

12 February 2026

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
[REDACTED]

Dear Mr Thomas

Queensland Civil and Administrative Tribunal Act Statutory Review 2025-26: Issues Paper 1 - Objects and Procedures

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 Issues Papers 1 - QCAT Objects and Procedures (**issues paper**) and draws on the expertise 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.

Key recommendations

1. The operation and expansion of QCase should be appropriately resourced.
2. Tribunal processes should not permit delays in documents being filed, irrespective of whether they were lodged through QCase, at QCAT's Brisbane registry or at a regional Magistrates Court.
3. Legislation should expressly confer legal representation as of right for all parties in all Tribunal jurisdictions. If this approach is not adopted, the restriction should be removed for additional categories where there is a significant power imbalance, where the proceedings concern matters arising under federal legislation or raise complex issues of fact, law or mixed-fact and law; for example, in all administrative appeals where the other party is a government agency and in tenancy matters where the other party is a real estate agent. Legal representation should not be restricted in matters where a party's human rights are affected.

4. Costs and costs assessment processes should be reformed. There should be different costs approaches for different types of matters; for example, costs should be routinely awarded in commercial-type matters, and exceptionally in other matters. The approach to costs going forward should be less restrictive and we note costs are likely to be reduced with improved case management and a reduction in delays.
5. Tribunal processes for communicating with parties be improved including regarding matters on the papers, leave applications/orders and enforcing Tribunal orders in the Magistrates Court.
6. The Tribunal remains insufficiently resourced and requires a significant and permanent increase to its funding. QLS calls for a dedicated sustainable funding model informed by a QCAT funding stakeholder group.
7. Case officers are often overloaded. It is imperative there are sufficient numbers of experienced/senior staff in complex jurisdictions and that adequate training is provided.
8. There is a need for better case management in the Tribunal. In some jurisdictions, efficiencies would be created by additional conferencing and directions hearings before a final hearing. Further, we call for enhanced use of dispute resolution and mediation services.
9. Similarly, there are repeated difficulties in contacting the QCAT registry. We strongly recommend these processes are improved and suggest contact persons be assigned for urgent matters, complex matters and that each division or jurisdiction have a designated group of specific case managers / contact points that are accessible to parties.
10. Measures should be implemented to reduce delays in making final decisions and issuing reasons for decisions. Decisions and reasons should be published as soon as practicable.

The following comments respond to the sections set out in the issues paper.

Registry functions and powers

In response to the consultation questions in this section, QLS cautions against a registrar outright rejecting or refusing an application due to an administrative error on a form, or similar reason, without informing the party of a way to rectify the error.

Where applications clearly lack substance, a registrar or caseflow member could be empowered to seek further particulars from the applicant prior to listing the matter for hearing and, in the event that information is not provided within a reasonable period of time, dismiss applications on the papers.

We do not consider there should be different rules depending on how documents are filed. They should be treated in the same way. There should be no unreasonable delay between when a document is lodged through QCase and when it is accepted for filing.

Vexatious litigants

We consider the Tribunal ought to be able to declare someone a vexatious litigant similar to the process that occurs in Queensland's courts. This power will assist the Tribunal to better manage matters and workload.

Electronic filing and QCase

The issues paper at paragraph 85 outlines the clear benefits of electronic filing and case management:

The move to electronic filing and digital case management is intended to increase the productivity and efficiency of QCAT by reducing reliance on paper files, which can be easily lost or damaged. It is also intended to promote the accessibility of QCAT by allowing parties to file and access documents at any time and without the need to physically travel to the registry. This is particularly beneficial for those living in rural or remote communities.

The inability for most QCAT users to file documents electronically (and therefore conduct proceedings electronically) has significant consequences for Queenslanders and Queensland businesses including:

- creating access to justice issues;
- introducing inefficiencies, particularly given that most business in the state is conducted electronically;
- increasing legal costs for clients;
- increasing operating costs for law firms;
- adding to inefficiencies within the Tribunal and stretching their resources (for example, staff required to process paper documents, storage costs and inefficiencies created by having one paper copy of a file which can only be accessed by one person at a time);
- increasing delay and uncertainty in proceedings;
- discouraging the use of technology in litigation generally;
- dissuading businesses from operating in Queensland or, at least, from using Queensland services to resolve disputes.

