

QCAT 2026 Review conducted by The Honourable David Thomas

Submission by QCAT President in respect of Issues paper 7

Leadership, governance and appointments

10 February 2026

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Introduction to response

1. As is acknowledged in Issues Paper 7, the issues discussed in Issues Paper 7 “are interdependent on the outcome of issues explored in other issues paper that have been released by the Review. In particular, questions about whether there should be judicial presidential roles will be dependent on whether certain jurisdictions (and powers) that require a judge remain with QCAT”.¹ So too are questions about whether other jurisdictions which do not require a judge remain within QCAT. In short, the answers to many of the questions raised in Issues Paper 7 will depend on whether it retains all of its current jurisdictions, and if not, what jurisdictions it does retain.
2. It is not possible to provide a response addressing all possible permutations, nor is it an efficient use of time at this juncture.
3. I also observe that many of the issues raised and questions posed go to matters of policy, and thus are ultimately matters for Government, and not something which a current sitting judge would ordinarily express a view about.
4. 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 Act could be made more effective,² and that the President may do all things necessary or convenient to be done for the performance of the President’s functions.
5. Given that this is a section 240 statutory review, directed to whether or not there should be legislative amendment of the QCAT Act and enabling Acts, I consider it necessary in order to properly discharge my statutory functions to provide responses to the Review which is, of course, the Minister’s review.
6. Further, the only response that is coming from QCAT, on QCAT letterhead, is coming from me, and I wish to provide as much assistance as possible to the Review in coming to informed recommendations to the Minister.
7. This response is provided with these things in mind.
8. I also observe that in this response, I have not purported to respond to, or verify the accuracy of, everything said in the issues paper.

High level overview of my views in respect of the themes advanced in issues paper 7

9. By way of high level overview, these are my views in respect of some of the issues discussed in Issues Paper 7:
 - a) The President and the “second in charge” (currently a ‘Deputy President’, but in some other Civil and Administrative Tribunals across Australia, known as a Vice-President – for

¹ Paragraph 25, Issues Paper 7.

² Section 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.

convenience and clarity I will refer to this position as the 2IC) must have tenure, irrespective of whether or not they are a judge. This is absolutely critical for the independence of the Tribunal. The President and the 2IC must be able to carry out their roles without fear that Government will remove them. Experience has shown that it is important that the President and 2IC must be able to advocate on behalf of QCAT, (for example for resources) without being concerned that they will no longer have a job;

- b) If QCAT's jurisdiction contains any matter type which contains a mandatory constitution provision requiring a judge to sit, then the presidential roles should of course be comprised by a judge of at least the level required to make those decisions. So, for example, the QCAT Act or the enabling Act mandates that a particular type or types of proceedings under it must be heard and determined by a District Court judge, then the presidential roles must be at least that of a District Court judge;
- c) Currently, the only legislation which mandates that the Tribunal be constituted by a Supreme Court judge (current or former) is the *Legal Profession Act 2007* (Qld)(LPA). As the Reviewer is aware, my view is that the LPA should be amended so as to vest exclusive jurisdiction in the Supreme Court for all proceedings that the LPA currently mandates the Tribunal be constituted by a current or retired Supreme Court judge. Reasons for this include:
 - i. Such amendments would have the effect of combining the present inherent jurisdiction of that Court to control the entry of lawyers as officers of the court upon admission, with the jurisdiction to discipline lawyers, often for reasons related to the suitability issues that can arise on admission, together with the review jurisdiction to review decisions of regulatory legal bodies; in this way, the high standards of conduct expected of lawyers will be enhanced both in the eyes of the profession, and importantly, in the mind of the public;
 - ii. granting jurisdiction of legal discipline and review to the Supreme Court will mesh more cohesively with the inherent jurisdiction of the Supreme Court enshrined in s 13(1) of the LPA as the "jurisdiction and power....in relation to the control and discipline of local lawyers and local legal practitioners"; and
 - iii. it will mean that legal practitioners facing disciplinary proceedings do so in the Court in which they took their oath or affirmation of office.
- d) If the LPA is amended as envisaged above, QCAT will not have any jurisdiction which requires a Supreme Court judge to sit, with the exception of section 99P *Child Protection Act* (CPA) which provides that a person other than the public guardian may file a review in QCAT only with the President's permission. The CPA does not expressly refer to the need for a Supreme Court judge, but one can assume that when it was drafted, the legislative drafters had in mind that the President of QCAT is a Supreme Court judge. Again, it is of course a matter of policy for Government as to whether the 99P power should only be exercisable by a judge of the Supreme Court. What I can say is that I have determined many section 99P applications while at QCAT. My observation in respect of them is that they have not involved such complexity as to mandate a judicial officer of Supreme Court level. By making that observation I do not intend to minimise the importance and seriousness of deciding whether or not to grant a person leave to review a decision of this nature. They are, of course, very serious and important matters, but having regard to the

ability, knowledge and experience of many members of QCAT, I would be confident that members in a category other than Supreme Court judge, would be well equipped to determine section 99P applications, and to do so to a high standard;

