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Office of the President

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Our ref: KB:MC

The Honourable David Thomas
Reviewer
Queensland Civil and Administrative Tribunal Act Statutory Review 2025-2026
GPO Box 149
Brisbane QLD 4001
By email: [redacted]

Dear Mr Thomas

Queensland Civil and Administrative Tribunal Act Statutory Review 2025-26: Issues Papers 6 and 10

The Queensland Law Society (**QLS**) welcomes the opportunity to contribute to the Queensland Government's Statutory Review of the *Queensland Civil and Administrative Tribunal Act 2009* as the peak professional body for the state's legal practitioners.

This submission responds to:

1. Issues paper 6 – Health practitioner disciplinary jurisdiction; and
2. Issues paper 10 – Occupational regulation

Our submission draws on the expertise and experiences of our specialist legal policy committees and practising members to assist the Review in identifying opportunities to strengthen the Queensland Civil and Administrative Tribunal's (**QCAT** or **tribunal**) legislative framework, enhance procedural fairness, and ensure the Tribunal remains responsive to the evolving needs of the community it serves.

This submission does not address matters relating to the legal practitioner jurisdiction.

Examples of some of the significant issues in the disciplinary jurisdictions

Before turning to the specific matters raised in the issues papers, we take this opportunity to set out some of the concerns of our members regarding the current operation of many of the occupational discipline jurisdictions in the tribunal.

- Delays

We know this is a consistent theme of this review, but wish to highlight it is of significant concern in the occupational regulation jurisdictions. There are concerning impacts for both the respondent involved in these matters as well as for public safety when there are considerable delays.

By way of example, one of our members has a client whose matter has been before QCAT since 2021. Their client is now withdrawing as they are unable to deal with the emotional and

other impacts of the matter remaining unresolved. This outcome should not be considered acceptable.

Delays in the issuance of decisions and reasons are also prevalent.

- Experience of members

In some occupational jurisdictions, the members hearing the matters do not appear to be experienced or familiar with the procedural or legislative requirements. In such circumstances, a significant portion of a hearing can be consumed through explaining the relevant statute or framework to the member, which is another cause of delay and other consequences. One of our members provided an example from one of their cases where an additional hearing day became necessary, which could not then be set down for 5 months due to tribunal unavailability.

- Directions and setting hearing dates

Obtaining accurate directions, amending inaccurate directions and setting hearing dates is a constant and frustrating issue for our members.

At directions, the sitting member cannot often access the Tribunal calendar to set matters down for final hearing. Where parties are required to confer and provide dates to the registry, it is common for them not to receive a response for some time, and by then counsels' diaries have filled up and the whole process needs to repeat anew. In some instances, the tribunal can take two to three months to fix a hearing date.

Where applications are made to amend directions, responses to those applications are also delayed. Sometimes they are not responded to until the after directions expire.

- Errors in documents and lack of e-filing and electronic case management

When hard copy documents are filed through the registry, sometimes those documents are returned unstamped or undated. Parties sometimes do not receive documents back at all from registry and there are other communication issues. Many of these issues could be resolved through access to a comprehensive e-filing and online document access/management.

Our members consider the above issues may be ameliorated with the proposed changes to the tribunal's structure and operation discussed in the following sections.

Issues paper 10 – Occupational regulation

Case management, communication, and engagement (questions 1 to 3)

QCAT's workload has clearly increased over the years and during recent times there has been a resource deficit leading to delays, poor case management and administrative and other errors in the disciplinary jurisdictions and elsewhere. The comparably small number of occupational regulation matters dealt with each year by the tribunal appear to have become lost in the chasm of total matters QCAT needs to deal with.

Proactive broad-scale case management is needed to address these issues. This should be facilitated through more explicit divisions within the tribunal that have dedicated resources, and members and other staff who are experienced or trained in specific areas. There should also be more transparency for users about the nature of the divisions and, in particular, relevant contact points for those divisions.

