication and engagement are typically operational matters, rather than matters of legislation.

66. As will be apparent from what has been said above, there would be benefit in judicial/legally qualified Registrars; and, as set out in the response to Issues paper 7 on leadership, creating three presidential layers, and incorporating heads of division within that structure, could assist greatly in further developing proactive case management, improvements in communication, helping to develop pockets of expertise for each of the areas before the Tribunal, and in innumerable other ways.

67. As I have submitted in response to other issues papers, formalised case management needs to be supported by resources that are not currently available to QCAT. If the Review is contemplating legislative change to prescribe case management, in the absence of additional resourcing, such case management would risk diverting resources from other areas of the Tribunal. The consequence would be that the case management may not achieve its intended effect of increasing efficiency or speed. There is also a significant risk of unintended consequences when a desk top review imposes legislatively prescribed case management – that is, of unintended consequences to the overall operations of the Tribunal.

68. That said, I take concerns about case management, communication or engagement seriously. Where stakeholders have particular concerns, they are invited to raise them.

69. If a concern relates to Registry operations, it should be raised with the Principal Registrar. If it concerns the conduct of proceedings by the Tribunal, it should be raised directly with me. In either case, concerns should be precisely articulated and, to the extent possible, supported by specific examples.

70. Generalised complaints about ‘delay’, ‘poor communication’ or ‘lack of engagement’, unsupported by detail, are of very limited or nil utility. By contrast, when stakeholders take the time to analyse the issue they have encountered and to frame their concerns with precision, those concerns are far more likely to result in constructive engagement and, where appropriate, operational reform. It has been my experience as President that when

this occurs, QCAT is able to identify solutions which can be achieved within its resources and act on them. I very much encourage stakeholders to engage with QCAT in this way.

71. Should the Review identify any specific suggestions for legislative amendment, QCAT would be happy to provide feedback in respect of the same.

Consultation question 4

Q4 How occupational regulation proceedings could be conducted differently to help QCAT perform its functions more quickly and economically.

72. I repeat my comment about the advantages to be offered by Heads of Division and judicial/legally qualified Registrars. I also make the obvious suggestion that if regulatory bodies are unable to comply with directions because of lack of resources, that funding options for those bodies need to be explored.

Directions hearings

73. The concerns recorded at paragraph 111 of the Issues Paper are expressed at a high level of generality. No specific examples are provided, so I can only try to answer the proposition in the very abstract. It is not the general practice of the Tribunal for legal arguments on matters of substance which would be relevant for the final hearing to be solicited during directions hearings. On the other hand, during a directions hearing, it is appropriate for a Member to raise questions as to the position of the parties. It would also be expected that an experienced regulator, or a lawyers, to be in a position to answer basic questions on the law in respect of process, or the basis on which a matter is proposed to be litigated. Such a course is consistent with the Tribunal's objects of dealing with matters in a way that is economical, informal and quick.[11] I note that there is no suggestion that a Member decide any issue based on submissions made during a directions hearing – I am sorry but I am really not sure what this paragraph is directed to.

74. In any event, matters of procedure are, subject always to the requirements of natural justice, within the discretion of the Tribunal. Tribunal members are independent decision-makers and are entitled to conduct directions hearings in the manner they consider appropriate to the circumstances of the particular proceeding.

75. As to paragraph 112 of the Issues Paper, I am unsure as to what mischief is suggested by the fact that pro forma directions are issued following a directions hearing. Pro-forma

[11] QCAT Act s 3(b).

directions, with necessary adjustments tailored to the particular proceeding, are a way of promoting consistency in the Tribunal's processes.

76. I note that paragraph 112 states that "a direction given in a review proceeding might require evidence to be provided by a certain date. However, within review proceedings, material is generally only provided by one party – the decision maker."

77. This is wrong. It is not my experience, or that of Members who hear occupational regulation matters, that material is provided only by one party – the decision maker.

78. In support of the proposition, the Issues Paper cites s 21(2) of the QCAT Act, however that provision is concerned with ensuring that the decision maker provides reasons for the decision, along with any relevant material. That provision is not concerned with relevant material that might be filed by the applicant.