- e) If the presidential roles are to be filled by judges, all notions of those judges being “on loan” from the relevant Court must be eschewed. The question of resourcing needs to be dealt with in a disciplined way. In respect of this:
- i. A proper assessment of the needs of the relevant Court must be undertaken so as to determine how many judges and Registry staff (and at what levels) that Court actually needs in order to be able to carry its workload, and then resourced accordingly;
 - ii. A proper assessment of the needs of QCAT must be undertaken so as to determine how many judicial members, members and adjudicators, and Registry staff (and at what levels) QCAT actually needs in order to be able to carry its workload, and then resourced accordingly. This resourcing must be in addition to what the Court needs;
 - iii. The QCAT Act should expressly provide that the Presidential roles (i.e. currently President and 2IC) are full-time at QCAT so there can be no expectation by Government that the Court is to “loan” its judges, or that the Presidential members are required to split themselves between QCAT and the Court. The New South Wales Civil and Administrative Tribunal (NCAT) legislation expressly provides that the NCAT President be a Supreme Court judge and that they are full-time at NCAT;
 - iv. If QCAT retains jurisdictions which require a judge to hear and determine proceedings, then a proper assessment must be undertaken of how many judges are needed in order to carry out that work, and as many judges as are needed should also be appointed, and designated at QCAT. In short, the Court/s need to be given as many judges as they need to do the work, and QCAT needs to be given as many judges as it needs to do the work, and in assessing need there should be a realistic appraisal of what is a reasonable workload for a judicial officer to undertake having regard, in particular, to health and wellbeing. Judicial officers are not machines;
 - v. In assessing how many full-time dedicated judges QCAT needs, Government should be very careful not to presume that work can be carried out by retired judicial officers who are sessional members. The number of such judicial members waxes and wanes, as does the amount of time that such judicial members can give to QCAT and the types of work they wish to undertake at QCAT. I regard myself to have been extremely lucky to have had judicial members within our sessional member cohort, but I have never taken for granted that they will always be there or that they will be able to undertake a certain amount of work;
 - vi. Any new judge appointed with the intention that they will serve time at QCAT must be of the same calibre of appointment of any other judge, because they will ultimately be returning to the Court and sitting as a member of that Court. It is therefore of primary importance that they are selected for skills that equip them appropriately for judicial office. This is critical – to do otherwise would diminish the

confidence of the public in the Court and in QCAT. So too would it place an unfair burden on that Court, including its leaders and other judges;

- vii. If the Presidential roles are to be filled by judges, and if QCAT remains similar in nature to its current state (that is, with as many or more jurisdictions as it currently has; with the level of workload it has), then the minimum term should be for a period of four years to enable those in the roles sufficient time to become accustomed to and knowledgeable in all matters QCAT, and to be proper leaders in that space. The maximum period for a single appointment should obviously exceed four years, but should be renewable, with such renewals able to be immediately consecutive (I note that the schematic in Option 1 at page 7 states that it “would not be feasible to extend the terms of appointment of the President and Deputy President.” I don’t agree with this. Some presidential members will not want a renewed term, however it is conceivable that others might: the President of NCAT is one example of a Supreme Court judge who sought and received a renewed appointment. Whether or not a presidential member would want a further appointment will depend on the individual, and the “health” of the organisation – if the Tribunal is properly resourced, with good scaffolding in senior level leadership to assist the President, it might be a job that a person wants for longer);
- viii. If the Presidential roles, or some of them, are not to be filled by judges, then, as noted above, tenure is critical. Conditions of appointment which are a close facsimile of those of judges can be legislated for, including immunity. Government has a blank page on which to work in that respect;
- ix. One consideration to be taken into account in having a long term appointee, without that appointee being a member of a Court to which they can go to, is the prospect of fatigue after a number of years, and leadership becoming “stale” – for want of a better description – that is, the particular leader runs out of ideas for how to continue to improve QCAT four or five years into the job, and they still have many more years to go before retirement.³ The latter may not be a problem for some people; it may be for others. The consideration of possible fatigue is particularly important if QCAT remains as big as it does, particularly if it remains without proper leadership scaffolding;
- x. Another consideration in this respect is whether the roles will attract the highest quality of applicants (which is what QCAT needs in its presidential members) without the benefit of a Court appointment. The non-judicial presidential roles might attract this calibre of applications, but it would seem that this is more likely if the presidential roles are supported by properly scaffolded leadership roles within the Tribunal (e.g. a number of third level presidential roles,⁴ which can serve as head of division roles and provide other leadership support; and sufficient numbers of Senior

³ I acknowledge that they could resign as President or Deputy President and go to a different job if they wanted to.

⁴QCAT does not, like many other CAT’s in Australia, have a leadership position/s between the Senior Members and the President and Deputy President. It is my view that this is a serious deficiency in the Tribunal hierarchy.

Members and Ordinary Members and Adjudicators), and if the Tribunal itself is adequately resourced (e.g., enough members, adjudicators, associates, administrative support for the members, Registry staff, hearing rooms, office space and office facilities, and training budget);

- xi. Some QCAT Members and Adjudicators have conveyed to me their view as to whether or not the presidential roles should be judicial appointments. Each who did expressed a very strong view to the affirmative. A summary of the reasons they expressed in that regard is set out later in this response;
- xii. Current minimum terms of appointments for members and adjudicators are problematic and should be longer. As to this, the process of considering and progressing renewals of short term appointments create significant resource impost on the Tribunal, Significant Appointments within Department of Justice (DOJ), and Government, including Governor-in-Council. Very importantly, they create a great degree of stress on the individual Adjudicator or Ordinary Member, who can never be guaranteed of reappointment regardless of how well they have discharged their role. It is also particularly stressful if they do not know well in advance of their appointment expiring that Government has reappointed them (in respect of this latter point, I am grateful for steps taken by Significant Appointments within DOJ to establish a system to try and progress recommendations for reappointment through to Government and then Governor-in-Council a number of months in advance of the appointment expiry);
- xiii. Remuneration and conditions for Adjudicators, and each category of member, to give proper recognition to the work they perform, should be evaluated and reviewed as judicial officers under the *Judicial Remuneration Act 2007* (Qld) (JRA) rather than tied to public service remuneration as is currently the case for Senior Members, Ordinary Members and Adjudicators;
- xiv. It is critical that Governments understands that the resources allocated to QCAT are not a 'set and forget' situation. Since its inception, QCAT has accrued much more jurisdiction. Each time the Government determines that QCAT should receive additional jurisdiction, mature and informed consideration must be given to what further resources, (i.e., Tribunal and Registry and other resources), QCAT will require to be able to perform its work in a way which meets the objects of the QCAT Act. A great deal of care should be taken not to assume, (or just hope), that the work can be absorbed within existing resources. Experience has shown that such assumptions or hope are problematic;
- xv. It is also essential that Government takes into account the health and wellbeing of Registry staff and the Tribunal members and Adjudicators in respect of any intended legislative change. As to the health and wellbeing of Tribunal members and Adjudicators, there is a significant body of credible research about judicial officer stress. It, and staff health and wellbeing, must be taken seriously and be an integral part of options being considered by the Review, and by Government;⁵