While ensuring each area has requisite resources, members and other registry staff who know the relevant legislation and processes, separating the jurisdictions completely may cause other issues. Having a cohort of members/senior members routinely hearing the same types of matters in specific lists is a valuable proposition, but we acknowledge that QCAT's jurisdiction currently relates to 180 Acts and so this would present a challenge in relation to training and knowledge management.

However, the outcomes are currently unacceptable in many matters, and hence we welcome the Review and the Government's consideration of the many recommendations QLS has made including in relation to improved case management, resource allocation, training and digitisation.

Better experienced, trained knowledgeable members

Notwithstanding the aforementioned difficulties, the lack of experience of members in a number of the disciplinary jurisdictions causes significant delays and potential for error. We already noted a case above where the matter was set down for a one-day hearing, yet the parties spent most of that day explaining the legislation and tribunal processes to the member.

A further example of member-related difficulty concerns the fact that disciplinary matters can fall within the tribunal's original or review jurisdiction depending on the nature of the matter. If the matter is before a less experienced member, or being managed by less experienced staff, there can often be confusion about which of these jurisdictions applies. One of our members reports that, in a police matter, which is a review jurisdiction, they received directions listing when each party was required to file evidence – as it would be the case were the matter in QCAT's original jurisdiction. This led to the parties losing time and expending costs seeking to have the error corrected.

Better training and mentoring of members and registry staff is required. Further guidance material could perhaps be developed for use by the Tribunal and parties.

Contacting QCAT

Contacting the tribunal, including a specific person or case manager is extremely difficult. Often no direct contact details are provided to parties and our members are required to sit on hold for long periods of time (e.g. 40 minutes) on a general phone line. There are also issues with emailing the general contact address for even simple enquires. Parties need to be able to contact a case manager or similar person directly.

E-filing and tracking matters online

In addition to the above noted issues with hard copy documents at the tribunal, our members also report receiving communications asking for documents which have already been filed and circumstances where one party receives documents from the tribunal, such as directions, but the other party does not.

Occupational regulation proceedings (questions 4 and 5)

Listing matters for hearings and other directions

Delays in listing matters for hearings are prevalent and present a number of difficulties for parties. In matters where all parties are required to confer and provide dates to the registry, there can be a delay of several weeks before a response is received. By the time a response is received, counsels' diaries have filled up and then the whole process starts again. In some

cases, two to three months are spent working this out. In these circumstances, it is difficult to make enquiries with the tribunal

Issues also arise when unsuitable standard directions are sent to parties. When applications are made to amend directions, it is often the case that a response will not be received for a month or so after directions expire. Sometimes one party will receive directions, or a response to a query and the other party will not. The parties often need to confer to work out what material has been sent by the tribunal. It is difficult to contact the tribunal to ascertain the status of the directions which have been sought. In the meantime, the parties must make their case preparations on the basis that these new orders will eventually be made.

Our members suggest that an expansion of electronic case management and a wider scope for decision-making by principal registrars would streamline the directions process.

Many of our members consider additional directions hearings would be beneficial if run efficiently. However, efficiencies could also be achieved if parties were able to file directions by consent in the first instance and these be promptly acted upon by the tribunal so the parties become certain of critical dates. A practice direction could require the parties to file proposed directions by a particular date and, if this does not occur, then the matter is automatically listed for the next directions hearing. It would also be useful for parties to have some access to aggregated QCAT calendars to assist in nominating available dates.

Directions hearings can significantly progress matters by providing a dedicated forum for communications between the tribunal and parties and can motivate parties to take steps in their matters. However, many directions hearings in the discipline jurisdictions are not run in a way which actually progresses matters. As indicated above, represented parties sometimes attend these hearings with instructions as to critical dates only to find that the member does not have adequate access to the Tribunal calendar and therefore must adjourn the matter pending input from the registry. This is a waste of time for the tribunal, the member, and for parties.

We are aware that the Tribunal has had difficulties in determining member/assessor availability where there are panel member requirements, but the above has also been an issue in matters which only need to be determined by a single member.