79. The issue identified at paragraph 113 is an operational matter.

80. The reason hearing dates are not generally allocated at directions hearings is not only because QCAT does not have sufficient funding or resources to maintain scheduling staff who can be available on call during hearings to provide live information about available hearing dates. It would be fantastic if QCAT had enough resources to be able to provide live hearing dates, and QCAT would be very grateful if Government could make this happen (QCAT was able to make this happen for a short period on a selection of lists under the START project, but QCAT simply did not have the Registry staff to be able to continue live hearing date allocation either during the START programme, or expanded beyond it.)

81. Absent such resourcing, the current separation between directions hearings and listing is unavoidable and reflects operational capacity.

Hearings 'on the papers'

82. Decisions to deal with a matter on the papers are made because the Tribunal considers, on the material before it, that such a course is appropriate in the circumstances of the case, having regard to the issues to be determined, the nature of the evidence, and the requirements of procedural fairness. Hearings on the papers are not, and are not used as, a substitute for oral hearings driven by backlog considerations.

83. In my own list (the legal list), where I form the preliminary view that a matter may be suitable to be dealt with on the papers, I may give a direction to that effect. However, any such direction is expressed as being subject to further order of the Tribunal. A timeframe is set within which any party may make submissions if they contend that an oral hearing is required, or if they no longer agree that the matter should proceed on the papers. I understand that Members who hear matters in the broader occupational regulation approach take a similar approach of allowing parties the opportunity to be heard on whether a matter should be determined on the papers before taking that course. Plainly, a matter will not proceed to a decision on the papers if one of the parties objects to that course and there is a proper basis for that objection.

84. More generally, parties are always at liberty to apply to the Tribunal for a matter to be dealt with by oral hearing, or on the papers, at any stage of the proceeding, including after a notice of hearing has issued. Such applications should, of course, be made promptly. If a regulator or other party considers that a matter should not proceed on the papers, it is incumbent on that party to raise that issue with the Tribunal rather than allowing it to proceed unchallenged. I observe that an on the papers hearing is also a 'full hearing' under s 32(2) of the QCAT Act.

85. The suggestion that some matters proceed by oral hearing when they could 'potentially be resolved on the papers' is also stated at a high level of generality. My understanding from Members who hear occupational regulation matters is that the preferred mode of hearing is commonly canvassed with the parties. Party views are taken into account, although they are not determinative (except that if a party opposes an on the papers determination, the matter will be listed for oral hearing). If the Tribunal considers it would benefit from hearing oral submissions, the matter will be listed for an oral hearing. Sometimes, in fact, it is more efficient overall for a matter to be dealt with by way of oral hearing: issues which are unclear in submissions or in respect of which the Member needs further submissions can be canvassed "then and there" in oral hearings. Once again, flexibility is key: the Tribunal needs to be able to choose the method and mode of hearing depending on the circumstances of the case.

86. As I have submitted in response to multiple issues papers, the mode of hearing is a matter properly determined by the Tribunal on a case-by-case basis with the benefit of submissions from the parties, where appropriate. I would not support introducing a legislative provision mandating a particular type of hearing in specific circumstances. My view is that that would be short sighted and problematic.

87. If stakeholders have concerns or suggestions, I invite them to raise those matters with me directly. Any such matters should be expressed with sufficient specificity so that they can be meaningfully considered and, if necessary, addressed.

88. Should the Review identify any specific suggestions for legislative amendment, QCAT would be happy to provide feedback in respect of the same.

Consultation question 5

Q5 Whether there is a need for clearer guidance on when occupational regulation matters should be dealt with "on the papers", and if so, for which types of matters.

89. Currently this is within the broad discretion of the Tribunal to decide. These decisions are taken by Judicial Officers, appointed by Governor—in-Council, who are able to decide what is an appropriate mode of hearing.

90. Legislation applying to some interstate tribunals specifically provides the circumstances in which an on the papers hearing can and cannot occur. For example, the Victorian Civil and Administrative Tribunal Act 1998 (Vic) s 100 provides that an on the papers hearing cannot occur if a party makes a reasonable objection. Such a provision is not necessary for QCAT – decisions can be made according to the case. If a party makes a reasonable objection to an OTP hearing, and the matter is able to proceed by way of oral hearing, then the member is well able to make a decision as to what should occur.