⁵See, for example, articles linked to the following webpage <https://www.humanethos.com.au/publications>. More will be said about Tribunal design and judicial stress elsewhere.

- xvi. Regardless of where the Review or recommendations within the Review land or what transpires as a result, it is critical that the significant pressures on the workload of QCAT and its officers are alleviated with a properly resourced leadership and governance model. This needs to be a model that enables the Tribunal to meet the needs of the jurisdictions it is empowered to deal with under the QCAT Act, in its original, review and/or appeal jurisdictions and will require a realistic assessment of the required resources to support the position that is advanced;
- xvii. A realistic and workable model is critical to ensuring the wellbeing and health of QCATs judicial and non-judicial or other appointments, and the health and wellbeing of Registry and support staff;
- xviii. In so far as a leadership role in the Tribunal requires excellence in skills other than legal skills, for example associated with management generally, project management, administrative excellence and human resources for Tribunal members, consideration should be given to whether it is appropriate to have in the leadership structure, a position designed to attract a person with those skills, who will be sufficiently senior to garner the trust and respect of the Tribunal's members, but may not be, or be designated to be, a judicial officer. In this respect, I do recommend three levels of senior management within the Tribunal (see below for more detail).

Consultation questions 1-4 & 8-10 & 11

10. See above, in "Overview" for a high level overview of my responses to themes raised by these consultations. I have provided some more specific responses in respect of some aspects of matters raised in Issues Paper 7 with respect to these issues in this part of the response.

Three levels of senior management within the Tribunal

11. The Issues Paper asks how "should there be a new role of Vice President? If so, how many should be appointed?"
12. If QCAT remains a Tribunal of large remit, with a number of jurisdictions, then irrespective of whether there are judges at President and "2IC" level, my view is that there needs to be three levels of leadership above the Senior Member level:
- a) President;
 - b) A Vice President (this appears to be most commonly used descriptor for the person who is 2IC in Tribunals and Commissions);
 - c) Deputy Presidents (this appears to be most commonly used descriptor for the people who are "3IC's in Tribunals and Commissions), whose whole role is to assist the President and Vice President in the discharge of their functions for issues which are common across the Tribunal, but who also take on the responsibility for a specific division, that is, are also Heads of Division.
13. In June 2024 QCAT received a budget allocation for two Heads of Division positions, to be remunerated at something approximating that of a Deputy Chief Magistrate remuneration level.

14. In the 2023-2024 QCAT Annual Report I stated:

The budget outcome of [June 2024] will go some significant distance towards a sustainable QCAT. We will continue to work closely with Government to seek to ensure that gaps in resourcing are addressed and that QCAT is properly resourced in order to deliver justice services to Queensland as demand continues to grow. The budget commitment to the creation of senior positions, that is, a head of division for the Civil, Administrative and Disciplinary Division (CAD) and a head of division for the Human Rights Division (HuRD), marks a very meaningful commitment by Government to providing continuity of leadership within the Tribunal. Like its counterpart provision in other States, each Head of Division will take on a very important leadership position with respect to the work of their respective division. We look forward to legislation, which will give effect to this critical reform.

15. The view I expressed there is a view I still have, and I believe that legislation which would create this third level of senior management within QCAT would offer many benefits.

16. As to how many of this third tier positions there should be, my view is that the legislation should provide flexibility, and that the formula currently used elsewhere in the QCAT Act, ⁶ could be adopted. That is, words to the effect that “as many Deputy Presidents as are required for the proper functioning of the Tribunal must be appointed.” Two would be the bare minimum. Those Deputy Presidents would also be appointed as a Head of Division.

17. As the Review notes, the QCAT Rules provide that the Tribunal is to exercise its function in divisions,⁷ and establish three divisions:

- a) The human rights division;
- b) The administrative and disciplinary division; and
- c) The civil disputes division.

18. In practise, the latter two divisions operate as under the banner of one “division” – CAD, and the first operates under the banner HuRD. This is one reason budget was sought for two Heads of Division.

19. Pegging the number of Deputy Presidents required to that which is necessary for the proper functioning of the Tribunal provides the means, at least in theory, to have sufficient Deputy Presidents (and thus Heads of Division) for the work of the Tribunal at any point in time. In this respect, workload, flow and trends could be analysed with a view to assessing need, that is, with a view to identifying which area or areas of work would warrant its own Division.

20. It is anticipated this balance of roles in the leadership of the Tribunal will also maintain and further create:

- a) a high level of public trust and respect from the legal profession that the decision making, and management of the Tribunal, is under the leadership and auspices of highly qualified and experienced members of the judiciary and legal profession;

⁶ E.g., s183(1) QCAT Act regarding Senior and Ordinary Members.

⁷ Rule 5(1).