We note that the health practitioners' list experiences fewer issues as there are dedicated directions hearing days. The associate to the Deputy President is also generally in contact with parties, which has been of assistance.

Hearings on the papers

Hearing matters on the papers is appropriate in some circumstances and inappropriate in others. It is a question ultimately for the tribunal and it should be open for the parties to request an oral hearing if this is considered necessary. We note some complex legal arguments will require an oral hearing and that determining matters on the papers does not necessarily mean the matter will be decided more expeditiously. We have not received feedback from members to suggest requests for oral hearings are not being granted.

Other issues

We have provided examples of delays throughout QCAT processes and set out the causes of those delays. It is typical for contested matters at the tribunal or any court to require a significant amount of time for finalisation; however even when the parties are agreed, obtaining a final

outcome from the tribunal can still take inexplicably long period of time. This extends to obtaining consent orders, determinations on the papers, and orders/notices after a mediation.

Applying previous decisions and referring questions of law (questions 6 to 9)

Question 6

There should be further training and education for tribunal members who routinely hear matters in these jurisdictions. This could be provided through a Queensland judicial commission. Further materials such as benchbooks should also be developed.

Question 7

Our members have had matters where a legal point was decided by an appeal court and following this decision, the parties submitted that the substantive matter should be sent back to the tribunal. This appeared to work well.

Question 8

Tribunal members often have typically have regard to previous decisions which can lead to increased consistency and better education and training.

Question 9

QLS has not specifically considered whether provisions in enabling acts require amendment.

Constitution and panel requirements (question 10)

While arranging panels to sit can cause difficulties and delays, our members caution against diluting the representational purpose of panels just for the convenience of having a matter heard. We consider that improved case management would ameliorate panel scheduling issues.

One option may be to consider whether it is necessary to have multiple assessors on a panel from the same professional background.

Guidance and education (question 11)

As recommended elsewhere, QCAT should identify the members and registry staff who will most likely be involved in disciplinary matters and provide education and guidance about the process and requirements of each enabling Act to these members. QLS has also proposed a model for a judicial commission for Queensland which would include a complaints arm, but also provide education and training for tribunal members.[1] This may assist the tribunal to manage resources in relation to education and training.

QCAT should capture and assess relevant data about proceedings including regarding directions, delays and reasons for decisions. The tribunal should also regularly engage with stakeholders to ensure matters are being run effectively.

For tribunal participants, we see value in the development of additional practice directions and benchbooks. Further guidance about when documents are able to be filed via email would also be beneficial.

[1] QLS submission in response to the discussion paper, 'Safeguarding Independence, Ensuring Accountability - Exploring the Need for a Judicial Commission in Queensland'

Potential transfer of police disciplinary matters to QIRC (questions 13 and 14)

If police disciplinary matters are not to remain within the jurisdiction of QCAT, then, aside from establishing an independent police tribunal, the only appropriate alternative forum is the Queensland Industrial Relations Commission (**QIRC**). In our view this is the logical course.

There is a clear policy impetus by involved parties towards consolidating all police-related matters within a single jurisdiction. Presently, QIRC adjudicates all police matters except for discipline, and the Commissioner for Police Service Review retains authority over transfers and stand-downs. It would be both rational and efficient for these functions to be transferred to QIRC, thereby streamlining the process and ensuring consistency in decision-making across the entire police jurisdiction rather than there being essentially three separate jurisdictions.

This proposal is a direct response to the wholly unacceptable delays experienced in police disciplinary proceedings before QCAT, where matters routinely languish for periods ranging from two to five years. Such delays have compelled parties to advocate for a change in jurisdiction. Were it not for these protracted delays, there would be no objection to retaining these matters within QCAT.

Potential transfer of other disciplinary matters (questions 15 and 16)

Our members generally consider that where these matters are determined is less important than ensuring the sitting members hearing them are trained and experienced, the registry is appropriately resourced and the processes are fit for purpose.

