

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CHANGES FOR THE RETAIL SHOP LEASES TRIBUNAL

What did the Retail Shop Leases Tribunal do?

The Retail Shop Leases Tribunal dealt with certain retail tenancy disputes under the *Retail Shop Leases Act 1994*.

Does the Retail Shop Leases Tribunal and the *Retail Shop Leases Act 1994* continue to exist?

The Retail Shop Leases Tribunal ceased to exist on 1 December 2009 when QCAT commenced operation.

However, the *Retail Shop Leases Act 1994* continues to exist. References to the Retail Shop Leases Tribunal were replaced with references to QCAT in amendments contained in the *Queensland Civil and Administrative Tribunal (Jurisdiction Provisions) Amendment Act 2009*. Provisions dealing with tribunal procedure and other related matters that were contained in the *Retail Shop Leases Act 1994* have been removed.

Which members in QCAT hear these matters?

The members who hear retail shop leases matters in QCAT are appointed under the *Queensland Civil and Administrative Tribunal Act 2009* membership provisions.

The *Queensland Civil and Administrative Tribunal Act 2009* requires that members are appointed who are either lawyers, or other people who have special knowledge, expertise or experience about particular matters dealt with by QCAT. The administrative arrangements supporting the Act require detailed specific expertise for the various jurisdictions, including for the retail shop leases jurisdiction.

There are senior and ordinary members appointed to QCAT on a full time and sessional basis. Senior legal members and ordinary legal members must be Australian lawyers.

A specific provision has been added to the *Retail Shop Leases Act 1994* that states that the tribunal for retail shop lease disputes is made up of three members, i.e. a legally qualified member, a person representing lessors and a person representing lessees. If a matter involves an amount less than \$25000 then the tribunal may be made up of a legally qualified member, or an adjudicator.

What happened to former members of the Retail Shop Leases Tribunal?

All former sessional members of Retail Shop Leases Tribunal were automatically appointed as sessional members of QCAT for a period of two

years if they agreed. There were no full time members of the Retail Shop Leases Tribunal.

What happened to the Retail Shop Leases Registry?

The Retail Shop Leases Registry is now part of the QCAT Registry.

The responsibility for maintaining the register of mediators and disputes is delegated to the Principal Registrar of QCAT.

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

How does QCAT deal with retail tenancy disputes?

The jurisdiction and orders that may be made by QCAT are the same as the Retail Shop Leases Tribunal.

Referrals and applications previously heard in the Retail Shop Leases Tribunal are now part of the Civil Disputes Division in QCAT.

Are retail tenancy disputes heard in the original or review jurisdiction of the QCAT?

Retail tenancy disputes are within the original jurisdiction of QCAT.

The original jurisdiction of QCAT means that the tribunal makes a primary decision about the matter. It is the first time that the matter has been decided by an independent body, even if the matter has gone through mediation or conciliation.

Are there any special processes from the Retail Shop Leases Tribunal which apply when QCAT hears the matter?

As previously occurred, when a dispute arises, one of the parties may lodge a dispute notice. The parties will be referred to mediation and if the mediation is unsuccessful, the mediator will refer the dispute directly to the tribunal. A party is still able to apply directly to QCAT in certain circumstances (e.g. where the party claims that the other party to a mediation agreement has not complied with the agreement within the time required).

How are retail tenancy matters appealed?

The way a person can appeal depends on whether or not a judicial member heard the decision in QCAT.

If the decision was made by a non-judicial member, the appeal can be made to the appeal tribunal within QCAT. The appeal tribunal can be made up of the President, the Deputy President, another judicial member, or suitably qualified member or members chosen by the President.

If the decision is about an award of costs, or where it is an appeal from a decision that is not the tribunal's final decision (an interim or interlocutory decision) then the permission of the President must be granted before the appeal can be heard.

If the decision to be appealed was made by a judicial member the appeal can be made to the Court of Appeal. The person must ask the permission of the Court of Appeal if the appeal is about a question of fact. The person does not have to ask the Court of Appeal for permission if the appeal is about a question of law.

Appeals to the Court of Appeal from a decision of the appeal tribunal may be made with the permission of the Court on a question of law only.

What happened to applications in the Retail Shop Leases Tribunal when QCAT commenced?

The *Queensland Civil and Administrative Tribunal Act 2009* sets out the standard approach to how matters are dealt with from the commencement of QCAT on 1 December 2009. The *Retail Shop Leases Act 1994* also contains some transitional provisions specific to retail tenancy disputes.

If a dispute lodged was referred to the chief executive but the chief executive had not referred the dispute to a former tribunal legal member before 1 December 2009, the chief executive must refer the dispute to QCAT.

If a matter was referred to a tribunal legal member before the 1 December 2009 but the tribunal had not yet started to consider evidence for the purpose of making its final decision in the proceeding, the matter is heard in QCAT. The procedure is that of QCAT under the *Queensland Civil and Administrative Tribunal Act 2009* and the amended enabling Act. However QCAT only has the functions and powers the former tribunal had. 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 enabling Act.

If the tribunal had started to consider evidence for the purpose of making its final decision in the proceed, the proceeding continues but is taken to be a proceeding before QCAT. QCAT must be constituted by the person or persons who constituted the former tribunal immediately before commencement. The procedure is that of QCAT under the *Queensland Civil and Administrative Tribunal Act 2009* and the amended enabling Act. However QCAT only has the functions and powers the former tribunal had. The rights of appeal are also those rights of appeal that applied prior to 1 December 2009.

If the application was finalised before 1 December 2009, the decision is deemed to be a decision of QCAT. Any appeal or any further dealing with the

decision by QCAT can only occur in the same way it could have for the former Retail Shop Leases Tribunal.