- b) the ability for President and Vice President to be independent of Government, which is important for public perception and confidence in the Tribunal, and sound, judicial decision making by the Tribunal (particularly due to the volume of decisions and proceedings involving government);
- c) a balanced and necessary mix of judicial, legal and industry skills to manage the diverse nature of the jurisdictions it is empowered to deal with under the QCAT Act;
- d) intellectual leadership of the highest calibre, particularly in relation to the jurisprudential development of Tribunal decisions, where the Tribunal has a broad and diverse number of jurisdictions;⁸
- e) the necessary judicial presence to support the Tribunal being a Court, as deemed by the QCAT Act;
- f) appropriate and necessary professional support for the President and Vice-President who have the benefit of continuing to engage, learn and receive support from their respective Courts and Chief Justices, which is then transferred to the Tribunal;
- g) an environment that will continue to attract quality decision makers, including Senior Members, Members and Adjudicators, who will benefit from the leadership and learning offered by current members of the judiciary (who are engaged with, and supported by their respective Courts and Chief Justices).

21. Three levels will provide QCAT with a strong capacity to perform the administrative and managerial aspects of the Tribunal to maintain high-performing, positive and a safe workplace culture, with sufficient resources to manage and work with other decision makers of the Tribunal and Registry staff.

The 2IC role

- 22. The Vice-President (i.e. 2IC) role needs to be filled by someone of the calibre expected of a District Court appointment, and that is so irrespective of whether or not the position is ultimately a judicial one.
- 23. It is someone of that calibre that QCAT needs in that 2IC role. The person holding that position needs to have the skills to be able to hear complex, significant and sensitive matters, promote best practice in decision-making and assist the President in performing their functions. They also need to be good leaders and managers. They need to be able to step into the shoes of the President as Acting President.
- 24. The functions of the Deputy President, as currently articulated in the QCAT Act, at section 174, provides a workable, and sufficiently flexible, statement of the current role of the 2IC at QCAT. There may well be a better statement of the functions of the 2IC role, but that is best assessed once it is known if the jurisdictions and/or structure of QCAT will change, and if so, how.
- 25. If QCAT retains a significant amount of work which requires determination by a judicial member, and therefore allocation of an additional full-time judge or judges, then those judges

⁸ Where the diversity of the jurisdictions of QCAT can be contrasted to the work of the Land Court, and where decisions of the Parole Board are administrative rather than judicial in nature, see: *Crump v State of New South Wales* [2012] HCA 20; 247 CLR 1, [28].

might also be called Vice-Presidents, with the legislation making clear that theirs is not a management role, but one focussed on adjudication and, most likely, list management. The current advertisement by the ART for Deputy Presidents might provide some useful terminology in this respect, which would be capable of adaptation to the QCAT situation.⁹

The 3IC role

26. The Deputy President (i.e., 3IC role) needs leadership and management skills, with the ability to work collaboratively with others in that role, with a view to supporting the President and Vice President in the discharge of their roles, and with a view to be able to be the leader of a division of the Tribunal.
27. These roles need not be judicial, but should have tenure. Apart from tenure assisting in the independence of the Tribunal, it would also help to deliver continuity and stability of senior Tribunal leadership in the event the Presidential roles stay as roles held by judges for relatively short terms which might or might not, depending on the individual and other matters, be renewed.
28. While I would recommend that the Deputy President appointments be Governor-in-Council appointments, made upon recommendation by the Attorney-General, upon consultation with the President, the allocation of a particular Deputy President to a particular division should be within the operational remit of the President. That would allow for the particular strengths, skill set and experience of each of the Deputy Presidents to be taken into account in allocating the Deputy President to a particular division, and it would allow for desirable change and renewal of leadership of divisions as is needed for good leadership and governance.
29. Operationally the role of Deputy President/Head of Division will likely translate, at least, to:
 - a) directing the business of the Tribunal in their assigned division;
 - b) providing strategic oversight and guidance in relation to list management and daily process improvement within their division;
 - c) providing education, training and support to Senior Members, Ordinary Members and Adjudicators;
 - d) leading reform initiatives to minimise times to finalisation; and
 - e) contributing to continuous improvement.
30. These matters should be subject to the direction of the President (and in the absence of the President, the Vice-President (if the structure includes Vice-Presidents as second tier leadership).
31. As to legislative statement of role, I would recommend this include assisting the President and Vice-President to carry out their respective functions, adjudicating in the Tribunal, and leading

⁹ It states: **Deputy Presidents** will be among the foremost legal experts and leaders in the ART. They will hear complex, significant and sensitive matters, promote best practice in decision-making and assist the President in performing their functions. The **Deputy President (Administration)** role will assist the President to perform administrative functions, including in areas of member training, education and professional development, performance and conduct, with a view to maintaining a high-performing, positive and a safe workplace culture at the ART.

the business of the Tribunal for their assigned division. The general requirement to assist the President and Vice-President to carry out their functions would encompass each of (c) – (e) above, and would provide sufficient flexibility for Deputy Presidents to be required to perform other tasks as needed.

32. You will see that I have suggested that this general requirement to assist Presidential members for Senior Members, and Ordinary Members. The general requirement to assist the presidential members in the discharge of their functions would cover all the things that in-house members (and adjudicators for that matter) and Senior Members are required to do from time to time in order for the Tribunal to operate properly, for example, organise, deliver or attend education, list management, sit on the Rules Committee, assist in pastoral care of members or adjudicators, assist in providing responses to Government or other stakeholders, engage with stakeholders, assist in day to day Tribunal logistics, example, accommodation allocation, development of Tribunal practices and procedures in preparation for additional jurisdictions granted by Parliament and working on initiatives for process improvement.
33. Obviously, additional offices, and provision for an associate, an Executive Assistant, and a commensurate increase in Registry staff to support hearings for each Vice-President and Deputy President, would need to be budgeted for provided.

