

19 October 2023

Our ref: [KS&KB:MC]

The Hon Yvette D'Ath MP
Attorney-General and Minister for Justice
Minister for the Prevention of Domestic and Family Violence
1 William Street
Brisbane QLD 4000

By email: [REDACTED]

Dear Attorney

Increase in funding for the Queensland Civil and Administrative Tribunal

Queensland Law Society (QLS) writes on behalf of its members to raise concerns about the critical resourcing demands of the Queensland Civil and Administrative Tribunal (QCAT). We strongly support the need for additional targeted resourcing of QCAT as well as additional funding of the statutory, legal and other service providers who support the Tribunal in meeting its ongoing and increasing workload demands.

This response has been compiled with input from the following QLS legal policy committees:

- Elder Law Committee
- Health and Disability Law Committee
- Competition and Consumer Law Committee
- Access to Justice/Pro Bono Law Committee
- Occupational Discipline Law Committee
- Litigation Rules Committee

As you know, QCAT is responsible for delivering essential frontline civil justice services to the Queensland public across a range of jurisdictions. Whilst QCAT continues to explore ways to respond to the breadth of its growing remit, in our view, it remains constrained by existing funding allocations.

We highlight the reality identified by Her Honour Justice Mellifont, President of QCAT in the QCAT's 2021-22 Annual Report that '[i]n all areas of its work, QCAT is overstretched'.¹ This has significant impacts for all parties, the consequences of which are particularly acute for

¹ [Queensland Civil and Administrative Tribunal, Queensland Civil and Administrative Tribunal: Annual Report 2021-22 \(Report, 27 September 2022\) 5.](#)

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vulnerable members of the community and those living in regional and remote areas of the State.

QLS submits that increases to QCAT's jurisdiction and the volume and complexity of matters which come before it, particularly in the guardianship jurisdiction, requires a significant funding commitment from government to ensure it can continue to meet demand for its services. We note for example that Her Honour Justice Mellifont, President of QCAT wrote to the former Attorney-General in April 2023 and highlighted that the number of applications in the guardianship jurisdiction from 1 January to 31 March 2023 showed a 6.5% increase in lodgements compared to the same quarter in 2022.

Since its establishment in 2009, the Tribunal has been continually vested with new or expanded jurisdictions. Recently, for example, the Land Valuation Amendment Bill 2023 allows for the external review of a number of decisions by QCAT. However, the Explanatory Notes, when identifying the financial impacts flowing from the amendments, do not specify that additional resources will be needed for QCAT. There is a requirement for an additional funding commitment to meet the demand for what will prove to be complex and technical matters that will require the appointment of experts and potentially additional experienced members. For this, and for all new jurisdictions, there should be regular reviews of initial and ongoing funding needs.

In our view, the capacity of courts and tribunals to promptly resolve matters is heavily reliant on adequate and responsive resourcing as well as correlating funding to the statutory and legal assistance entities who support QCAT, and the courts, in responding to any additional work loads.

QLS strongly recommends the government commit to providing a significant and sustained increase in funding to ensure that QCAT can continue to perform its functions and provide accessible, fair, just, economical, informal and quick resolutions, in line with its statutory mandate.² Additionally, where increases in QCAT outcomes results in downward pressure to other statutory bodies and legal assistance providers, those entities must also be sufficiently funded to ensure they can adequately support any increased hearing capacity of QCAT.

Current case work implications

To support the government's consideration of this issue, our members have provided the following case examples and information to emphasise the importance of a commitment to a sustainable funding model in QCAT.

Guardianship and administration jurisdiction:

- Case officers are overloaded with, as we understand it, as many as 180 cases for some case officers;
- An application seeking declaration of capacity was lodged in April 2023 but the party does not have a tentative hearing date as at the end of September 2023.
- Delays in progressing referrals from the Supreme and District Courts for example where QCAT is to determine whether a parent has capacity to instruct a lawyer in a child safety

² *Queensland Civil and Administrative Tribunal Act 2009* (Qld) s 3(b).

matter. Some matters have been stood down for over a year. This has implications for the family and child safety.

- Further, where there are issues of capacity for dangerous prisoner matters (where prisoners are held on continuing detention orders) referred to QCAT from the Supreme Court (such as the ability to make decisions about where to live), these matters are also delayed.

Discipline matters

Other jurisdictions of the Tribunal are also experiencing significant workloads. For example, in the Health Practitioner Disciplinary List we understand that the Tribunal is hearing over 120 to 130 matters in that list alone each year. Whilst we are aware that the workload of that list is managed with the benefit of retired judges, the judges who manage that list do not currently have a dedicated Associate resource at all. This is important particularly considering the complexity of those matters. Delays in the disciplinary jurisdictions can lead to significant burdens being placed on individuals who may have been stood down or suspended without pay pending the outcome of their matter. It is critical that these matters are determined as expeditiously as possible for all parties.

