

QCAT 2026 Review conducted by the Hon David Thomas

Submission by QCAT President in respect of
Issues paper 5: Building and construction

26 March 2026

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Issues paper five: Building and construction

Introduction to response

1. I observe that some of the issues raised in Issues paper 5, 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 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;

¹ *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.

² QCAT Act s 172(4).

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 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.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).

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);
 - 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 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.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

⁴ Pursuant to section 172(5) 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.

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 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.

High-level overview of themes advanced in Issues Paper 5

22. At the outset, it is important to distinguish between the different building and construction jurisdictions conferred on the Tribunal and to consider how these differences affect responses to the questions in the Issues Paper, which will vary depending on the jurisdiction.
23. Delays can primarily be attributed to non-compliance with directions, limited registry resources to monitor non-compliance, numerous interlocutory applications, increased case volumes, a high number of unrepresented or unfamiliar parties, resource constraints for litigants, the submission of voluminous and often irrelevant or emotive materials, capacity limitations due to scarce hearing rooms and available members, and a growing reliance on AI-generated submissions.
24. While many practical solutions lie in the operational domain, there is scope for the Reviewer to consider whether particular provisions of the QCAT Act or enabling Acts could be amended to better support the Tribunal's objectives. Provisions concerning legal representation, alternative dispute resolution, and the powers of the Principal Registrar may warrant examination to determine whether legislative change could alleviate systemic pressures.
25. Early, specialist-led intervention is the most effective way to address delay. An early compulsory conference (within weeks of the proceeding being filed) could significantly reduce issues and encourage resolution. If a resolution cannot be reached at a compulsory conference, the Tribunal can make end-to-end decisions and list the matter

for a final hearing. Such measures fall within the Tribunal's existing statutory powers and are therefore operational rather than legislative. The extent to which such measures can be operationalised is dependent on resources available. Sometimes such initiatives are hampered by not having the resources to execute them as broadly as we would like. These measures are mentioned here to explain the context in which the legislation operates.

26. In a similar vein, Alternative Dispute Resolution (ADR) is valuable in both civil building disputes and review proceedings. In-person processes are generally more effective than remote ones. These, too, are operational matters that can be addressed within the existing statutory scheme.
27. Whether the START pilot should be retained or expanded is an operational matter outside the Review's remit. The START pilot only applied to select categories of administrative review. The particular categories selected were selected because of the low level of resolution reached at compulsory conferences. That low level of resolution is perhaps unsurprising in the context of risk-based decisions. As well as operational benefits, it delivered educational benefits in terms of effective case management which can be (and in some cases, has been) adopted, as considered appropriate, in other lists. Also, if retained, should complement rather than replace other ADR.
28. Queensland Building and Construction Commission (QBCC) pre-claim processes should be standardised and made clearly procedural (that is, processes which can be waived in appropriate cases) to avoid time and resource consuming unnecessary dismissals and/or recommencement of proceedings.
29. As to the whether the definition of 'building dispute' should be simplified, the feedback I have received from Members with expertise in building and construction matters is to urge caution, that is, extremely careful and thorough consideration will need to be given to any intended proposal. This is in part because the current definition intersects with numerous concepts (for example, reviewable domestic work, tribunal work, and excluded work) that has been developed over the course of decades. Feedback from some Members on this topic is that while simplification, such as consolidating the meaning of 'building dispute' into a single schedule, might be of benefit, a great deal of care would need to be taken to avoid unintended consequences.
30. If minor civil disputes are transferred out of QCAT, several members have expressed the view that the Tribunal should retain building disputes due to specialised expertise, the need for coordinated sequencing with related QBCC reviews, and established practices with expert evidence.
31. Multiple related review proceedings should not be consolidated where the statutory questions differ. Rather, they should be identified and case-managed together so they can be heard sequentially, if appropriate.

32. Several Members have provided feedback that they do not support a general power to stay directions to rectify and have expressed the view that if any stay power is introduced, it should be tightly circumscribed.
33. While ultimately a matter of policy, the strong feedback is that merits review should be confined to evidence before the original decision-maker. This is consistent with my own view of merits review cases in areas in which I have significant experience.
34. The 28-day timeframe for statements of reasons and documents remains appropriate, however, to remove any ambiguity, the legislation should contain an express power to vary the timeframe.
35. Expert evidence should continue to rely on party-chosen experts and the flexible processes and procedures adopted by the Tribunal. A Tribunal-appointed panel of experts is unlikely to provide a practical way in which to approach to expert evidence.
36. Consistent with my submissions in response to other issues papers, there would be benefits to QCAT in achieving its statutory objects if there is as of right representation in these matters.
37. No changes to the current costs provisions in the QCAT Act are suggested.
38. The work in the building and construction jurisdictions in QCAT is sufficiently sizeable to warrant its own division. If, as is strongly recommended in my response to Issues Paper 7, a third layer of presidential member is created, and they are Heads of Division, building and construction is sufficiently sizeable, of an of sufficient complexity, to warrant its own division. Currently, QCAT is funded for two Heads of Division (but needs legislation in order to implement that role). There would be merit in creating a third division for Building and Construction and provide funding accordingly.

Differences between jurisdictions

39. There are significant differences between the Tribunal's review jurisdictions conferred under the *Building Industry Fairness (Security of Payments) Act 2017* (BIF Act) (review jurisdiction),⁵ the *Building Boost Grant Act 2011* (Grant Act) (review jurisdiction),⁶ the *Building Act 1975* (Building Act) (review jurisdiction, original jurisdiction – disciplinary, and original jurisdiction – pool fencing disputes),⁷ and the *Queensland Building and Construction Commission Act 1991* (QBCC Act) (original jurisdiction – building disputes, merits review, conduct a public examination– recovery of debts arising from the statutory insurance scheme).⁸

⁵ BIF Act s 180.

⁶ Grant Act s 96.

⁷ Building Act ss 189, 208, 245XE, 245XG, 245XI, 245XN, 245XO, 245XS, 245XU, 245XV, 246DA.

⁸ QBCC Act ss 56AH, 77, 87, 92.

40. The Tribunal is also conferred with building and construction-related jurisdiction under the *Electrical Safety Act 2002* (ES Act) (review jurisdiction),⁹ the *Professional Engineers Act 2002* (Engineers Act) (review jurisdiction and original jurisdiction – disciplinary),¹⁰ the *Architects Act 2002* (Architects Act) (review jurisdiction and original jurisdiction – disciplinary),¹¹ and the *Plumbing and Drainage Act 2018* (Plumbing Act) (original jurisdiction – disciplinary).¹²
41. The BIF Act confers jurisdiction on the Tribunal to review decisions of the Adjudication Registrar made in the exercise of the Adjudication Registrar’s regulatory functions over adjudicators.¹³
42. *Building Boost Grant Act 2011* (Grant Act) confers jurisdiction on the Tribunal to review decisions of the Commissioner of State Revenue to confirm or set aside and substitute a decision (an objection decision) upon an objection to a decision to authorise payment of a grant with or without conditions, or refuse an application for a building boost grant.¹⁴ The review is restricted to the evidence before the Commissioner at the time the decision was made, unless QCAT considers it necessary in the interests of justice to allow new evidence.¹⁵ Parties may be represented by a lawyer.¹⁶
43. The Building Act confers jurisdiction on the Tribunal to review decisions of the QBCC in the exercise of the QBCC’s regulatory functions over building certifiers,¹⁷ conduct disciplinary proceedings to decide whether proper grounds for taking disciplinary action against a building certifier are established,¹⁸ decide fencing disputes between pool owners and neighbours,¹⁹ and conduct disciplinary proceedings to decide whether a ground for taking disciplinary action against a pool safety inspector is established.²⁰
44. The QBCC Act confers the Tribunal with jurisdiction to review decisions of the QBCC that a person is an excluded individual, or excluded company, or that an individual is still a director or secretary of or an influential person for the company,²¹ decide building disputes,²² conduct a public examination that investigates the conduct or competence of a

⁹ ES Act s 172.

¹⁰ Engineers Act ss 122, 127.

¹¹ Architects Act ss 121, 126.

¹² Plumbing Act s 51(3).

¹³ BIF Act ss 163(2), 165(3)(a), 167(6), 167(7), 174(3), 175(2)(a), 177, 180.

¹⁴ Grant Act ss 27, 31, 94, 95, 96.

¹⁵ Grant Act s 97.

¹⁶ Grant Act s 98.

¹⁷ Building Act ss 158, 164, 170, 178, 189.

¹⁸ Building Act s 208.