Should the top two tiers of Tribunal leadership be held by judges?

34. In the overview, I stated that members and Adjudicators who have communicated their views on these questions have expressed a strong preference to have judges in the top two Tribunal positions. Reasons advanced for this by Members and Adjudicators to me have included:
 - a) a high level of public trust and respect from the legal profession that the decision making, and management of the Tribunal, is under the leadership and auspices of highly qualified and experienced members of the judiciary and legal profession;
 - b) the ability for President and Vice President to be independent of Government, which is important for public perception and confidence in the Tribunal, and sound, judicial decision making by the Tribunal (particularly due to the volume of decisions and proceedings involving government);
 - c) a balanced and necessary mix of judicial, legal and industry skills to manage the diverse nature of the jurisdictions it is empowered to deal with under the QCAT Act;
 - d) that this provides intellectual leadership of the highest calibre, particularly in relation to the jurisprudential development of Tribunal decisions, where the Tribunal has a broad and diverse number of jurisdictions;¹⁰
 - e) to support the Tribunal being a Court;
 - f) the provision of appropriate and necessary professional support for the President and Vice-President who have the benefit of continuing to engage, learn and receive support from their respective Courts and Chief Justices, which is then transferred to the Tribunal;

¹⁰ Where the diversity of the jurisdictions of QCAT can be contrasted to the work of the Land Court, and where decisions of the Parole Board are administrative rather than judicial in nature, see: *Crump v State of New South Wales* [2012] HCA 20; 247 CLR 1, [28].

- g) the maintenance of an environment that will continue to attract quality decision makers, including Senior Members, Members and Adjudicators, who will benefit from the leadership and learning offered by current members of the judiciary (who are engaged with, and supported by their respective Courts and Chief Justices).

Senior Members

- 35. There are currently 6 Senior Members appointed to assist the Tribunal. A person can be appointed as a Senior Member for at least 3 years but not more than 5 years.¹¹ A person appointed as a Senior Member may be reappointed.¹²
- 36. Only five of the six Senior Member positions are permanently funded. The sixth position is only funded until 30 June 2028. My view is that this sixth position is critically needed and should be permanently funded, and I shall be conveying this to the incoming presidential members of QCAT as something which they might consider taking up in budget requests.
- 37. Issues Paper 7 asks whether there should be additional members and if so, how many. It seems that question might be directed at budget and operational considerations, rather than, to whether the QCAT Act is sufficient to meet its objects. If so, the answer to it is not.
- 38. The QCAT Act provides that “as many Senior members and Ordinary members as are required for the proper functioning of the Tribunal must be appointed.” Thus, the legislation already provides that as many Senior Members as are required for the proper functioning of the Tribunal must be appointed.
- 39. As such, in so far as the remit of section 240 recommendations are concerned, the legislative provision appears sufficient.
- 40. As to advice to the Minister pursuant to section 172(3)(a):
 - a) Obviously QCAT could do with more Senior Members, particularly given its current workload. That would allow Senior Members more time to sit on complex matters. All applicants of sufficient calibre to be appointed Senior Member need to be very good at hearing and determining cases; some applicants will also have very good leadership skills. Under the current structure, having more Senior Members could provide the President with the opportunity to allocate work roles according to their strengths, with some Senior Members taking on a full-time role in determining cases and running lists, while others could have a hybrid role which involves a caseload (albeit lesser than a Senior Member who does not have a hybrid role), and list management and which also involves leadership roles (if a third tier of Tribunal leadership is introduced, then more of that leadership could be undertaken by the third tier presidential members, freeing up Senior Members to focus more on case load and list management);
 - b) Permanent funding for 10 to 15 Senior Members could provide significant benefits to the Tribunal (whether or not a third presidential tier is introduced). At the very bare minimum, making what is currently temporary funding for the sixth Senior Member position permanent, is absolutely necessary;

¹¹ QCAT Act s 183(6).

¹² QCAT Act s 183(7).

- c) Additional offices, an associate, and the number of Registry staff necessary to support the hearing load of each additional Senior Member above the current cohort of six would need to be provided.

- 41. The absence of legislative statement as to the functions of Senior Members is problematic: there is no clear statement of the extent of the legislative remit, including in respect of any management or leadership of Ordinary Members and Adjudicators, all of whom are independent decision makers and Governor-in-Council appointments.
- 42. I have had the good fortune of a group of Senior Members who have been able to work collaboratively with each other, and with the Deputy President and myself, but not having a clearly stated role in the legislation is sub-optimal and has its challenges for all. It would be much better, not least for the Senior Members, if this lacuna were remedied.¹³
- 43. As to what the QCAT Act should say as to the role of the Senior Member, this will, like most other issues raised in Issues Paper 7, depend on what work QCAT has, and what leadership structure will be above the Senior Member. If it is three tiers, some of the management and leadership roles that would otherwise need to sit with Senior Members could sit with the Deputy President (i.e., the 3ICs). If it is not three tiers, more of those roles would need to sit with the Senior Members, and this is sub-optimal given the flat structure (in this respect, please see my comments in the table at the conclusion of this document, including as to the benefits of synthesis of member ideas and suggestions through third tier presidential members to the President and 2IC).
- 44. In either scenario, the statutory description should include that the Senior Members are required to assist the presidential members in the discharge of their functions, using a formula similar to that which appears in section 174 of the QCAT Act for the Deputy President role.

Ordinary members

- 45. The issues paper asks whether there should be a legislative provision setting out the role of Ordinary Member. Currently there is none. It seems there should be.
- 46. A statutory description of the role should at least include that the Ordinary Member is required to assist the presidential members in the discharge of their functions and adjudicate on matters and to adjudicate on matters, and undertake list and case management as required. The general requirement to assist the President in the discharge of the President's functions allows for allocation of tasks relevant to those functions – for example, being part of the Education Committee, sitting on the Rules Committee, helping to prepare responses to consultation relevant to an area in which they have particular expertise.