In addition to addressing issues currently faced by our members when filing hard copy documents, electronic filing and processes in all QCAT jurisdictions would create additional benefits, such as:

- the ability to check the status of matters online, significantly reducing the number of phone calls to Tribunal staff;
- removing the need for Tribunal staff to return documents by post;
- ensuring timeframes for filing documents are more easily able to be complied with;
- facilitating stronger security practices in respect of access to Tribunal material.

QLS calls for additional funding to enable the transition from CLAIMS to QCase and/or to resource the management of both systems until all matters on CLAIMS are finalised. Further, it is imperative any ongoing QCase issues are rectified as a priority for the current users in the minor civil jurisdiction and for expanded use of the system. QCAT should also be resourced to manage queries from users as QCase is expanded. Finally, there should be a simple transition from QCase to systems currently being developed in the Courts for matters that are appealed.

Remote conferencing and hearings on the papers

Remote hearings

Remote hearings are often appropriate and facilitate better access to justice, particularly for administrative and case management appearances. However, we caution against mandating a particular format for specific matter types as individual parties will have different needs at different times.¹ We note the barriers that remote hearings may create for some parties. We equally note that barriers may be removed for others by allowing remote appearances.

We agree with the access to justice benefits and efficiencies outlined in the issues paper. In addition to these, our members have advised that remote hearings can assist to reduce delays where there is a shortage of hearing rooms in the Tribunal.

The issues paper notes QCAT does not currently capture and record data about the number of matters proceeding in-person, remotely or on the papers. If possible to record, this data would be useful for planning and resourcing purposes.

The paper also notes an in-person hearing can allow a last-minute mediation to be conducted prior to the hearing. We consider this could be facilitated remotely, with proper facilities and notice to parties.

Hearings on the papers

We caution against hearings proceeding on the papers for any matters where adverse decisions are being made unless the Tribunal is satisfied the parties have been given appropriate time to seek legal advice and make submissions.

Where there is no oral hearing, parties can become confused about the process and what is happening, particularly where there is a delay in a decision being made and provided to the parties. There should be appropriate communication by the registry in these circumstances.

Service of documents

QLS acknowledges the difficulties expressed in the issues paper in respect of service of documents. Rather than proposing amendments to restrict rules in this regard, we advocate for a principles-based approach grounded in the practical need to ensure documents are received and seen, irrespective of how they are delivered. Noting the difficulties with posting documents as well as the possible advantages of newer ways to deliver documents, such as by electronically sending a clickable link that can be monitored to determine if and when it was accessed, the Tribunal's focus should be on how documents can best be brought to the attention of the intended party. Again, better digital case management would likely increase engagement with Tribunal processes.

Legal representation

QLS has consistently called for legal representation as of right in all courts, commissions and tribunals. The argument that legal representation causes a power imbalance or leads to increases in costs fails to recognise the following:

¹ Further guidance has been produced by the Law Council of Australia (with the assistance of QLS): [Principles for determining the appropriateness of online hearings](#) - updated December 2025

1. Having a lawyer present, even if the other party is unrepresented, often helps all parties to understand the process and the issues involved and can save the parties and the Tribunal time. The issues paper, at paragraph 121, discusses countervailing views including that allowing for legal representation may make the Tribunal less accessible and formalise it. We disagree. Accessibility will be increased for those who will struggle to appear themselves. Formality of the Tribunal is determined by the rules, processes and how the member conducts the hearing.

2. Parties may be unable to, or apprehensive about, conducting a matter alone. They may find it difficult to commit the necessary time and may struggle against the other party if that other party has more knowledge of about the process. Where there is an individual in a matter involving a business or organisation, the person representing that business or organisation, such as a real estate agent, often has more knowledge and experience (as is noted at paragraph 139 of the issues paper).

3. Further, not allowing a party to be legally represented at a hearing can simply mask existing inequities in financial and legal resources where one party receives significant legal advice in preparing for the hearing.

4. Where leave is not applied for or not granted, parties who are not legally represented may not receive appropriate support to manage their matter under complicated provisions in the QCAT Act (such as the requirements in section 29). Unrepresented parties are frequently exposed to unfair outcomes where they do not understand what is needed for a hearing or how to present their matter.

5. Where a lawyer is representing a party in the Tribunal, their legal costs must be fair and reasonable under the *Legal Profession Act 2007* (Qld) (**Legal Profession Act**). We also note provisions in the *Queensland Civil Administrative Tribunal Act 2009* (Qld) (**QCAT Act**) and other legislation can address costs concerns in particular matters.