Minor debt and consumer claims, fence and tree disputes

Members of the community, particularly vulnerable people can have difficulty accessing QCAT's consumer jurisdiction.

Our members have reported delays in reaching a hearing date for resolving neighbourhood disputes relating to dividing fences and/or trees. We note that delays can have a significant personal and financial flow on impact. For example, in respect of disputes about the sale of motor vehicles, disputes are often time sensitive as individuals live in regions where travelling to work is extremely difficult without access to a private vehicle. QLS highlights some of the experiences and issues raised by the Indigenous Consumer Assistance Network in this regard.³

There can also be a power and resource imbalance for individuals where the other party is a company or business, particularly those with legal experience or access to greater resources. This is particularly relevant in residential tenancy disputes where property managers and real estate agents often have a significant advantage over tenants in respect of maintenance, bonds and other disputes. The ability to access expert evidence in these circumstances, especially for vulnerable people, is limited.

Reserved decisions

In addition to these examples, QLS receives requests from members to enquire with the heads of jurisdictions (courts and tribunal) about delays in receiving reserved decisions. Typically, and according to agreements reached with courts and tribunals, we enquire when matters have

³ 'Car sales in remote Indigenous communities, Part two: A broken system' *The Indigenous Consumer Assistance Network* (Web Page, 25 October 2022) <<https://ican.org.au/car-sales-in-remote-indigenous-communities-part-two-a-broken-system/>>.

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been outstanding for more than three months. We currently receive more enquiries for QCAT matters than for any other jurisdiction and this has been the case for some time.

Economic burden

There are also economic burdens for individuals and government resulting from the under-resourcing of QCAT.

For individuals, delays and disruptions in QCAT can negatively impact their businesses, livelihoods, personal assets and capital as well as create increased out of pocket expenses for legal and other needs.

In respect of government, delays and disruptions in the Tribunal have the following impacts:

- Increased burdens on government agencies, statutory bodies and services which are either the subject of, or ancillary to, a matter before QCAT.
- Increased demand on the legal assistance sector and related services.
- Where government (or its agency) is a party in a QCAT matter, there is a direct impact on resources including to fund legal costs.

More broadly, where there is a choice of jurisdiction for business and investment, one of the decisive factors will be whether the justice system can efficiently and effectively deal with disputes. An improperly resourced civil and administrative tribunal can be deterrent for business and a lost opportunity for the State.

What is required?

We encourage the government to urgently commit to increasing the ongoing funding available to QCAT to ensure it can meet the growing demand for its services.

At this first instance we note that in the 2021-22 financial year, QCAT received additional funding from the government to meet both workload demands and its expanding jurisdiction. Additionally, the Queensland Budget for the 2023-24 year announced a further \$13.4 million over four years and \$1.2 million per annum ongoing to assist in meeting demand pressures.⁴ In our view, consideration should be given to ensuring that the temporary allocation of additional funding over the next few years is provided on an ongoing basis.

Further, to ensure the resourcing needs and implications of other areas of the justice system connected to QCAT are understood and considered, we recommend that such funding should be supported by a broad and strategic review and engagement with QCAT stakeholders, statutory bodies and legal assistance providers. For example, we note that currently, the guardianship jurisdiction receives no Legal Aid funding. Due to the inquisitorial nature of this jurisdiction, and the vulnerability of the cohort it relates to, QCAT relies heavily upon the contribution of the community legal sector to progress matters.

In addition, we understand the Public Guardian has observed a significant growth in appointments of the Public Guardian. If there is not additional funding allocations to increase the capacity of the Public Guardian as the guardian of last resort, then where the Public

⁴ [Queensland Government, 'Budget Measures: Budget Paper 4' \(Queensland Budget, 2023-24\) 70.](#)

Guardian is appointed, those same people currently impacted by QCAT delays will not be able to receive timely decision making support if personal decisions are required.

It is important to ensure that delays do not move to a different area of the system as the same impacts on individuals concerned will remain. Sufficient engagement with all stakeholders in this area is critical.

By way of example, our members have identified that with the recent additional appointment of three new District Court Judges in Ipswich, Cairns and Brisbane, the government also allocated targeted funding to Legal Aid Queensland (LAQ) to assist with the additional work the judicial appointments would produce. QLS considers that this formula should be applied when additional court and tribunal resources are allocated.

Discrete funding areas to support QCAT

Training and resourcing of Tribunal members and staff

In Her Honour's April 2023 correspondence Justice Mellifont outlined that 'staff undertaking guardianship work need to be of a sufficient skill and experience level to undertake enquiries directed to gathering information necessary for the Tribunal member to make decisions under the Guardianship and Administration Act'. Her Honour similarly observed that 'the sheer quantum and complexity of the work marks the need for more permanent Tribunal members who have and/or develop, substantial expertise in the guardianship jurisdiction'.