¹⁹ Building Act ss 245XE, 245XG, 245XI, 245XO, 245XS, 245XU, 245XV.

²⁰ Building Act s 246DA.

²¹ QBCC Act s 56AH.

²² QBCC Act s 77.

person who has carried out tribunal work or undertaken to carry out tribunal work,²³ and review several administrative decisions of the QBCC, including:²⁴

- a) decisions related to granting, refusing, placing conditions on, suspending and cancelling licences;
- b) decisions to give or not give a direction to rectify;
- c) decisions about the scope of works to be undertaken under the statutory insurance scheme to rectify or complete tribunal work;
- d) a decision to disallow a claim under the statutory insurance scheme in whole or in part;
- e) a decision that a domestic building contract has been validly terminated, having the consequences of allowing a claim for non-completion under the statutory insurance scheme; and
- f) a decision to take disciplinary action against a person.

45. The ES Act confers jurisdiction on the Tribunal to review several decisions, including:²⁵

- a) disciplinary decisions of the Electrical Licensing Committee in relation to the holder of an electrical licence; and
- b) decisions made by the regulator under the Act.

46. The Engineers Act confers jurisdiction on the Tribunal to review decisions of the Board of Professional Engineers of Queensland in the exercise of its regulatory functions in relation to engineers.²⁶ The Act also confers jurisdiction on the Tribunal to conduct a disciplinary proceeding to decide whether a disciplinary ground exists against a professional engineer.²⁷

47. The Architects Act confers jurisdiction on the Tribunal to review decisions of the Board of Architects of Queensland in the exercise of its regulatory functions in relation to architects.²⁸ The Act also confers jurisdiction on the Tribunal to conduct a proceeding to decide whether a disciplinary ground exists against an architect.²⁹

²³ QBCC Act s 92(a).

²⁴ QBCC Act ss 86(1), 86E, 87.

²⁵ ES Act ss 167, 172.

²⁶ Engineers Act s 122.

²⁷ Engineers Act s 127.

²⁸ Architects Act s 121.

²⁹ Architects Act s 126.

48. The Plumbing Act confers jurisdiction on the Tribunal to act on a disciplinary referral from the Commissioner under the QBCC Act in relation to a person who holds a licence under the Plumbing Act.³⁰
49. The majority of the building and construction matters before the Tribunal consist of building disputes and merits review decisions under s 87 of the QBCC Act.
50. Expressed in a general way, building disputes are disputes relating to the performance or non-performance of certain building work between a building owner and a building contractor, between two building contractors, or between a building owner, a building contractor, and any one or more of an architect, engineer, surveyor, quantity surveyor, an electrician or electrical contractor, or a supplier or manufacturer of materials used in tribunal work.³¹ It follows that the parties to building disputes are usually private entities. Many are individuals or small businesses, and, given the application of s 43 of the QCAT Act, many are litigants in person or not legally represented.
51. The parties to merits review proceedings under s 87 of the QBCC Act include the QBCC and the person who applied for the review. Other entities affected by a decision may also be parties. For example, in a review of a decision to disallow a claim under the statutory insurance scheme, the relevant contractor(s) may also be joined as parties, given the effect of s 71 of the QBCC Act.³² The person who has applied to review the decision is often an individual homeowner or licensed contractor. Homeowners and licensed contractors are often not legally represented. The QBCC is represented in review proceedings by QBCC lawyers, private firms retained by the QBCC, and, in some cases, counsel. Because of the operation of s 43 of the QCAT Act, any party wishing to be legally represented must seek and obtain the Tribunal's leave. While each application must be decided on its merits, the Tribunal frequently grants leave to the QBCC (and, in the interests of fairness, other parties) to be legally represented.

³⁰ Plumbing Act s 51(3).

³¹ QBCC Act sch 2 'building dispute', 'commercial building dispute', 'domestic building dispute', 'major commercial building dispute', and 'minor commercial building dispute'.

³² Section 71 of the QBCC Act allows the QBCC to recover the amount of a payment made under the statutory insurance scheme from the building contractor by whom the relevant residential construction work as, or was to be carried out.

Issues

Consultation question 1

Q1 Based on your experience, what are the causes for delay in building and constructing matters in QCAT?

52. There are several causes for delay in building and construction matters in QCAT (to varying extents), including:
- a) non-compliance with directions;
 - b) limited registry resourcing for monitoring compliance with directions, leading to non-compliance with directions not being able to be addressed by the Tribunal in a timely way;
 - c) repeated interlocutory applications (including applications to extend time to comply with directions) and attempts to file fresh material outside timetables;
 - d) increases in filings across both civil building disputes and QBCC review matters;
 - e) a high incidence of parties who are not legally represented and at times, representatives unfamiliar with the jurisdiction;
 - f) resource-poor litigants, including small businesses that need to focus their resources on trading as opposed to engaging with Tribunal proceedings;
 - g) filing of voluminous, irrelevant, and often emotive submissions;
 - h) listing capacity constraints due to insufficient resourcing, including but not limited to, insufficient number of full-time inhouse members, including Senior Members, (which has an impact across the board, including the time which can be devoted to proactive list management), funding for sessional members, insufficient registry staff and resources to schedule hearings and prepare hearings and all work incidental to these matters (including not having sufficient staff to be able to give real time listings in all matters across the hearing), a shortage of physical space, in particular but not limited to a shortage of physical hearing rooms; and
 - i) increasing reliance on voluminous AI-generated submissions.

Non-compliance with directions, repeated interlocutory applications, limited registry resourcing, resource-poor litigants, and representation

53. There is likely a nexus between non-compliance with directions, repeated interlocutory applications, limited registry resourcing, resource-poor litigants, and representation. Resource-poor litigants and parties who are not legally represented, or represented by practitioners unfamiliar with QCAT litigation, (and, not infrequently, parties who are familiar with QCAT litigation) fail to comply with directions, leading to repeated interlocutory applications. Resource-poor litigants and parties who are not legally represented, or represented by practitioners unfamiliar with QCAT litigation (and, not infrequently, parties who are familiar with QCAT litigation),³³ fail to comply with directions, leading to repeated interlocutory applications. Extremely limited registry resourcing to monitor non-compliance with directions means inevitable delay in detection of non-compliance and action being able to be taken in respect of same.
54. In fiscal year 2024-2025, the QBCC filed 308 applications for leave to be represented. Under s 43(2)(b)(iv) of the QCAT Act, each application for leave to be represented must be determined on its merits. However, experience has shown that applications in these matters are frequently granted in the interests of justice.
55. Interlocutory applications place a significant burden on Tribunal and registry resources. In fiscal year 2024-2025, the Tribunal received a great many interlocutory applications,³⁴ a large proportion of which were from QBCC.
56. A significant contributor to delays in both the Tribunal's review jurisdiction and original jurisdiction to decide building disputes is likely non-compliance with directions. In building disputes, non-compliance with directions principally takes two forms. Sometimes, parties fail to comply with directions altogether. Other times, parties ostensibly comply with directions, but fail to address what is necessary.
57. In review proceedings, the QBCC frequently applies for an extension of time to comply with its obligations under s 21(2) of the QCAT Act to provide a statement of reasons and documents that may be relevant to the Tribunal's review of the decision. I have spoken at some length about statement of reasons in the response to issues paper two and the potential for reform. Whether that suggestion for reform is taken up will be entirely out of my hands, and so we must address the issues in the current framework. Delays caused by extensions of time to comply with the s 21(2) obligations are a source of frustration for the Tribunal, and other parties, including homeowners waiting for completion of crucial work and small businesses. Applications for extensions of time by the QBCC are not limited to applications to extend time to comply with s 21(2) obligations and extend to

³³ See, for example, Proctor article: "Directions mandatory, not aspirational" - <https://www.qlsproctor.com.au/2024/07/directions-mandatory-not-aspirational/>

³⁴ Data limitations prevent me from being able to provide precise figures.

other directions made by the Tribunal. The ground advanced for most QBCC applications is that QBCC have insufficient resources. Obviously, that is a matter for Government and QBCC to address. As a general proposition, it is imperative that government entities the subject of frequent QCAT proceedings need to be sufficiently resourced so that they can engage with the Tribunal in a way which does not frustrate QCAT's attempts to achieve its objectives of efficient and timely proceedings, conducted in a way which consumes as little costs as practicable. There would be benefit in such funding being sufficient to assist the relevant entity to identify any process improvements that can be implemented, and to carry out all of its work in a way which does not have a negative impact on QCAT's times to finalisations.