Adjudicators

- 47. The Issues Paper does not ask whether the legislative provision setting out the functions of an Adjudicator should be amended.
- 48. Given that, in practice, some Adjudicators do so much more than hear and adjudicate cases, for example, assist on the Education Committee, sit on the Rules Committee, update internal

¹³ Please also see my comments in the table at the conclusion of this document in respect of the roles and functions of Senior Members.

resource documents, it would seem appropriate to expand the functions to include the function to assist the presidential members in the discharge of their functions; and to undertake list and case management as required. This would be a more appropriate recognition of the extent of work undertaken by Adjudicators.

Appeals from minor civil dispute decisions of Magistrates

49. Section 166 of the QCAT Act provides that appeals from decisions of Magistrates on minor civil disputes must be heard by a judicial member.
50. QCAT does not have enough judicial members to hear and determine appeals from minor civil dispute decision of Magistrates.
51. If these appeals are to remain within QCAT, then QCAT needs to be given sufficient full-time judges to hear and determine these appeals (and all the other work which must, by law, be heard by a judicial member), or some other solution has to be found.

Terms of appointments of Senior Member, Ordinary Member, and Adjudicator appointments

52. As set out in the overview at the beginning of this response, my view is that appointment periods and terms need to be longer than is currently provided for in the QCAT Act.
53. Some members and Adjudicators have provided their feedback to me as to this issue. Uniformly the feedback is that the periods of appointment should be longer.
54. Some have suggested that periods of 7 to 10 years, with an ongoing right to reappointment, and ongoing ability to resign or be removed from office in accordance with section 183(7), 187 and 188 of the QCAT Act, would have the following benefits:
 - a) A period of this nature adds to the independence of the Tribunal and independent decision making, with appointments crossing over multiple political cycles;
 - b) It assists in providing continuity of experience and decision making within the Tribunal;
 - c) It seeks to attract additional high calibre decision makers with significant legal and professional industry experience, noting that attracting members of the profession (Solicitors & Barristers) who are in permanent or established roles can be challenging for a short-term appointment (3 to 5 years). This is particularly the case for members of the Queensland Bar, who are prevented from working within the jurisdiction for a 5-year period following a QCAT appointment;¹⁴ and
 - d) It provides Members and Adjudicators greater security of employment, which assists in attracting and retaining high quality Members and Adjudicators.

Remuneration of QCAT decision makers

55. I raise this issue pursuant to section 240(2)(d) of the QCAT Act.

¹⁴ See: Rule 95(n), *Bar Association of Queensland – Barristers’ Conduct Rules*, 14 May 2025.

56. Remuneration of Senior Members, Ordinary Members and Adjudicators is tied to public service remuneration (see Schedule 1). This situation appears to emanate from section 186 and section 201 of the QCAT Act which provides that Senior and Ordinary Members (s186) and Adjudicators (s201) are entitled to be paid the remuneration and allowances decided by the Governor-in-Council.
57. A comparison of remuneration of Senior Members, Ordinary Members and Adjudicators, with other judicial officers in Queensland, shows that the QCAT judicial officers are paid less, far less, and in some cases, well under half that of some other judicial officers in Queensland.
58. There are good reasons that the remuneration of Senior Members, Ordinary Members and Adjudicators should not be tied to public service remuneration, but rather, given the judicial roles they perform, and in a proper acknowledgement of the amount of work, type of work, and complexity of work they undertake, should be evaluated and reviewed properly as judicial officers under the JRA. This would require an amendment to sections 188 and 201 of the QCAT Act, at least.

Roles and functions of the Principal Registrar/Chief Executive

Consultation questions 5-7

59. Again, the answers to the question posed, will depend in part on what QCAT looks like at the end of any recommendations made by the Review which are accepted and implemented by Government.
60. For the time being, my broad observations are:
 - a) Section 172 imposes a clear obligation on the President to manage the business of the tribunal to ensure it operates efficiently. The words of section 172 do not, in and of themselves, create confusion;
 - b) The “business of the tribunal” is not defined in the QCAT Act;
 - c) Adopting a common language meaning, business means the work of QCAT;
 - d) In a large scale Tribunal, which has multiple jurisdictions, statutory obligations to assist the litigants, and an enormous number of self-represented litigants, the membership, led by the presidential members, needs to work hand in glove with Registry in order for justice services to be delivered, and delivered well;
 - e) The role of the Principal Registrar/Chief Executive (currently titled Assistant Director General) is a very big role at QCAT;
 - f) The current framework puts the Principal Registrar in the position of having to “serve two masters” – the President, who is charged with managing the business of the Tribunal, and those further up in the public service hierarchy, that is, the Deputy Director-General and the Director-General, DOJ. This has the potential to place the Principal Registrar in an invidious position if the President is at odds with the DDG and/or the DG, particularly under the current system where the Principal Registrar is appointed not by Governor-in-

Council but rather by the Director-General of DOJ. (I am not suggesting this situation has, in fact, occurred, but that has been more the product of good luck, than a good legislative structure.);

- g) An independent tribunal should be free from direction of the Executive;¹⁵
- h) I agree with the statement at Issues Paper 7 that “being appointed by the Governor-in-Council, could enhance the independence of QCAT’s Principal Registrar from the executive government.”;¹⁶
- i) The descriptor “Principal Registrar” rather than Assistant Director-General for the leader of the Tribunal Registrar is more aligned with the concept of independence;
- j) A statutory statement of the role of the Principal Registrar should have independence of the Tribunal in mind, including the need for the Tribunal to be able to have autonomy from the Department in respect of budget allocations – that is, the ability to pivot and divert resources as needed in order to most efficiently deliver justice services;¹⁷
- k) The formulation adopted by the Commonwealth ART as summarised in paragraph 160 appears to strike a balance between the need for the Principal Registrar to assist the President, and to be able to independently exercise some functions as to staff management under legislation specific to public service. I am not personally aware of how this formulation is going in real life, but no doubt the Review is well placed to consult with the ART leaders on this point as it sees fit.