In respect of the registry, our members have also reported the need for more experienced staff, observing that this contributes to delays even for simple matters.

QLS supports additional funding for staff training and the allocation of funding for additional permanent and experienced Tribunal members and case management staff to respond to the complexity of guardianship and other matters. Additional registrars and the ability to dismiss applications without merit on the papers may also reduce some of the delays and resourcing impact in the guardianship jurisdiction.

As stated, QCAT is frequently vested with new or expanded jurisdictions. This requires training for staff, and the development of new practices and procedures, all of which require appropriate resources to put in place. There is also a need to ensure there are sufficient numbers of members, with the requisite experience, to meet the demand for often complex and technical matters.

In addition, judges in the Tribunal should be appropriately supported including with Associate and administrative resourcing. The Tribunal is of course best placed to determine how such resourcing should be allocated.

Capacity reports

Another related aspect to support QCAT resourcing is the need to allocate funding to assist with obtaining capacity reports which can cost in the order of \$2,000.00. QCAT has no funding to request these reports and they can be inaccessible for many individuals in this jurisdiction. Legal Aid for example could be funded to manage obtaining these reports.

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Funding to support the preparation of benchbook and guidance material in QCAT would also assist to support Tribunal members and improve the accessibility of the jurisdiction more broadly. Our members report that guidelines for separate representative appointments would also be of assistance.

Legal representation for QCAT matters

We reiterate our previous calls for legislative change to allow legal representation, as of right, in QCAT. There are also a number of areas requiring specific legal assistance funding for representation and advice which would support current resourcing impacts on QCAT, some of which are outlined below.

Firstly, QCAT does not currently receive any funding for representation in guardianship matters nor does LAQ. Whilst referrals can be made to one of the relevant community legal centre providers, delays within QCAT and existing workloads of these services means it can take up to 12 months to have these matters progress in the system once legal representation is obtained. Discrete and ongoing funding for legal assistance within the guardianship jurisdiction would be highly beneficial.

Additionally, in order to assist QCAT in managing highly complex guardianship matters, QLS seeks an expansion of Legal Aid's Mental Health Legal Practice program (which organises and funds legal representation for people appearing before the Mental Health Review Tribunal), to fund section 125 Separate Representative appointments under the *Guardianship and Administration Act 2000* (Qld). QCAT does not note the frequency of these appointments in their Annual Report, however in NSW, the comparative jurisdiction appoints as many as 7% of guardianship applicants with a Separate Representative. This would equate to approximately 800 appointments in Queensland.

In addition to guardianship matters, consideration should also be given to legal assistance funding for QCAT matters in a holistic way.

For example, there are increasing numbers of older women experiencing or at risk of homelessness. Older persons who are receiving hospital treatment for example with a QCAT application in the guardianship jurisdiction may be unable to pay rent and subsequently face tenancy issues and possible eviction. These women can end up with no options for legal help in those circumstances. There should be funding for all matters in QCAT, not just guardianship to ensure that legal assistance is available to address the range of legal issues that can snowball for this vulnerable cohort.

QLS also supports funding for independent legal representation to support QCAT's hospital hearing program pilot.

Finally, LAQ receives no specific funding for legal representation or to assist people with civil disputes although we understand they provides extensive advice and some assistance to individuals accessing QCAT in relation to credit, debt and consumer law matters. The demand for consumer advice and legal assistance is likely to continue due to ongoing housing and cost of living pressures. QLS strongly supports targeted legal assistance sector funding to support individuals accessing the consumer jurisdiction at QCAT including the ability to obtain expert reports.

Technology

Finally, QCAT needs significant and targeted investment in technology to facilitate better interactions with Queenslanders, particularly vulnerable community members and those not located in a central business district.

Many matters proceed by phone, and this works well in many respects. However, the increased capacity for hearings and other appearances to be conducted by video-conference would provide an enhanced, and in many instances necessary, option for our members and their clients.

Electronic filing and digitisation of the registry should also be a priority in QCAT and all courts. Given the volume of QCAT work, efficiencies in the registry including hearing listings and the timely distribution of directions and orders would be significantly enhanced by digitisation. The current systems present clear access to justice issues which QLS has articulated on many occasions. While QCase has been rolled out in the Tribunal's minor civil jurisdiction, there have been a number of problems and delays.

It is difficult, in the current environment, to see how and when the other jurisdictions will be able to accept electronically filed documents and conduct their matters electronically without the requisite funding to progress these projects in a timely manner, while ensuring they are fit for purpose. Modernisation of QCAT's registry and practices and procedures can only lead to better outcomes for the Tribunal and the people who come before it.

We would welcome the opportunity to discuss these matters with you further.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via [REDACTED] or by phone on [REDACTED]

Yours faithfully

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