58. Parties to review proceedings include the QBCC, homeowners, consumers, QBCC licence holders, and contractors. Many parties appear in person, are not legally represented or engage lawyers who are unfamiliar with the Tribunal's jurisdiction.
59. In building dispute proceedings, parties are frequently litigants in person, not legally represented, or represented by legal practitioners who are unfamiliar with the jurisdiction. Consequently, parties frequently fail to comply with directions. The registry attempts to monitor compliance, and where non-compliance is detected, refer files to the Tribunal. However, the registry is not sufficiently resourced to do so. Consequently, it is not uncommon for significant delays to be caused as a consequence of non-compliance with directions. When a file eventually comes before a Member in such circumstances, and the Member issues further directions to progress the matter, significant time has often passed. Increased resources to detect and deal with non-compliance is necessary.

Increases in filings

60. The table below summarises the increases in filings in the building dispute jurisdiction over the period financial year 2014-2015 to 2024-2025. Aside from minor civil disputes, building disputes make up the second largest share of civil disputes in the Tribunal's original jurisdiction.³⁵

³⁵ Queensland Civil and Administrative Tribunal, *Annual Report 2024–25* (Report, 2025) 19.

Year	2014- 2015	2015- 2016	2016- 2017	2017- 2018	2018- 2019	2019- 2020	2020- 2021	2021- 2022	2022- 2023	2023- 2024	2024- 2025
Building Dispute Lodgements	265	307	315	333	352	304	297	377	367	459	446
% Difference	-	16%	3%	6%	6%	14%	-2%	27%	-3%	25%	-3%

61. The Tribunal has seen an approximate 68 per cent increase in building dispute filings over the last 10 years.

Listing capacity constraints

62. As at 30 June 2015, QCAT has 12 appointed ordinary members, three of whom work part-time (QCAT Annual Report 2014-2015, page 51). As at 30 June 2015, QCAT has 79 sessional members including three who are concurrently part time Adjudicators and one who is concurrently appointed as a part-time Ordinary Member.⁴⁷ The June 2024 budget outcome provided a substantial uplift in the number of full time ordinary members (from 11 to 21), increased lodgments mean that more members will be needed. Sessional Members conduct a substantial volume of hearings and compulsory conferences. QCAT would also welcome the appointment of approximately 30 more Sessional Members, and emphasise the need for reappointment of existing experienced Sessional Members.
63. While work is underway to create additional hearing room space, even these additional hearing rooms are unlikely to be enough to keep up with the extraordinary increase in lodgments that QCAT has seen year to date. Further, the Tribunal remains constrained by the need for more space for in-house members and staff to support them. While some partial solutions are underway, more will be needed to keep up with increased work.

³⁶ Queensland Civil and Administrative Tribunal, *Annual Report 2015–16* (Report, 2016) 15.
³⁷ Queensland Civil and Administrative Tribunal, *Annual Report 2015–16* (Report, 2016) 15.
³⁸ Queensland Civil and Administrative Tribunal, *Annual Report 2016-17* (Report, 2017) 46.
³⁹ Queensland Civil and Administrative Tribunal, *Annual Report 2017-18* (Report, 2018) 14.
⁴⁰ Queensland Civil and Administrative Tribunal, *Annual Report 2018-19* (Report, 2019) 13.
⁴¹ Queensland Civil and Administrative Tribunal, *Annual Report 2019-20* (Report, 2020) 13.
⁴² Queensland Civil and Administrative Tribunal, *Annual Report 2020-21* (Report, 2021) 12.
⁴³ Queensland Civil and Administrative Tribunal, *Annual Report 2021-22* (Report, 2022) 14.
⁴⁴ Queensland Civil and Administrative Tribunal, *Annual Report 2022-23* (Report, 2023) 22.
⁴⁵ Queensland Civil and Administrative Tribunal, *Annual Report 2023-24* (Report, 2024) 16.
⁴⁶ Queensland Civil and Administrative Tribunal, *Annual Report 2024–25* (Report, 2025) 19.
⁴⁷ QCAT Annual Report 2014-2015, page 52.

64. Listing capacity constraints are a substantial source of delay. A significant number of matters await a hearing date, even though all interlocutory applications have been determined and all directions have, at least ostensibly, been complied with.

Voluminous, irrelevant, and emotive submissions and the increasing use of generative artificial intelligence

65. The filing of irrelevant or emotive submissions take up resources that QCAT can ill afford to be consumed. Sometimes there is a need for the Tribunal to adjourn the matter to require the parties to redo submissions which actually deal with the real issues in the proceedings.
66. The increasing use of generative artificial intelligence results in parties filing voluminous submissions that are often irrelevant, incorrect as to legal principles, and refer to authorities that either do not exist or do not address the matters in issue. One member of the Tribunal noted in a judgment that a party to that proceeding had filed material 'comprising 600 pages' that was 'prolix, rambling, repetitive, non sensical' and appeared to be the product of artificial intelligence.⁴⁸ In another judgment, the then Deputy President observed that the use of artificial intelligence 'wastes the time for Tribunal members in checking and addressing... hallucinations' and 'causes a significant waste of public resources'.⁴⁹
67. Queensland Courts has issued a guideline on the use of generative artificial intelligence by non-lawyers.⁵⁰ Those guidelines apply to QCAT and set out the risks to non-lawyers arising from the use of generative artificial intelligence.
68. QCAT Practice Direction No. 10 of 2025 acknowledges the increasing use of artificial intelligence as a tool in litigation. It aims to address the risk of parties filing submissions that may give the superficial appearance of being coherent and based in law but, are actually neither of those things. That practice direction is broadly consistent⁵¹ with the one issued by the Chief Justice and other heads of jurisdiction in Queensland.

Consultation question 2

Q2 What should be done to reduce delays and backlogs in these jurisdictions?

⁴⁸ *Sunrise Creek Pty Ltd v Body Corporate for Glades Easthill South Community Titles Scheme* 30074 [2024] QCAT 362 [19].

⁴⁹ *LJY v Occupational Therapy Board of Australia* [2025] QCAT 96 [26].

⁵⁰ Queensland Courts, *Guidelines for Self-Represented Litigants on the Use of Generative Artificial Intelligence* (Guideline, 15 September 2025).

⁵¹ Only changes were bespoke for QCAT.

69. In addressing this question, I limit my response to matters properly within the remit of the review under s 240, not matters which are purely operational.

Non-compliance with directions, repeated interlocutory applications, limited registry resourcing, resource-poor litigants, and representation

70. What can be done to reduce delay and backlogs will differ between the Tribunal's review jurisdiction and the Tribunal's original jurisdiction, particularly the Tribunal's building dispute jurisdiction.
71. An important contextual consideration is that the Tribunal is constrained by its resources, and additional resources would likely significantly alleviate some of the pressures on the Tribunal. For example, in light of the obligations placed on the Tribunal and the registry in ss 29 and 30 of the QCAT Act, a significant improvement would be an additional substantial investment in the Tribunal of resources to improve online resources to assist parties in understanding the jurisdiction and what is required of them.
72. As I have set out earlier in this submission, the Tribunal frequently grants the QBCC leave to be legally represented in proceedings before the Tribunal. The Tribunal's experience is that most legal practitioners do provide valuable assistance to the Tribunal.
73. In my response to issues paper one, I expressed the view that there would be benefit in there being 'as of right' legal representation in all CAD jurisdictions, except Minor Civil Disputes. Allowing legal representation as of right would reduce the burden on the Tribunal and the registry of managing and deciding hundreds of applications for legal representation every year.
74. While the assistance of legal practitioners is valuable in progressing review matters, QCAT still experiences avoidable delays as a consequence on non-compliance with directions and frequent applications for extensions of time.
75. Most applications for extension of time are not complex and do not require specialist expertise of experienced members. Views differ as to whether or not the Principal Registrar's power to make directions under s 62 of the QCAT Act is delegable. Obviously the Principal Registrar does not have time to deal with applications for extension of time: the job is big enough as it is. It is not practical for the Principal Registrar to exercise the power personally, given the vast array of functions that are conferred on the Principal Registrar under the QCAT Act. The Principal Registrar is also an office currently held by one person concurrently with that of the Assistant Director-General (ie, in common parlance, that role could be described as a Chief Executive).
76. Efficiencies could be gained if the power to make directions could be exercised by appropriate personnel within the Registry. As such, it is recommended that the legislation be amended to make it very clear that the section 62 power is delegable.

