

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CHANGES FOR THE HEALTH PRACTITIONERS TRIBUNAL

What did the the Health Practitioners Tribunal do?

The Health Practitioners Tribunal (HPT) heard and decided:

- disciplinary proceedings referred by a health registration board;
- appeals from disciplinary decisions of health registration boards and Professional Conduct Review Panels; and
- reviews of certain decisions made by the tribunal itself.

The Professional Conduct Review Panels are lower level disciplinary bodies established under the *Health Practitioners (Professional Standards) Act 1999* to hear and decide disciplinary matters referred by the health registration boards. The panels cannot make orders cancelling or suspending a health practitioner's registration. These matters were referred to the HPT.

Do the HPT and the Professional Conduct Review Panels continue to exist?

The HPT is abolished and its jurisdiction transferred to QCAT under the *Queensland Civil and Administrative Tribunal (Jurisdiction Provisions) Amendment Act 2009*. The provisions in the *Health Practitioners (Professional Standards) Act 1999* establishing the HPT were repealed.

The Professional Conduct Review Panels continue to perform the functions they previously performed under the *Health Practitioners (Professional Standards) Act 1999*.

Has the role of the health registration boards changed?

No, the boards continue to have the same functions and powers.

Who will hear these matters in QCAT?

Amendments to the *Health Practitioners (Professional Standards) Act 1999* contained in the *Queensland Civil and Administrative Tribunal (Jurisdiction Provisions) Amendment Act 2009* require QCAT to be constituted by a judicial member for hearing and deciding disciplinary matters for health practitioners. The amended Act continues to require an assessor from the public panel of assessors and two assessors from the professional panel of assessors to assist QCAT in health practitioner disciplinary proceedings.

The HPT was previously constituted by a District Court judge. The judge was assisted by one assessor chosen from the public panel of assessors (non-professionals) and two assessors chosen from the professional panel of assessors for the registrant's profession. The panels were established under the *Health Practitioners (Professional Standards) Act 1999*. Members of the

Professional Conduct Review Panels were also drawn from these panels. The panel members were not members of the HPT.

How does QCAT deal with health practitioner disciplinary matters?

QCAT is not intended to significantly change how these matters were previously dealt with in the HPT. QCAT has the same jurisdiction, functions and powers to make decisions under the *Health Practitioners (Professional Standards) Act 1999* as the HPT had before the amalgamation process.

The *Queensland Civil and Administrative Tribunal Act 2009* sets out the generic powers and procedures of QCAT. Where the generic provisions of the *Queensland Civil and Administrative Tribunal Act 2009* are appropriate for health practitioner disciplinary matters, corresponding provisions have been removed from the *Health Practitioners (Professional Standards) Act 1999*. For example, provisions in the *Health Practitioners (Professional Standards) Act 1999* relating to the directions conferences, general procedural requirements such as complying with natural justice and public hearings are similar to the generic provisions in the *Queensland Civil and Administrative Tribunal Act 2009*. These provisions were amended so that they only refer to specialist processes for health practitioner matters, such as the requirement for a hearing to be held in private if it is about an impairment matter. However, other specific functions and powers required for this jurisdiction, including the types of disciplinary orders QCAT can make, are retained in the *Health Practitioners (Professional Standards) Act 1999*.

Are health practitioner disciplinary matters heard in the original or review jurisdiction of the QCAT?

QCAT exercises original jurisdiction when it makes a primary decision about a matter. It is the first time the matter has been decided by an independent body, even if the matter has gone through mediation or conciliation. Disciplinary matters are part of QCAT's original jurisdiction.

QCAT exercises review jurisdiction when it reviews a decision made by another body. Applications to QCAT for review of disciplinary decisions of health registration boards or Professional Conduct Review Panels are part of QCAT's review jurisdiction.

Where is the QCAT registry located?

The QCAT registry is located on level 9, Bank of Queensland Building, 259 Queen Street, Brisbane.

How are decisions of QCAT about health practitioner disciplinary matters appealed?

The *Queensland Civil and Administrative Tribunal Act 2009* sets out the general rights of appeal from decisions of QCAT.

The decisions of the tribunal which may be appealed are set out in section 346 of the *Health Practitioners (Professional Standards) Act 1999*. These rights will not be altered. However, the nature of the right of appeal currently set out in section 348 of the *Health Practitioners (Professional Standards) Act 1999* was replaced and broadened by the general appeal provisions in the *Queensland Civil and Administrative Tribunal Act 2009*. This means that, because a judicial member hears health practitioner disciplinary matters, a party can appeal to the Court of Appeal (rather than the QCAT appeal tribunal) on a question of law and, with leave of the Court, on a question of fact.

What happens to applications in the HPT when QCAT commences?

The transitional provisions in the *Queensland Civil and Administrative Tribunal Act 2009* set out the standard approach to how matters are dealt with as of the date of commencement of QCAT on 1 December 2009.

If a person was able to apply to the HPT before 1 December 2009, but has not done so and is still within time to apply, the person must apply to QCAT from 1 December 2009. The functions, powers and procedures that apply to the matter are those set out in the *Queensland Civil and Administrative Tribunal Act 2009* and the amended *Health Practitioners (Professional Standards) Act 1999*.

If a board or another person has already filed an application in the HPT before 1 December 2009 but the matter has not yet begun to be heard, the matter will be heard in QCAT. The procedure is that of QCAT under the *Queensland Civil and Administrative Tribunal Act 2009* and the amended *Health Practitioners (Professional Standards) Act 1999*. However QCAT only has the functions and powers the HPT had (although it is not proposed to significantly alter the functions and powers). The right of appeal from QCAT's decision are the rights set out under the *Queensland Civil and Administrative Tribunal Act 2009* and the amended *Health Practitioners (Professional Standards) Act 1999*.

If the application had already started to be heard by the HPT before 1 December 2009, the proceeding continues before the same person but is taken to be a proceeding before QCAT and the person hearing the matter is taken to be a QCAT member. The procedure is that of QCAT under the *Queensland Civil and Administrative Tribunal Act 2009* and the amended *Health Practitioners (Professional Standards) Act 1999*.

However QCAT may only perform the functions and exercise the powers of the HPT. The right of appeal is the right of appeal that applied to decisions of the HPT.

If the application was finalised before 1 December 2009, the decision of the HPT is deemed to be a decision of QCAT. The right of appeal is the right of appeal that applied to decisions of the HPT.

How are these changes affected by the proposed National Regulation Law contained in the *Health Practitioner Regulation National Law Act 2009*?

In March 2008, the Council of Australian Governments signed an Intergovernmental Agreement to establish a national registration and accreditation scheme for the health professions. The national scheme is to be fully implemented by 1 July 2010 and is to initially apply to the following ten health professions—medical, nursing and midwifery, pharmacy, physiotherapy, dental (dentists, dental prosthetists, dental therapists, dental hygienists), psychology, optometry, osteopathy, chiropractic, and podiatry.

To implement the national scheme, legislation was introduced in the Queensland Parliament in two stages. The *Health Practitioner Regulation (Administrative Arrangements) National Law Act 2008* was passed on 13 November 2008, and established the governance structure for the national scheme. The second stage (the *Health Practitioner Regulation National Law Act 2009*) was passed on 6 October 2009, and establishes the registration and accreditation functions of the boards and provides for national registration and accreditation of all relevant health professions.

Following this, a further Bill will be introduced to amend and/or repeal related current Queensland based legislation.

QCAT will continue to be responsible for hearing disciplinary matters referred to it under the new National Regulation Law in relation to Queensland based registered health practitioners. However, to ensure national consistency, the new legislation will specify common findings and determinations that can be made.