QLS responses to consultation questions in issues paper 6 – Health practitioner disciplinary jurisdiction

Constitution of the tribunal (questions 1 to 3)

QLS considers a judge, or retired judge at the direction of the QCAT President, should continue to hear health practitioner disciplinary proceedings. Judges and former judges bolster public confidence in the decisions being made in this jurisdiction, which is important due to the health and safety concerns present.

In recent years, delays in this jurisdiction have been reduced as a result of sessional members who are former judges hearing these matters. These members have the requisite expertise and experience to determine matters with fewer delays.

Any changes to the constitution requirements for hearing health practitioner disciplinary matters should therefore relate to the requirements of a panel. Some of our members consider it is appropriate for some simple matters, such as those relating to practising without insurance, where the conduct is admitted, to be determined by a non-judicial member if this would assist management of tribunal resources.

Our members find associates to be helpful, particularly in the lead up to hearings due to the communication they have with the parties. Parties can ask questions directly of the associate and they act as a conduit between the member and the parties. While some of the associate functions could possibly be performed by the registry, the outcomes are likely to be worse due to resourcing challenges which exist in the busy registry and the issues discussed above such as difficulty in contacting the tribunal.

The process in health disciplinary matters where there is a judicial member and associate leads to better outcomes than processes in other disciplinary jurisdictions.

Panel of assessors (questions 4 to 7)

Panel members are present to assist the tribunal. We are cognisant of the scheduling difficulties this presents, however, and consider for matters where there are no factual issues in dispute or if there is an agreed position between the parties, and the issue to be determined is the sanction, then perhaps health assessors are not warranted. Where there are elements that are contested, then panel members are appropriate.

Awarding costs (question 8)

QLS considers the costs regime in the disciplinary jurisdictions should generally be retained. Typically, each party will bear their own costs, however, costs can be recovered following a contested hearing which should not have been run. This approach strikes a good balance; encouraging the parties to be reasonable. It does not disincentivise the respondent from otherwise admitting the conduct but rather, assists to progress matters where the parties are acting reasonably.

We understand there to be different costs regime in other states and that national regulators therefore have inconsistent experiences. As stated elsewhere in this submission, improved case management, practice directions and other efficiencies would likely assist parties to reduce costs. Delays in the delivery of decisions and reasons currently add to costs unnecessarily.

We note there were previously caps on costs for some professions due to the different impact costs can have on respondents depending on their role and salaries. We do not support a return to this regime at this time. Questions about capacity to pay can be determined in each individual matters.

Alternative dispute resolution (question 9)

Recent experience suggests compulsory conferences are not a common tool, with parties more likely to engage informally in 'without prejudice' negotiations. Negotiations in these matters often happen over time, meaning a single day event may not be fit for purpose.

There may be benefit in more formalised tribunal processes and conferencing, particularly if there is a change to costs rules. This process should be optional, rather than mandatory. Forcing parties to attend a conference where this is not appropriate in the circumstances will ultimately waste tribunal resources.

For any type of ADR to be effective, a decision-maker for each party needs to be in the room. Our members who act for respondents advise that a regulator will often not be represented at a conference by someone who is able to make a decision. This makes the ADR ineffective and contributes to delays and increased costs.

If the parties consented to a conference, it would be helpful to have a third party from the tribunal present, if the process was suitable.

Forum

Our members recommend this jurisdiction should have its own resources, expertise and case management process, regardless of whether it sits within QCAT or in the District Court.

If QCAT retains the jurisdiction, resources may be able to be shared more easily and, subject to the tribunal and courts' views, it may be easier to utilise retired judges rather than reserved judges in the District Court.

Other issues

The delays in this jurisdiction not only impact the respondent but create significant public safety concerns. Under section 204 of the *Health Practitioner Regulation National Law (Queensland)*, the tribunal is required to notify the national board of a decision and provide reasons and other particulars. We are informed that there are sometimes delays of years before this notification occurs. An improved process should be put in place for these matters.

QLS remains eager to assist the Review and would be pleased to engage further on any of the issues raised in our submissions.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via policy@qls.com.au or by phone on [redacted].

Yours faithfully

[redacted]

Peter Jolly
President