77. Other measures that can be adopted to reduce delays and backlogs are operational in nature. QCAT knows how to take these measures, but has been constrained by resources. While the June 2024 budget uplift was significant, and greatly appreciated by QCAT, it won't be enough to do all that QCAT would like to do (some examples are below), particularly given the increase in lodgements at QCAT.
78. Some examples of things QCAT would like to do are to have early compulsory conferences in more building disputes. It is considered that in many matters, an early compulsory conference by a member with significant experience and knowledge in building matters, could resolve, narrow, and identify the real issues in dispute. Average times to compulsory conference across the Tribunal have reduced from 6-7 months this time last year, to 3-4 months currently. This is a very tangible benefit of the increased funding from the June 2024 budget uplift. Obviously it would be great to be able to do more and do them earlier – but that will almost entirely depend on having more members and more resources. Registry staff monitoring compliance with directions is another important operational tool to limit delays, but again, registry staff can only do so much. More are needed.
79. Matters concerning the timing and conduct of compulsory conferences and ADR processes, and monitoring compliance with directions, fall within the Tribunal's operational functions. Continued improvement depends on resources. If the Review identifies any specific legislative proposal which it considers may assist with these issues, QCAT would be more than happy to consider such a proposal or proposals and provide feedback.

Increases in filings and listing capacity constraints

80. Additional hearing rooms are currently being built at 259 Queen Street (where QCAT has its Brisbane offices). They are due to be completed later this year. They are unlikely to be sufficient in the long term to manage all of QCAT's work if increases like those we have seen continue.
81. QCAT would very much welcome the appointment by Government of many more additional Sessional Members, including if at all possible, those with building expertise.

Voluminous, irrelevant, and emotive submissions and the increasing use of generative artificial intelligence

82. If the Review identifies any proposed legislative change which it considers might address these issues, QCAT would be very happy to consider such proposals and provide feedback.

Consultation question 3

Q3 Is alternative dispute resolution helpful in resolving:

- a) building disputes;
- b) review proceedings for administrative decisions related to building?

83. ADR assists materially in both review proceedings and building disputes. Early intervention led by decision-makers experienced in building matters improves settlement rates, narrows issues, and provides parties with practical guidance about relevant evidence and outcomes. Some Members have reported that in-person participation in ADR is generally more effective than remote participation, but that the ability to conduct ADR remotely, in part or in full, remains an important tool for people to be able to participate in ADR, particularly those in regional or remote areas, or who have accessibility constraints due to physical or other disability or difficulties.
84. The QCAT Act currently provides for three different types of ADR: conciliation, compulsory conferences, and mediation.⁵²

Conciliation

85. The power to refer a matter to conciliation was inserted into the QCAT Act following the 2018 review of the QCAT Act.⁵³ It appears that the reviewers concluded that conciliation would be beneficial because conciliators could provide the parties with advice on the operation of relevant legislation, whereas mediators do not. It was said that 'conciliation will assist in the early and efficient resolution of disputes so that a final hearing by QCAT is not required'.⁵⁴ I am unaware of the power to refer to conciliation ever being used. Practically speaking, compulsory conferences and mediations are likely able to achieve the same result, particularly if the member conducting the compulsory conference or the mediator conducting the mediation uses an evaluative mediation style. Members conducting compulsory conferences are encouraged to use an evaluative, rather than facilitative, style.

⁵² QCAT Act pt 6 divs 1A, 2, 3.

⁵³ Department of Justice and the Attorney-General, *Review of the Queensland Civil and Administrative Tribunal Act 2009* (Report, July 2018) 19; Queensland, *Queensland Civil and Administrative Tribunal and Other Legislation Amendment Bill 2018*, Explanatory Notes 2, 5.

⁵⁴ Department of Justice and the Attorney-General, *Review of the Queensland Civil and Administrative Tribunal Act 2009* (Report, July 2018) 19.

Compulsory conferences

86. The Tribunal commonly uses compulsory conferences. However, they are not currently used in every building and construction matter. Rather, whether a compulsory conference should be ordered is a matter for the member to decide, taking into consideration whether there is a reasonable prospect that the compulsory conference will result in resolution (whether in part or full) of the matter, and/or a narrowing of issues and/or is considered desirable in order to discharge the Tribunal's obligations pursuant to section 29 of the QCAT Act. As to the latter, this might occur when a party is likely to have more equitable access in the less formal environment of a compulsory conference compared to a directions hearing. As such, the current approach to compulsory conferences is that they proceed only when there is merit in doing so. This current approach was introduced after a consideration of a number of matters, including the success rate of compulsory conferences in certain lists.⁵⁵ By way of example, the rate of partial or full resolution of compulsory conferences in QBCC review matters was approximately 5%.
87. It is critical that some thought is given to what matters are sent for compulsory conference rather than simply defaulting to compulsory conference for all matters. A simple default approach is not a responsible use of the Tribunal's resources, and has the potential to increase the time to finalisation of not only the particular matter being referred (if the compulsory conference does not result in a meaningful outcome, it means that the parties need to wait for and take part in a step which was not useful) but to other matters in the Tribunal because there would be a huge and unwarranted diversion of resources to conduct compulsory conferences.
88. Compulsory conferences must be heard by a member, adjudicator, or the Principal Registrar⁵⁶ The current practice is for compulsory conferences to be heard by members, including, from time to time, the President,⁵⁷ and from time to time, suitably experienced and skilled adjudicators. Unlike external mediation, the Tribunal bears the cost of a compulsory conference: that cost comes in the form of use of Registry resources to prepare files and schedule compulsory conferences, and, to some extent facilitate IT requirements of compulsory conferences which are conducted remotely in part or in full. It also comes in the form of the member's time and the use of physical space at the Tribunal's premises, both of which are limited resources. Compulsory conferences are a very important means of providing ADR without cost to the parties.
89. Feedback from members indicates that compulsory conferences are useful for resolving matters, narrowing issues, and providing practical guidance to parties, particularly litigants in person and parties who are not legally represented. Compulsory conferences also enable the Tribunal to comply with its obligations under s 29 of the QCAT Act. As with many forms of ADR, the prospect of resolution is often greater when a compulsory

⁵⁵ Hence, also the introduction of the directions hearing model of the START project in some lists.

⁵⁶ QCAT Act s 70(1).

⁵⁷ Although not in building matters given the demands of the President's own lists and statutory functions.

conference is held at an early stage, that is before parties become irrevocably entrenched in their position. QCAT does this to the extent it can, within its available resources, but the reality is that historical underfunding has made that difficult to achieve across the board for a long time.

90. Remote participation in compulsory conferences can facilitate access to justice in circumstances where parties are located regionally or where a party is affected by factors that make travel to QCAT's premises onerous (for example, caring responsibilities or medical conditions). However, it is some member's experience that in-person attendance by parties (or at least a person with full authority to settle a matter or recommend a settlement to an authorised delegate) results in more productive compulsory conferences. It remains necessary for the Tribunal's enabling legislation to permit parties to attend remotely, thereby facilitating access to justice.
91. The extent to which compulsory conferences can and should be used in building matters is an operational matter, which, subject to resourcing limitations, can be achieved within the current statutory framework as set out in section 67 to 74, and section 84 and ancillary provisions of the QCAT Act. QCAT has not identified any specific recommendations for legislative change. If the Review articulates specific proposals for legislative change, QCAT would be happy to provide feedback in respect of same.

Mediation

92. In building disputes, mediation is another helpful ADR mechanism. It may also be productive in merits review proceedings. The Tribunal maintains a list of legally qualified, nationally accredited mediators to mediate disputes. The Tribunal's approach to mediation is set out in QCAT Practice Direction 8 of 2025. The benefit of mediation to QCAT is that it is privately resourced by parties rather than by the Tribunal. Mediation by a member of the QCAT mediation panel does not use any QCAT facilities.
93. Under s 75 of the QCAT Act, the Tribunal or the Principal Registrar may refer the subject matter or part of the subject matter of a proceeding for mediation. A referral to mediation may be made with or without the parties' consent.⁵⁸
94. Mediation by a member of the QCAT mediation panel to be a useful method of dispute resolution in building dispute matters that does not use Tribunal resources.
95. The extent to which external mediation can and should be used in building matters is an operational matter, which can be achieved within the current statutory framework as set out in section 75 to 83, and section 85 and ancillary provisions of the QCAT Act. QCAT has not identified any specific recommendations for legislative change. If the Review articulates specific proposals for legislative change, QCAT would be happy to provide feedback in respect of same.

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QCAT Act s 75(2).

Consultation question 4

Q4 How could alternative dispute resolution be used to better facilitate early resolution of building disputes or review proceedings? For example, are certain forms of alternative dispute resolution more helpful for building disputes or review proceedings?