Some notes on some statements within Issues Paper 7

61. The following table contains some further observations on some statements within Issues Paper 7. It is not intended to be a comprehensive response to everything said, but rather some observations I can make in the time available:

Page 6, paragraph 26	This paragraph states that the President and Deputy President make themselves available to hear civil and criminal matters in their respective courts at regular times throughout each year.
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¹⁵ See, for example, section 3(a) QCAT Act; and section 172(5) of the QCAT Act which provides that the President is not subject to direction or control by the Minister: s172(5), the Explanatory Notes to the QCAT Bill in 2009 which stated 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”, page 4.

¹⁶ Paragraph 161.

¹⁷ For example, some budget is allocated to spend on sessional member work. Sometimes the number of Registry staff is insufficient to prepare the files necessary to spend all of that allocation, or there may not be sufficient sessional member availability, QCAT needs to be able to divert resources to increase Registry resources to prepare more files, or engage in-house Acting Members or Adjudicators to take on the work that needs to be done. QCAT is well able to do this, and remain within its footprint, and should not be subject to direction by the Department which, understandable, will not be across the operational minutiae and how QCAT can “get the best bang for its buck”.

	More precisely expressed – the President and Deputy President are scheduled to sit in their respective courts, across various jurisdictions, as scheduled by the SJA (Supreme Court) and JA (District Court) at times throughout each year.
Page 6, paragraph	This paragraph states that “this part asks whether there is a continuing need for judicial leadership of the tribunal or whether it is appropriate for QCAT to sever its ties to the Supreme and District Courts, and be led by its own dedicated leaders who can focus 100% on QCAT”. The paragraph appears to assume these are mutually exclusive concepts. In my view, they are not. The NSW model for NCAT expressly provides that the President, a Supreme Court judge, is allocated full-time to the Tribunal.
Page 7, paragraph 37; and schematic for Option 2 on page 8, and schematic for Option 3 on page 8, and paragraph 127	Paragraph 37 states that the “QCAT Appeals Tribunal also has jurisdiction to hear appeals on questions of law, which is a judicial function”. The schematic for option 2 (partial judicial leadership option) states that “QCAT can continue to hear appeals on questions of law.” The schematic for option 3 (no judicial leadership) states that “QCAT would not hear appeals on questions of law from decisions of the tribunal.” However, QCATA has power to hear questions of law on appeal, whether or not it is constituted by a judicial member: sections 26, 142, 146, 147, subject to some exceptions, for example, QCATA does not have jurisdiction at all if the decision at first instance was made by a judicial member: s142(1). Given QCATA does have power to hear questions of law on appeal, whether or not constituted by a judicial member, I am not sure what the final sentence in paragraph 127 relates to. The final sentence states “This [i.e. a jurisdiction being taken over by a court] may be seen as appropriate where appeals are limited to questions of law.”
Schematic for Option 2	This schematic says that under Option 2 “Judges and retired judges could continue to hear matters in QCAT, as Deputy Presidents, under the leadership of the President.” I don’t cavil with the proposition that under Option 2 judges and retired judges could continue to hear matters in QCAT. I would note, though, that even under Option 3, judicial members could hear matters. That is, retired judges could and should still be appointed as sessional members to sit on matters, even if the QCAT Act or an enabling Act doesn’t mandate the Tribunal be constituted by a judicial member. Having retired judges as sessional members is a very good thing for a Tribunal. Obviously, under Option 3, appeals from decisions of judicial sessional members should still go straight to the Court of Appeal, and not to QCATA.

Schematic for Option 3	This schematic says that under Option 3 (no judicial leadership) that QCAT could not continue to hear health practitioner disciplinary matters. This would only be correct if the constitution provisions in the relevant enabling Acts continue to mandate the Tribunal be constituted by a judicial member. As discussed in Issues Paper 6, this is not necessarily inevitable. Most other CATS do not have such a requirement for health practitioner matters.
Page 12, paragraph 71	Paragraph 71 states that “The Parole Board is another example of a Queensland body that exercises judicial functions but is not led by a judge.” I assume that what was intended was “The Parole Board is an example of a Queensland body that exercises administrative decision-making.”
Page 13, paragraph 89	Paragraph 89 states that “the Principal Registrar ... who is typically the longest serving senior person on the tribunal.” That is not correct. It is the person appointed by the Director-General. I am not aware of any such appointment being “the longest serving senior person on the tribunal”, or even a long serving senior person on the Tribunal.
Page 15, paragraph 108	This paragraph states that the President and Deputy President roles are “typically taken up by new appointments”. It happens, but it is not typical. A number of appointments to such roles have been made of judges who are not new judicial appointments.
Page 15, paragraph 110 & 111	Paragraphs 110 states that “the judicial leadership requirements might mean that the Supreme and District Courts are not able to fully utilise their judges to hear the court’s own matters. It might also put strain on the QCAT President and Deputy Presidents themselves who are required to balance their judicial workloads with the responsibility of their role as QCAT President or Deputy President.” Paragraph 111 states that “the judicial leadership model may cause disruption to the courts system and restrict the ability of the courts to manage their own judicial resources and appointments.” These reasons are some of the reasons why, if a judicial leadership model is used, then the Courts need to be given as many judges as they need to do their work, and QCAT needs to be given as many judges as it needs to do its work, and the QCAT Act needs to provide that any judge appointed to QCAT is appointed there full-time, like the NSW legislation does for its President.
Page 17, paragraph 124	Paragraph 124 states that judicial sessional members and supplementary members (which, I note, includes Land Court members) assist the tribunal with its work “in hearing matters that require judicial expertise.”