91. If stakeholders have concerns or suggestions, I invite them to raise those matters with me directly. Any such matters should be expressed with sufficient specificity so that they can be meaningfully considered and, if necessary, addressed.

92. Should the Review identify any specific suggestions for legislative amendment, QCAT would be happy to provide feedback in respect of the same.

Consultation question 6

Q6 What changes, if any, should be made to improve consistency in sanctions imposed in occupational regulation disciplinary proceedings.

93. The proposition that QCAT decision-makers do not consistently impose sanctions is broad and vague. I note that no specific examples are given.

94. Disciplinary sanctions are discretionary matters.[12] That necessarily means the Tribunal has a degree of latitude when imposing a sanction, subject to the limitations that the power must be exercised in a manner consistent with the purpose for which it was conferred and reasonably.[13]

95. In Minister for Immigration and Citizenship v Li,[14] French CJ observed that:[15]

> *"…the requirement that officials exercising discretion comply with the canons of rationality means, inter alia, that their decisions must be reached by reasoning which is intelligible and reasonable and directed towards and related intelligibly to the*

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[12] *Nursing and Midwifery Board of Australia v Lockie* [2023] QCA 96 [39] (Mullins P, Flanagan and Boddice JJA).

[13] *Nursing and Midwifery Board of Australia v Lockie* [2023] QCA 96 [39] (Mullins P, Flanagan and Boddice JJA).

[14] *Minister for Immigration and Citizenship v Li* (2013) 249 CLR 332.

[15] *Minister for Immigration and Citizenship v Li* (2013) 249 CLR 332, 349.

> *purposes of the power. Those canons also attract requirements of impartiality and 'a certain continuity and consistency in making decisions".*

96. As I set out below in response to question 7, there is nothing remarkable about different independent decision-makers arriving at different conclusions. Please see my response to question 7 in that regard.

97. The Issues Paper refers to s 158(2) of the *Education (Queensland College of Teachers) Act 2005* (Qld). I note that the provision concerns whether a ground for disciplinary action is established, rather than the sanction.

98. Clearly, the sanction applied in any matter depends on a variety of factors, which vary from case to case. Litigants are able to assist in promoting consistency in sanctions before the Tribunal by ensuring they refer to all relevant cases, including "comparable"[16] cases when making submissions before the Tribunal. For example, in the Legal List, the Tribunal routinely has the benefit of submissions, from both applicant and respondent, which carefully set out the principles relevant to sanction, and summaries of "comparable" cases which the Tribunal might find of some assistance in coming to its own view as to what should be imposed in the case before it. This approach assists the Tribunal in achieving consistency. If a litigant considers a sanction to have been imposed in a way which discloses an error of law, an appeal avenue is open to them.

99. To the extent that this considers legislative change, that is a matter of policy for the Government. I would welcome the opportunity to comment on any specific statutory changes that are proposed.

Consultation question 7

Q7 Whether there should be an additional mechanism in the QCAT Act to allow parties to raise legal questions for determination by the Court of Appeal.

100. In respect of paragraph [120] of the issues paper, the statement about the decision in *Andersen v Crime and Corruption Commission* would possibly be correct if QCATA had granted leave in respect of the fifth ground on appeal.

101. In my view, there is nothing extraordinary about independent decision-makers arriving at different conclusions about the application of the law, even when those decision-makers sit on the same court or Tribunal. As a matter of law, QCAT decision-makers must act

16 I use the term "comparable" advisedly. No two cases are precisely the same. Further, sanction is an exercise of discretion, and even if there are similarities between cases, a decision-maker might properly choose to impose a different sanction: it all depends on the circumstances.

independently and apply the law as they interpret it, without their independence being fettered.[17] That is an important part of independent decision-making.