96. The Tribunal has had some success in implementing list-specific practice directions that set out the procedures to be followed in relation to proceedings on particular lists.⁵⁹ Other practice directions have been issued addressing when mediation will and will not occur, and how it will occur.⁶⁰
97. QCAT Practice Direction No. 9 of 2022 addresses applications for review of decisions made by the QBCC. It does not address building dispute matters. Practice Direction No. 9 of 2022 provides that a compulsory conference will be held in a QBCC review matter after the initial directions have been complied with and any applications for an extension of time or to join a party to the proceeding have been determined. The initial directions anticipated by the Practice Direction relate to the service of the application to review a decision, the statement of reasons and bundle of documents under s 21(2) of the QCAT Act, and any application for joinder.⁶¹ The provisions within the QCAT Act provide a sufficient framework for conducting various forms of ADR. As stated above, compulsory conferences and mediation are both useful forms of ADR. Subject to resourcing constraints, compulsory conferences can be used in both merits review proceedings and

⁵⁹ See QCAT Practice Direction No. 9 of 2025 for information about lists; for list-specific practice directions, see QCAT Practice Direction No. 1 of 2025 (Applications for review of decisions made about animals), QCAT Practice Direction No. 4 of 2023 (Applications for residential tenancy disputes), QCAT Practice Direction 12 of 2022 (Applications for review of decisions made about voluntary assisted dying), QCAT Practice Direction No. 9 of 2022 (Applications for review of decisions made by the Queensland Building and Construction Commission), QCAT Practice Direction No. 7 of 2022 (Applications for review of decisions made about weapons), QCAT Practice Direction No. 5 of 2022 (Applications for review of decisions made about Blue Cards), QCAT Practice Direction No. 10 of 2021 (Legal Profession Act), QCAT Practice Direction No. 2 of 2019 (Motor Vehicle List), QCAT Practice Direction No. 6 of 2015 (Process for administrative reviews in child protection matters), QCAT Practice Direction No. 7 of 2013 (Arrangements for applications for orders to resolve other issues about trees), QCAT Practice Direction No. 4 of 2011 (Arrangements for the mediation and determination of minor civil disputes), QCAT Practice Direction No. 3 of 2011 (Matters under the Education (Queensland College of Teachers) Act 2005), QCAT Practice Direction No. 8 of 2010 (Directions relating to guardianship matters).

⁶⁰ See QCAT Practice Direction No. 4 of 2011 (Arrangements for the mediation and determination of minor civil disputes), QCAT Practice Direction No. 6 of 2010 (Compulsory Conferences and Mediations).

⁶¹ See Annexure A to Practice Direction No. 9 of 2022; applications for joinder are common in reviews of decisions of the QBCC (for example, a builder may be joined in a proceeding to review a decision of the QBCC to reject a claim against the statutory insurance scheme).

building disputes. Privately resourced mediation can be employed in building disputes to encourage parties to resolve the proceeding without the need for a contested hearing in the Tribunal.

98. As further stated above, if the Review has any specific proposal or proposals for legislative change in respect of ADR, QCAT is happy to provide feedback in respect of same. Beyond that, utilisation of ADR methods is an operational matter which QCAT will continue to pursue within resources and other constraints.

Consultation question 5

Q5 Has the START program been effective? Is it successful in reducing delay in review proceedings? If so:

- a) Should the START program be extended to building disputes? Would this create any unnecessary duplication with pre-trial dispute resolution services which are already mandatory for building disputes?
- b) Is the pre-trial dispute resolution service operated by the QBCC helpful for resolving matters in addition to, or replacement of, any alternative dispute resolution by QCAT?
- c) Should QCAT offer its own in-house mediation service for building disputes which is free of charge?
- d) Should alternative dispute resolution occur in person or remotely, either over phone or video link?

The START program

99. The START program was introduced, partially in consequence of an identification that certain types of lists were not prone to high success rates in ADR, but also in order to model end to end programming directions and setting of hearing dates in real time, as well as practice directions intended to provide greater guidance and information to litigants engaged in proceedings. Unfortunately, QCAT was only able to fund the Registry staff time for real time hearing dates for a short period of time – such was the extreme lack of resources in QCAT at that time.
100. In consultation with the membership, the START program was designed with two models – one with a short compulsory conference at an early stage and the other with a lengthy directions hearing at an early stage. The objective of both models was to “front end” the process. Which model applied depended on the preference of the particular List Manager. In the QBCC review jurisdiction, START involved a short compulsory conference (with all the protections of a compulsory conference) at an early stage of the proceeding.

Adjudicators with specialist expertise in building and construction conducted the compulsory conferences. In the animals, weapons and blue cards list, the long directions hearing model was chosen. Both approaches were effective in educating applicants about the nature of the decision under review and what evidence was relevant to it.

Jurisdictional issues were identified and addressed; interlocutory applications were determined; the parties agreed to a timetable for the progression of the matter; and directions hearing and final hearing dates were allocated.

101. The extent to which the START program should be continued or extended is an operational matter outside the Review's remit. List Managers in building and construction have sufficient expertise and skill to conduct their lists in the manner they see fit, and to develop Practice Directions for the President's consideration. They are able to take up such aspects of the START model as are appropriate for running their list if they wish to.
102. The only observation I make here is as to resourcing. QCAT could certainly do with additional Registry resources in scheduling, though, to enable hearing dates to be given in real time across **all matters**. This would mean, for example, that at a directions hearing, the member could set a suitable hearing time, then and there, with the parties and Registry, rather than having to list matters for a hearing "to be set by Registry on a date set in consultation with parties." It may be difficult to believe that QCAT simply does not have the staff to do this, but it doesn't. Hopefully future funding and resource allocation by Government will make that operational efficiency a sustainable reality.
103. If the Review has a specific proposal or proposals to amend the legislation relevant to this topic, QCAT would be happy to provide feedback in respect of it.
104. Consultation Question 5(a) refers to the pre-trial dispute resolution service operated by the QBCC. QCAT takes the reference to 'pre-trial dispute resolution' to be a reference to a process established by the QBCC to attempt to resolve a building dispute under s 77(2) of the QBCC Act. If a program similar to the START pilot were used in relation to building disputes, it seems unlikely that it would create any unnecessary duplication with any dispute resolution process established by the QBCC under s 77(2) of the QBCC Act, but, as I said above, how the building and constructions lists are managed are a matter for the discretion of the particular list manager.

QBCC pre-proceeding dispute resolution

105. Question 5(b) queries whether the 'pre-trial dispute resolution service operated by the QBCC' helps resolve matters in addition to, or in replacement of, any alternative dispute resolution by QCAT. The Tribunal is not made aware of successful dispute resolution under s 77(2) of the QBCC Act because the consequence of the successful dispute resolution is that a proceeding is not commenced in the Tribunal. The Tribunal is not best placed to respond to this particular question, however some observations about s 77(2) of the QBCC Act and the pre-proceeding dispute resolution processes are made in response to question 6.

QCAT in-house free mediation service

106. This is an operational matter that is subject to resourcing constraints. To the extent that the Reviewer may be considering statutory amendments, it does not appear to be necessary for the QCAT Act to be amended to prescribe that QCAT provide an in-house mediation service that is free of charge to parties.
107. The QCAT Act already provides the Tribunal with the power to refer matters to a compulsory conference, which may (and do) take the form of mediation. The current framework allows QCAT to manage its finite resources to best achieve its statutory objectives.
108. In so far as Government might be considering providing additional resources so that QCAT can establish and run compulsory conferences in real time – that is – Mediators and/or members and adjudicators on call to take on compulsory conferences “there and then” when a Member or Adjudicator identifies that might be worthwhile during a directions hearing or interlocutory hearing (or even, conceivably, a final hearing) I would strongly encourage such an allocation of resources. There are still staff and members at QCAT who have knowledge of a similar type program previously in place (before my time) and would be well placed to develop and reintroduce such a program if resources were allocated.

Method of conducting ADR

109. This is an operational matter subject to discreet considerations, including those related to access to justice and reasonable accommodation for parties who require it. To the extent that the Reviewer may be considering statutory amendments, I would not consider it either necessary or desirable for the QCAT Act to be amended to prescribe or presume a particular method of conducting alternative dispute resolution. In any event, as always, if the Review or Government has a specific proposal or proposals in mind for legislative amendment, QCAT would be happy to provide feedback in respect of same.

Consultation question 6

Q6 What has been your experience with the pre-claim dispute resolution processes offered by the QBCC?