	More accurately expressed, this would read “in hearing matters that require a judicial member consequent on a mandatory constitution provision as well as other matters.”
Page 17, paragraph 124	Each member of the Land Court is a supplementary judicial member. Through their generosity, they take on appeals, but also some other matters, including, but not limited to, contempt matters.
Page 17, paragraph 126	Contempt must also be heard and determined by a judicial member. I do note, though, that you have already noted this elsewhere (i.e., at para 36).
Page 18, paragraph 130	This would depend on whether or not the 3IC role (Deputy President) is given power to hear such appeals. (See also observations at paragraphs 36 and 37 above).
Page 18, paragraph 132	I note this issue is dealt with in more detail in Issues paper 3: Minor Civil Disputes. However, for current purposes I note that legislation which would require all non SEQ MCD hearings being dealt with remotely would produce a dichotomy of how justice is delivered to those in SEQ and those outside SEQ. This is not desirable. It is correct to say that if Adjudicators were to circuit to major regional centres to hear disputes in person, that this would “undoubtedly involve the need to appoint additional Adjudicators”. It would also need, amongst other things, additional Registry staff to support the additional caseload, and hearings (including additional Hearing Services Officers), additional office space for the additional Adjudicators, additional travel budget, and guaranteed Court room availability, now and in the future (taking into account increases in the number of matters) in the non SEQ locations.
Page 18, paragraph 134	Section 145(4)(b) should be repealed. Any member should be able to order such a stay: Senior Members and Ordinary Members have sufficient skills and qualifications to exercise this power whether or not the Tribunal is constituted for the appeal.¹⁸ The power should not be limited to judicial members, or presidential members. From operational and consistency perspectives, it seems to me that this sub-provision should be repealed.
Page 20, paragraph 147	This paragraph says that “the QCAT President typically hears appeals, decides questions of law and provides precedent decisions.” A better description is that “the QCAT President list manages a number of lists (legal practitioner list, contempt list, RTI list) and hears and determines matters within those lists, as well as hears

¹⁸ My view is that care should always be taken not to add to the list of things only presidential members can do unless it is truly necessary for the proper administration of justice.

	and determines some matters from other jurisdictions. Typically, the latter will be where there is competing jurisprudence in the Tribunal on a certain matter, novel cases or new law cases.”
Page 22, paragraph 163 and 164	The documents which is extracted at paragraph 163 is a document which was drafted prior to my appointment as President. Only selective extracts have been included by the Review within paragraph 163. My understanding is that the complete document was an attempt to articulate the roles and responsibilities of Senior Members generally, but in the specific context of designating one such Senior Member as a Senior Member Administrator and allocating particular tasks to that person. Much has changed since that draft was produced, and it is now quite outdated. Ultimately the concept of having a Senior Member Administrator proved challenging for a number of reasons, including the absence of an (understandable) legislative hierarchy amongst Senior Members. It is this flat legislative structure which makes the need for third tier presidential management so important. In short, I do not think that the document, or reference to it, is of any value to the Review, and the way it has been referenced in the issues paper does not provide full or sufficient context. I think that a close and more useful skeleton of core aspects of what the current Senior Members do is found in Background Paper 4, page 8-9, paragraph 45, but I would expand the last dot points. Senior Members also conduct hearings which do not fall into the categories described. They also conduct compulsory conferences. They also do a myriad of other things that arise, and I am lucky to have them. Paragraph 164 states that “senior members are no longer responsible for scheduling matters because this work is now performed by a Registry team.” This is not correct. Scheduling of matters within QCAT is a collaborative effort as between the Tribunal and Registry. A Senior Member works, day by day and week on week, with a team of Registry staff, to schedule matters, the constitutions for which are approved by the President.
Page 25, paragraph 185	The divisions are now too big to be headed by a Senior Member.
Page 25, paragraph 185	This paragraph states that “The 3 divisions were established in the QCAT Rules, rather than the QCAT Act, to give the QCAT president more control and flexibility in the operation of the tribunal.” I respectfully agree. This situation should continue in the future.

Page 25, paragraph 185	The paragraph states “given that each division is already broken into different lists which each have a member as the list manager, adding the role of head of division may simply create another level of bureaucracy which is not required.” I do not agree with this statement. Three tiers of senior Tribunal management above the Senior member level is required. I have set out my reasoning in respect of this earlier in the document. All Senior Members are equal. None has management or supervisory authority over another. As noted above, the flat structure, and the absence of a clear statement of legislative functions, is not optimal. Views about how things should be done in the Tribunal can differ. It can sometimes be challenging to get unanimity of view. Sometimes there is no unanimity of view. I hasten to say, this is not a criticism of the Senior Members – I highly value their input and being able to engage in open discussions where differing views might be expressed. Often such discussions leads to better solutions. However, it is very time consuming for all concerned. It is my view that the introduction of third tier presidential members, (i.e. Deputy Presidents) provides a stable focal point to synthesize the views of members in the relevant division, testing ideas and propositions for ongoing reform, rather than the President and/or 2IC needing work through a number of issues with a ‘committee’ of multiple Senior Members, Deputy Presidents can then provide the strategic direction for their entire division, and work with the other Deputy Presidents to provide assistance to the President and the Vice Presidents in respect of discharging functions which are relevant across more than just their division
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Conclusion

62. 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