102. In *Pivovarova v Michelsen [2016] QCATA 45*,[18] Justice Thomas, President, and Member Deane observed that s 4(d) of the QCAT Act is directed at the concept of legal precedent and comity:

> *"The doctrine of precedent does not require a court or tribunal to follow a decision where the decision is by a court or tribunal of equal ranking. The doctrine of judicial comity as a general rule requires courts to follow decisions made by other equal ranking courts unless they consider the decision to be 'plainly wrong'."*

103. For Tribunals, the principle of judicial comity does not, and cannot, mean that a decision-maker will not independently bring their own mind to a matter.[19] I am unaware of any law that requires a decision-maker who disagrees with a peer on how to interpret the law to refer the matter to an appellate court or a higher judicial officer. Likewise, I am not aware of any law that mandates a party to refer a matter to an appellate court or a higher judicial officer simply because the decision conflicts with a previous decision by the same decision-making body. In both situations, the parties would still have to go through another legal process, even if they prefer not to. This would expose parties to further costs and is contrary to the Tribunal's objects to deal with matters in an economical, informal, and quick manner.[20]

104. A party that is aggrieved by a decision of the Tribunal can appeal or seek leave to appeal in the ordinary way.

105. Further, there is already a power to refer a question of law to the President and a separate power of the President to refer a question of law to the Court of Appeal.[21]

106. Referring questions of law to the Court of Appeal also carries the deleterious effects of increasing costs, fragmenting proceedings and extending time to finalisation. The ordinary way for a party that is dissatisfied with the Tribunal's application of the law, whether because the decision is inconsistent with previous decisions or otherwise, is to appeal. In this regard, I note the observation in In *Bhandari & Ors v Morgan Conley Solicitors Pty Ltd [2022] QCAT 282*, where the Tribunal (the Hon Peter Lyons KC), said:

> "*The applicants submitted that questions should be referred because there is currently no precedential on the construction of ss 54 and 57 of the Queensland Civil and*

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17 As much is clearly contemplated by chapters 1 and 4 of the QCAT Act.

18 *Pivovarova v Michelsen [2016] QCATA 45, [37].*

19 See, for example, *Jaenke v Department of Justice and Attorney-General* [2024] QSC 162, [18] (Bowskill CJ).

20 QCAT Act s 3(b).

21 QCAT Act s117 and s 118 respectively

Administrative Tribunal Rules 2009 (Qld) ('QCAT Rules'). However, the questions which arise are relatively straightforward questions of statutory interpretation. Any error in relation to them can be more conveniently dealt with by way of appeal against this decision. No particular need for an early determination by the Court of Appeal has been established."[22]

107. Section 117 and 118 are couched in discretionary terms. This is far preferable than a legislative mandate to refer.

108. Further, if the concern is around sanctions imposed in disciplinary matters, it is difficult to see how referral to the President or Court of Appeal for what would be a discretionary exercise would be justified. It would certainly not be conventional.

Consultation question 8

Q8 Whether QCAT members should be required to have regard to previous decisions when determining occupational regulation matters.

109. The existing law of judicial decision-making is sufficient in respect of this. Should the Statutory Review have any suggested legislative reform, QCAT would be happy to provide feedback on same.

Consultation question 9

Q9 Whether any provisions in enabling legislation governing occupational regulation would benefit from clarification to assist QCAT to achieve its objectives.

110. If any such clarification is proposed, I would welcome the opportunity to be consulted. I note that no specific proposal is identified.

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22 *Bhandari & Ors v Morgan Conley Solicitors Pty Ltd [2022] QCAT 282,* [65]-[66].

Consultation question 10

Q10 Whether constitution or panel requirements should be amended, introduced, standardised or removed for occupational regulation matters.

111. This is ultimately a policy question.

112. However, I note that panel constitution requirements have significant cost and resource implications. Panels require additional coordination by the Registry to identify suitably qualified, available Members or panel Members. The more stringent the panel requirements are, the more resource-intensive it is to assemble a panel.

113. There are also physical constraints. Only some of the Tribunal's limited hearing rooms can accommodate panel hearings, further restricting scheduling and contributing to delays in listing matters.

114. Consideration might be given to permitting any matter which requires panel members to be able to proceed if the particular circumstances of the case means that it would be n the interests of justice. See, for example, discussion on this topic in the context of the health lists.

Consultation question 11

Q11 What forms of guidance, education or support (for members or parties) would assist QCAT in performing its functions in occupational regulation matters.