110. The Tribunal is limited in the observations that it can make about the QBCC's pre-claim dispute resolution process. The nature of the Tribunal's function means that it is not made aware of when the QBCC pre-claim dispute resolution process successfully resolves a dispute. The Tribunal only becomes involved in disputes that the pre-claim dispute resolution process does not resolve.

111. Otherwise, some Members who preside over building disputes have informed me that the QBCC's pre-proceeding dispute resolution steps tend to be highly inconsistent in both substance and documentation. Member feedback on this topic includes that sometimes applicants receive a detailed letter from the QBCC setting out that they have complied with the pre-proceeding dispute resolution process. Other times, applicants receive only a brief pro forma letter stating that the letter serves as evidence that they have complied with the pre-proceeding dispute resolution service. On other occasions, applicants are told that the QBCC has no process for them to comply with, yet they nonetheless receive a letter asserting that the pre-proceeding dispute resolution process has been complied with.
112. Member's feedback includes that this is in contrast to pre-proceeding alternative dispute resolution that is provided by some other entities in other matters, for example, the dispute resolution provided by the Residential Tenancies Authority under the *Residential Tenancies and Rooming Accommodation Act 2008* and by the Office of the Information Commissioner under the *Information Privacy Act 2009*.
113. The requirement in s 77(2) of the QBCC Act that an applicant comply with a dispute resolution process established by the QBCC before commencing a proceeding in the Tribunal has been the subject of decisions in the Tribunal. In summary, those decisions have found:
 - a) compliance with s 77(2) of the QBCC Act is mandatory – if the QBCC establishes a process to attempt to resolve a building dispute, it must be complied with before proceedings are commenced in the Tribunal;⁶²
 - b) the Tribunal does not have jurisdiction to hear a building dispute if s 77(2) has not been complied with – it is a jurisdictional fact, not merely a procedural requirement that can be waived under s 61 of the QCAT Act;⁶³
 - c) a dispute which may be both a minor civil dispute and a building dispute cannot proceed even as a minor civil dispute unless s 77(2) has been complied with;⁶⁴ and
 - d) if the QBCC is satisfied that a party to a building dispute has complied with a process established by the Commission for the purposes of s 77(2), what form that process might take, and whether parties to a building dispute have complied with such a process, is a matter for the QBCC.⁶⁵

⁶² *Widdows v Pacific Blue Painting Pty Ltd & Anor* [2022] QCAT 114 [5] (Senior Member Brown).

⁶³ *Arrowsmith v True Blue Garages Pty Ltd* [2026] QCAT 41 [12] (Magistrate Hughes); *Walsh v Australian Building and Construction Group* [2016] QCAT 187 [8]-[12] (Senior Member Brown), *Leyden v NJ Tierney Constructions Pty Ltd* [2015] QCAT 483 (Senior Member Brown).

⁶⁴ *Arrowsmith v True Blue Garages Pty Ltd* [2026] QCAT 41 [13] (Magistrate Hughes); *Subramaniam & Anor v Queensland Roofing Pty Ltd & Anor* [2019] QCAT 70 [12] (Senior Member Brown).

⁶⁵ *Widdows v Pacific Blue Painting Pty Ltd & Anor* [2022] QCAT 114 [6] (Senior Member Brown); *Contrast Constructions Pty Ltd v Allen & Anor* [2020] QCAT 194 [44] (Senior Member Brown).

114. The consequence of s 77(2) of the QBCC Act, the practical inconsistencies of the pre-proceeding dispute resolution program, and the Tribunal's construction of s 77(2) is:
- a) the Tribunal must engage in a fact-finding exercise about whether an applicant has engaged in the pre-dispute resolution steps, which is not always clear; and
 - b) the Tribunal cannot waive the requirement in s 77(2) of the QCAT Act, and if s 77(2) has not been complied with, the Tribunal lacks jurisdiction to hear the proceeding.
115. The practical impacts are delays in resolving disputes, proceedings being dismissed and recommenced, and the litigation costs associated with those impacts.
116. In this regard, there is scope for statutory reform. In particular, some Members have suggested that reform that would allow the Tribunal to waive the requirement that the applicant engage in pre-proceeding dispute resolution when it is in the interests of justice to do so may be beneficial in assisting QCAT to achieve its objects.

Consultation question 7

Q7 Should the pre-claim dispute resolution processes be improved? For example, should the mediation and conciliation service be available for a wider range of disputes?

117. Views as to how the pre-claim process might be improved are set out in response to question 6, beyond that, this answer is best answered by others.
118. As to whether the mediation and conciliation service should be available for a wider range of disputes, I note that the QBCC Act already provides for dispute resolution for building disputes, and that I presume this question is not directed to reviews of QBCC – it would be most peculiar for the QBCC to operate a dispute resolution service for reviews of its own decisions. Those decisions are already subject to internal review before an application can be filed in the Tribunal (although it is not uncommon for the Tribunal to see deemed decisions on internal review). As such, it is not entirely clear to me what would fall within the “wider range of disputes”. If the Review has some specific types of disputes in mind, QCAT would be happy to provide feedback in respect of same.

Consultation questions 8

Q8 Should the definition of 'building dispute' be simplified? If so how?

119. The definition of 'building dispute' includes defined terms that themselves include further defined terms.
120. The Court of Appeal has described the *Queensland Building Services Authority Act 1991* (Qld) (since renamed as the QBCC Act) as being characterised by a 'labyrinthine and poorly integrated definitions and provisions'.⁶⁶
121. Some Members have expressed the view that while this characterisation might seem to make the definition attractive, it should be considered that:
 - a) in the Tribunal's experience, the current definition of 'building dispute', when properly understood, can be applied; and
 - b) the definition of 'building dispute' was inserted into the then *Queensland Building Services Authority Act 1991* by the *Commercial and Consumer Tribunal Act 2003* and has been carefully refined over the course of over 20 years to appropriately define the jurisdiction of the Tribunal; and
 - c) varying the definition of 'building dispute' would have implications for several provisions within the QBCC Act.
122. Even before the establishment of the Commercial and Consumer Tribunal, a 'domestic building dispute' could be heard in the Queensland Building Tribunal.⁶⁷
123. Accordingly, some Members urge caution in making changes to the definition of 'building dispute' without a very careful and thorough consideration. This in part because the current term intersects with numerous concepts (for example, reviewable domestic work, tribunal work, and excluded work) that have been developed over the course of decades. Feedback from some Members on this topic is that while simplification, such as consolidating the meaning of 'building dispute' into a single schedule, might be of benefit, a great deal of care would need to be taken to avoid unintended consequences.

⁶⁶ See *Fraser Property Developments Pty Ltd v Sommerfeld* [2005] QCA 134 [23] (MacPherson JA, Williams JA and Philippides J agreeing).

⁶⁷ *Queensland Building Services Act 1991* (Qld) as enacted, s 95.

Consultation question 9

Q9 If the minor civil disputes jurisdiction is transferred to the Magistrates Court, should QCAT retain jurisdiction to hear and decide building disputes?

124. Feedback from some Members is that even if minor civil disputes were transferred to another jurisdiction, the Tribunal should retain its building disputes jurisdiction. This is because:

- g) Building disputes often involve complex factual and legal issues, expert evidence, and concurrent related review proceedings. The Tribunal has developed specialist capability and established processes,⁶⁸ concurrent evidence, and a process to identify related files in the registry, which would be difficult to replicate immediately elsewhere (particularly with reviews of decisions remaining in QCAT);
- b) The Tribunal frequently has building disputes and related merits review proceedings travel together, and such related proceedings are sometimes heard sequentially;
- c) Disputes concerning the same work on the same land between the same homeowner and contractor (and involving the QBCC for review matters) being heard in different jurisdictions would be problematic and could lead to duplication and increased costs for parties;
- d) The overlap with minor civil disputes is limited to debt claims and claims arising from a contract between a consumer and a trader, or between two or more traders, below the prescribed amount of \$25,000.00. As matters currently stand, those proceedings can already be commenced in QCAT or the Magistrates Court;
- e) In practice, there is little confusion about which procedures apply to a matter that can be characterised as both a minor civil dispute and a building dispute. The Tribunal has consistently found that s 77(2) of the QBCC Act applies to minor civil disputes that are also building disputes in the same way as if they were only building disputes (unless the claim is framed as a claim under the Australian Consumer Law (ACL), in which case the ACL prevails and s 77(2) does not apply);⁶⁹
- f) Section 94 of the QCAT Act provides that the Tribunal may conduct an expedited hearing for a minor civil dispute or a matter that an enabling Act states is a matter for

⁶⁸ See QCAT Practice Direction No. 4 of 2009.

⁶⁹ *Arrowsmith v True Blue Garages Pty Ltd* [2026] QCAT 41 [13] (Magistrate Hughes); *Subramaniam & Anor v Queensland Roofing Pty Ltd & Anor* [2019] QCAT 70 [12] (Senior Member Brown); *GC Pontoon & Jetty Repairs Pty Ltd v Wegener* [2024] QCATA 69 [48] (A/Member Lumb).

which an expedited hearing may be conducted. The procedure for an expedited hearing is set out in r 82 of the QCAT Rules;

- g) Section 95 of the QBCC Act sets out circumstances in which a domestic building dispute or review proceeding either must or may be determined at an expedited hearing. Contrary to that stated in Issues Paper 5, expedited hearings are not limited to 'minor domestic building disputes' (where a claim is under \$10,000). The Tribunal has the power, in some circumstances, to decide a domestic building dispute that is not a minor domestic building dispute at an expedited hearing;⁷⁰
- h) Section 96 of the QBCC Act sets out the circumstances in which certain minor commercial building disputes may be heard at an expedited hearing;
- i) Generally speaking, the QBCC Act provides that a matter cannot be decided at an expedited hearing if the Tribunal considers the dispute to be too complex to be properly dealt with at an expedited hearing. Ultimately, whether a matter can properly be decided at an expedited hearing is always a matter of discretion for the Tribunal;
- j) The QCAT Act currently provides that if the Tribunal considers it does not have jurisdiction to hear all matters in a proceeding, it may, by order, transfer the matter or matters for which it lacks jurisdiction to a court of competent jurisdiction.⁷¹ If a Superior Court finds that QCAT is not a court of a State within the meaning of s 77 of the Commonwealth Constitution, the Tribunal can use its power under s 52(2) of the QCAT Act to transfer the matter to the appropriate jurisdiction.

Consultation question 10

Q10 Is there a more efficient way to deal with the multiple review proceedings which can arise in relation to a single building dispute? For example:

- a) Are there any administrative decisions which are currently reviewable which should not be reviewable in QCAT?
- b) Should the principal registrar have the power to consolidate related merits review proceedings 'on the papers'?

125. Question 10(a) asks whether there are any administrative decisions that are currently reviewable, which should not be reviewable in QCAT. That is a policy question for the Government, which requires balancing the salutary outcome of allowing decisions to be

⁷⁰ QBCC Act s 95(2).

⁷¹ QCAT Act s 52(2).

independently reviewed against the deleterious effect of a single transaction resulting in multiple administrative decisions and review applications in the Tribunal.

126. One difficulty with removing the right to review particular decisions is that each decision has different practical consequences for the persons affected. This may mean that removing the right to have a particular decision reviewed independently on its merits may result in more applications to the Supreme Court for judicial review of that decision.
127. As to whether proceedings can or should be consolidated, this is a matter of judicial discretion and can be one of some complexity, and take time to consider, and thus should remain a matter for a member or adjudicator, rather than an express legislative power being given to the Principal Registrar to consolidate related merits review proceedings.
128. Each reviewable decision can have different practical consequences for the persons affected. One practical consequence may be that, but for the first-in-time decision, the second-in-time decision would not have been necessary. The following example has been provided to me in feedback from some members:

“if the QBCC issues a direction to rectify and the builder applies to the Tribunal to review the QBCC's decision, the homeowner may later apply to the Tribunal to review a QBCC decision disallowing a claim under the statutory insurance scheme. Those two decisions have different practical outcomes for the QBCC, the homeowner, and the builder. The Tribunal will need to deal with the application to review the decision to issue a direction to rectify before it can even begin to consider the application to review the decision to disallow the claim under the statutory insurance scheme. The proceedings that cannot be consolidated, could be heard sequentially.”
129. The Tribunal's registry has developed practices and procedures to identify where multiple review proceedings (and related building disputes) are filed in the Tribunal. Member feedback is that those practices and procedures are effective, that the registry often identifies multiple related files, and that, once identified, they travel together, allowing them to be appropriately case-managed and, where appropriate, heard sequentially.
130. In conclusion, granting power to the Principal Registrar to consolidate matters is not a legislative amendment for which there is Member support.
131. However, Members have identified one area for potential reform which would assist QCAT to meet its statutory objects. This is in relation to scope of works decisions. The QBCC sometimes issues variations to the scope of works. If a builder applied to review the initial scope of works decision before the variation was issued, the builder may later apply to review the variation. There would be benefit in the application to review the first scope of works decision including a review of the variation, and this being able to be readily and efficiently achieved without the need to file a second application (and then have that consolidated).

Consultation question 11

Q11 What changes could be made to the QBCC Act to clarify the scope and nature of reviewable decisions?

132. Member feedback is that one change that could clarify the scope and nature of reviewable decisions would be to adopt, within the QBCC Act, an approach to identifying internally reviewable decisions by reference to when a person must be given an 'information notice' and externally reviewable decisions by when a person must be given a 'QCAT information notice'.
133. Some enabling Acts provide a statutory power to make a decision, then provide that upon making a decision, the decision-maker must give a person affected by the decision an 'information notice'. Information notice is defined to mean a notice stating the decision, the reasons for the decision, the day the decision takes effect, that the person may seek internal review of the decision, and how and the period within which the internal review may be started. The Act then provides that a person who has received an 'information notice' may apply for internal review of the decision. The internal review decision maker is then required to decide the application for internal review and give the applicant a 'QCAT information notice'. QCAT information notice is then defined to mean an information notice within the meaning of s 157 of the QCAT Act. A different provision of the enabling Act then allows a person who is given a QCAT information notice to apply to the Tribunal to review the decision.⁷²
134. The beneficial effects of this approach are that:
 - a) reviewable decisions are identified with precision;
 - b) it is clear to the decision-maker that the decision-maker must give a notice stating:
 - i. the decision;
 - ii. the reasons for the decision;
 - iii. that the person has a right to review the decision in the Tribunal;
 - iv. how, and the period within which the person may apply for the review; and
 - v. any right the person has to have the decision stayed under s 22 of the QCAT Act.
135. It would be particularly beneficial for applicants to have a notice explaining the reasons for the decision before they apply to the Tribunal for review. I am told that the Tribunal often

⁷² See, for example, *Medicines and Poisons Act 2019* (Qld) ss 200(1)(c), 202.

receives applications to review decisions in circumstances where the applicant has not received a statement of reasons containing the matters set out in s 27B of the *Acts Interpretation Act 1954* (Qld).

136. There is a significant benefit in applicants being given reasons before they apply to the Tribunal. Those benefits include the possibility that a person who is given reasons for a reviewable decision may decide not to apply to the Tribunal to review the decision, in circumstances where sensible reasons accompany the decision. They also include that if reasons are provided before an application is filed in the Tribunal, it may reduce the time that the QBCC needs to comply with its obligations under s 21(2) of the QCAT Act. This could, in turn, reduce some of the delays caused by the QBCC needing further time to comply with its s 21(2) obligations.⁷³
137. A decision-maker for a reviewable decision is already obliged to give an information notice for a reviewable decision (including one that states the reasons for the decision) under s 157 of the QCAT Act. However, making that obligation explicit in the QBCC Act would remove any ambiguity about when an information notice stating the reasons for a decision is required.

Consultation question 12

Q12 What changes could be made to make the different outcomes available in review proceedings and building disputes clearer to consumers?

138. This question appears to be directed to operational matters. Should the Review have particular proposals for legislative reform on this topic, QCAT would be happy to provide feedback in respect of same.

Consultation question 13

Q13 Should QCAT have the power to stay a decision to issue, or not to issue, a direction to rectify or remedy?

139. Feedback from Members shows hesitation in supporting the conferral of a general stay power for directions to rectify or remedy. This is because rectification can be time-sensitive and, given current listing pressures, a stay may delay works for extended periods, with risks to consumers and impacts on related proceedings. If any stay power is

⁷³ For further comment on this issue of provisions of reasons in matters which are the subject of merits review in QCAT, please see my response to Issues Paper Two.

introduced, feedback to me is that it should be exceptional, narrowly defined, and subject to stringent public interest and safety criteria.

140. If the Review has a specific amendment in mind, QCAT would be happy to provide feedback in respect of it.

Consultation question 14

Q14 Should the QBCC Act be amended so that QCAT's review is limited to consideration of the evidence before the original decision maker?