115. It is unclear what is meant by a 'lack of guidance in disciplinary matters for both the parties and the Tribunal'. I shall try and answer the question in the abstract.

116. My public position on bench books has always been that I am not opposed to there being publicly available bench books, however, they must be properly resourced, both with respect to their initial production and then with respect to keeping them up to date and correct. This is not work that can simply be absorbed by Members within their other work.

117. The Issues Paper does not propose any legislative changes or specific options in relation to guidance for other disciplinary matters.

118. If legislative reforms are contemplated in this area, QCAT would be happy to provide feedback. Beyond that, the question concerns operational matters. As always stakeholders are welcome to contact with QCAT if they have identified concerns and wish to proffer appropriately specific information to QCAT to be able to identify the mischief/s and work towards solution/s within its resource capability.

Consultation question 12

Q12 Whether there are any other issues affecting QCAT's occupational regulation jurisdictions that should be addressed as part of the Review.

119. I repeat and rely on my observations as to the benefits of Head of Division provisions, and additional Senior and Ordinary Members in QCAT's establishment cohort. Further, specifically allocated funding for creation and maintenance of bench books and website upgrade would be welcome.

Consultation question 13

Q13 Whether QCAT's police disciplinary jurisdiction should remain within QCAT.

120. This is a matter of policy. Care should be taken in relying on the CCC data and opinions based on that data which appear in the issues paper.

Consultation question 14

Q14 If police disciplinary jurisdiction were transferred from QCAT, whether the Queensland Industrial Relations Commission would be the appropriate forum (for review proceedings, corrupt conduct matters, and applications to quash abbreviated proceedings).

121. This, too, is a matter of policy. I do not express a view about this. If there is to be a transfer of jurisdiction, careful analysis of costings and lead times will need to be taken into account as part of the cost/benefit analysis.

Consultation question 15

Q15 Whether QCAT remains the appropriate forum for disciplinary and review matters for each regulated occupation currently within its jurisdiction.

122. QCAT remains an appropriate forum for disciplinary matters for all of the occupations listed.

123. The Tribunal is well equipped to deal with these matters. It has experienced and capable decision-makers, and established procedures suited to disciplinary and review jurisdictions. While there can always be improvement, like in any court, on matters of process and information provision, QCAT is and remains an appropriate jurisdiction for the hearing and determination of these matters. Appeal rates are low, and the rate of successful appeals is lower still. That is a good indicator of the quality and robustness of decision-making.

124. Creating new specialist Tribunals or transferring these jurisdictions elsewhere would be costly. It would also fragment what is presently a coherent occupational regulation framework.

Consultation question 16

Q16 If QCAT is not the appropriate forum for some occupational regulation matters, what alternative forum should have jurisdiction instead.

125. I consider that QCAT is the appropriate forum.

Conclusion

126. Issues Paper 10 raises several matters that are, in large part, matters of policy for Government, or operational matters for the Tribunal that fall outside the proper scope of a statutory review under s 240 of the QCAT Act.

127. Concerns expressed in the Issues Paper about ‘delay’ are, in many instances, better understood as reflections of unavoidable time to finalisation in complex disciplinary litigation compounded by resource constraints that affect the Tribunal as a whole.

128. An area in which legislative reform may warrant further consideration is the possible introduction of judicial/legally qualified Registrars with the power to undertake defined judicial functions, including case management and interlocutory decision-making across

jurisdictions. Such reform could improve efficiency, but only if accompanied by adequate and sustained funding.

129. Finally, QCAT is an appropriate forum for the occupational regulation jurisdictions presently conferred upon it. The Tribunal has the expertise, experience and institutional framework to determine these matters.

130. Stakeholders are strongly encouraged to engage with QCAT on systemic matters they have observed, providing sufficient particularity and specificity, so as to allow QCAT to interrogate the issue, and identify any cause or causes, and work towards solutions within its resourcing cap. Some stakeholders do this. Others do not.

131. I trust that this submission assists the Review in identifying where legislative reform may be warranted, and equally, where the existing statutory framework is functioning as intended.

The Honourable Justice Kerri Mellifont

Supreme Court of Queensland

President of the Queensland Civil and Administrative Tribunal