141. This is primarily a matter of policy, however, as expressed in response to Issues Paper two, I do think that merits review in QCAT should be limited to consideration of the evidence before the original decision maker. I observe that a merits review aims to reach the correct and preferable decision. In building matters, this may require additional targeted evidence (often technical) beyond that available to the original decision-maker.

Consultation question 15

Q15 Is the timeframe of 28 days for the decision maker to file statements of reasons and documents under section 21(2) of the QCAT Act appropriate for review of decisions made by the QBCC? If not, what should the timeframe be?

142. I address this issue in response to Issues Paper 2. I adopt those submissions here. I do not suggest an amendment of the timeframe in section 21(2) QCAT Act. It is trite to say that decision-makers should make every effort to comply with the 28-day requirement, and that agencies should be resourced sufficiently for decision-makers to meet that obligation.
143. There may be some benefit in the legislation expressly providing that the time frame may be varied.
144. Such an express power is provided in other CATs. The Tribunal should have the power to vary the 28-day timeframe in circumstances where it would cause undue hardship to a party if such an order were not made. This is the approach taken in New South Wales.
145. One approach that could at least partly lessen delays after a proceeding is filed is for the QBCC Act to provide that reasons must be provided when a decision is made. Such reasons should be a concise articulation of the basis of the decision and the reason for it – thus making it clear why a decision has been made. I refer to my response to Issues Paper Two on this topic.

146. Explicitly requiring a decision-maker to provide reasons before an application can be made to the Tribunal would significantly reduce delays and possibly reduce the number of applications made to the Tribunal.

Consultation question 16

Q16 Is the requirement to provide 'any document or thing in the decision-makers possession or control that may be relevant to the Tribunal's review of the decision' appropriate for review of decisions made by the QBCC? If not, how could it be amended?

147. Yes.
148. Restricting decision-makers to documents they 'relied on' or consider 'directly relevant' is too limited.

Consultation question 17

Q17 How should expert evidence be handled in building and construction matters?

149. How the Tribunal receives expert evidence is a matter for the Tribunal, as constituted for a particular hearing. QCAT Practice Direction No. 4 of 2009 provides guidance as to how expert evidence will ordinarily be received. However, it applies subject to the presiding member's orders. When it comes to expert evidence, a flexible approach is necessary, and I do not consider it appropriate for the QCAT Act or enabling Acts to be more prescriptive.
150. Members have expressed concern about adopting an approach that would see QCAT appoint a panel of experts to provide expert evidence in building matters. Experts who give evidence in building matters come from a wide range of occupational backgrounds. For example, one matter may require a plumber, while another may require an electrician. It would be practically difficult to assemble a panel that covers all necessary areas of expertise and includes experts who will be available when called upon to prepare a report or give evidence. It also places a considerable burden on QCAT.
151. Building disputes tend to be quite adversarial. This adversarial culture extends to the role that experts play in proceedings. It would be difficult to have the parties agree that one expert is qualified to offer a credible and independent opinion.

152. It follows that there are strong reasons why parties should be at liberty to appoint their own experts.
153. The current approach to expert evidence in building matters remains the most effective and flexible model. It accommodates the wide range of specialist disciplines commonly engaged in building disputes, preserves the parties' ability to select experts they consider credible, facilitates the narrowing of issues through conclaves, and enables efficient testing of competing opinions.

Consultation question 18

Q18 Should QCAT allow for 'as of right' legal representation in building disputes or merits review of QBCC decisions?

154. Yes.

Consultation question 19

Q19 Should appointed representatives have obligations to assist the tribunal to meet its objectives?

155. Please see my response to this question in Issues Paper One.
156. I further note that under s 21(1) of the QCAT Act, the QBCC (and its representatives) have an obligation to use their best endeavours to help the Tribunal so that it can make its decision on the review. The QBCC is also subject to Queensland's model litigant principles.⁷⁴ Consistent with their respective rules of professional conduct, barristers and solicitors have obligations to the Tribunal, including their paramount duty to the administration of justice.⁷⁵

⁷⁴ Queensland Government, *Model Litigant Principles* (4 October 2010) <https://www.justice.qld.gov.au/>.

⁷⁵ See, for example, Bar Association of Queensland, *Barristers' Conduct Rules* (as amended 14 May 2025) rr 5(a), 25; Queensland Law Society, *Australian Solicitors' Conduct Rules 2023* (27 September 2024) r 3.

Consultation question 20

Q20 Should the current position as to awarding costs in the QCAT Act be revised for building disputes? If so:

- a) What should the new position be?
- b) Should the position be different for building disputes and review proceedings for QBCC decisions made?

157. While ultimately a matter of policy, Member feedback is that it is not considered necessary to revise the current position on awarding costs under the QCAT Act for review proceedings or under the QBCC Act for building disputes.
158. In relation to review proceedings, the Court of Appeal has provided the Tribunal with significant guidance on how it must exercise its discretion when awarding costs under s 102 of the QCAT Act.⁷⁶ Whether or not to award costs remains a matter of discretion to be exercised in accordance with s 102 of the QCAT Act.
159. In relation to building disputes, the Tribunal has held that s 77(3)(h) of the QBCC Act displaces the costs provisions in ss 100 and 102 of the QCAT Act.⁷⁷ Section 77(3)(h) of the QBCC Act gives the Tribunal a broad general discretion to award costs as may be appropriate in the particular circumstances.⁷⁸ The Tribunal has held that where there is a power to award legal costs, a successful party who has incurred legal costs should ordinarily recover costs as an expense incurred in achieving success.⁷⁹ It was said that building disputes are essentially about money, which gives them a commercial flavour, and that the costs of legal proceedings affect the justice of the proceedings.⁸⁰

Consultation question 21

Q21 Are there any ways in which the building jurisdiction can be improved to help small businesses?

⁷⁶ *Health Ombudsman v du Toit* [2024] QCA 235.

⁷⁷ *Boys v Imperial Homes (Qld) Pty Ltd* (No 2) [2024] QCATA 79 [5] (Judicial Member D J McGill SC).

⁷⁸ *Boys v Imperial Homes (Qld) Pty Ltd* (No 2) [2024] QCATA 79 [5] (Judicial Member D J McGill SC).

⁷⁹ *Boys v Imperial Homes (Qld) Pty Ltd* (No 2) [2024] QCATA 79 [6] (Judicial Member D J McGill SC).

⁸⁰ *Boys v Imperial Homes (Qld) Pty Ltd* (No 2) [2024] QCATA 79 [6] (Judicial Member D J McGill SC).

160. Please see suggestions in respect of pre-proceeding dispute resolution process, and explicitly requiring that reasons be provided before an application to review a decision is filed with the Tribunal, may have a positive impact on small businesses.
161. Beyond that, if the Review has any specific legislative amendment proposal on this topic, QCAT would be happy to provide feedback in respect of same.

Consultation question 22

Q22 Are there any other issues about QCAT's building jurisdiction you would like to tell the Review about?

162. Section 86C(3) of the QBCC Act provides that if an internal review decision in relation to a reviewable decision is not made within 28 days of the internal review application being made or a longer period agreed to by the applicant, the original decision is taken to be confirmed.
163. The effect of this provision is that the Tribunal receives applications to review decisions for which reasons have not been provided and for which an internal review has not been conducted. Consequently, applicants are forced to make what could otherwise be an unnecessary application to the Tribunal. This can result in unnecessary filings in the Tribunal that might otherwise have been resolved administratively.
164. I have addressed this issue in my response to Question 3 in Issues Paper 2, and I adopt those submissions here.

Conclusion

165. The issues raised in Issues Paper 5 highlight some areas in which legislative amendments to the QCAT Act or the enabling Acts may assist the Tribunal in better achieving its statutory objects. Many of the challenges identified are operational matters that fall outside the remit of this Review. However, some statutory matters warrant consideration, including:
- a) allowing legal representation 'as of right' with limited exceptions;
 - b) clarifying that the principal registrar's power to make directions can be delegated;
 - c) clarifying the pre-proceeding dispute resolution regime under the QBCC Act (including a clear process of evidencing compliance with the requirement and a limited waiver power); and

- d) explicitly requiring decision-makers to provide reasons at the time they make decisions.

166. In my view, addressing these matters may assist QCAT in achieving its statutory objects.

167. I hope this response is of some assistance to the Review in carrying out its remit. As always, please do not hesitate to contact me should you have any queries or if I am able to be of assistance.



The Honourable Justice Kerri Mellifont

Supreme Court of Queensland

President of the Queensland Civil and Administrative Tribunal