Additionally, lawyers have ethical duties, including a duty to the court. They are regulated, have professional indemnity insurance and complaints can be made to the Legal Services Commission.

6. Legal representation will be increasingly important in the context of increased AI use by litigants. We note that self-represented persons are using AI tools to compile large volumes of documents courts and tribunals are required to consider. Increased access to legal representation would support the Tribunal to respond to its growing workload and the volume of material required to be considered.

Our members report difficulty with the process for applying for leave. Our members report instances where leave has not been granted despite matters involving large construction dispute claims with complex or jurisdictional issues.

Notification and service of these applications is also an issue and contributes to delays. If the requirement to seek leave is retained, perhaps a notification process can be formalised to ensure the other parties are aware of the application and order. The Tribunal should be resourced to facilitate this, although we note a comprehensive digital case management system would ultimately assist with these processes.

Further, even where leave is ultimately granted, there will have been additional costs for the party in relation to preparing the application documents and submissions and, if necessary,

attending an interlocutory hearing. There is also delay and uncertainty for parties who do not know if their representative will be able to appear during this time. This adds to the stress they might already be under in relation to their matter.

Despite the difficulties with obtaining leave that have been reported to us, the issues paper notes the large volume of applications that are made and granted, indicating these applications is often purely a procedural formality. If there was no leave requirement, based on these figures, significant Tribunal resources could be directed elsewhere.

We make the following comments in response to this section of the issues paper:

- Regarding unbundled services, QLS considers the caution expressed in paragraph 122 is unwarranted. Many cases are well-suited to unbundled services, and the Tribunal could support a framework for this.
- Those described in the issues paper as being “vulnerable persons” typically face a number of barriers in society and should be allowed legal representation without restriction. However, we also point out all non-legally trained people are vulnerable in an adversarial process. Problems could arise if the Tribunal was required to assess *how* vulnerable a person was so as to justify them being entitled to legal representation.
- QLS is concerned about any additional obligations imposed on lawyers as mentioned at paragraph 144. In an adversarial process, the duty should not be any higher than it already is. If the Tribunal requires assistance because it is engaging in a more inquisitorial process (like a Coroners Court) then the model of counsel assisting the Tribunal should be used, rather than imposing inappropriate obligations on a lawyer who is representing a party in an adversarial process.

In respect of the consultation questions:

- Question 15: Legal representation should be ‘as of right’ for all matters in the Tribunal. If this recommendation is not accepted then, at the very least, the restriction should be removed for additional categories where there is a significant power imbalance, where the proceedings concern matters arising under federal legislation (e.g. the *Corporations Act 2001* (Cth) or raise complex issues of fact, law or mixed-fact and law; for example, in all administrative appeals where the other party is a government agency and in tenancy matters where the other party is a real estate agent. Legal representation should not be restricted in matters where a party’s human rights are affected.
- Question 15(c): While we do not advocate for any restrictions on non-lawyer paid agents, we note they are not regulated in the same way as lawyers, nor do they have the same ethical obligations or professional indemnity insurance requirements. The Tribunal should also be mindful of the prohibition in the Legal Profession Act regarding engaging in legal practice when the person is not entitled to do so.
- Questions 16: Yes, but this would depend on appropriate resources for the lawyers/legal services providing this representation. Circumstances could include where the Tribunal considers this is necessary for compliance with section 29 of the QCAT Act and for human rights matters.
- Question 17: Parties should be notified via their preferred contact method provided to the Tribunal and this should include the use of any digital case management system.

- Question 18: As noted with respect to paragraph 144, additional obligations may make it difficult for the legal practitioner to fulfill the ethical and professional obligations to their client.
- Question 19: Yes, any lawyer with a practising certificate should be able to represent a party.
- Question 20: If leave is still required following this Review the principal registrar could decide the matter where the application is consented to. There would need to be appropriate guidance given to the principal registrar if the application was either not consented to or opposed.

Costs

We agree with the sentiments expressed in the issues paper that costs are likely to be reduced with improved case management and a reduction in delays. While it was noted that there is no mechanism to keep costs down, the Legal Profession Act imposes obligations to lawyers to only recover costs that are fair and reasonable (s319).

In our view, the current costs provisions should be revised. Our members report a need for greater clarity. We recommend there be different costs approaches for different types of matters; for example, costs should be routinely awarded in commercial-type matters, and exceptionally in other matters. Overall, the approach to costs going forward should be less restrictive than the current provisions to better ensure fair and equitable outcomes.

Costs assessment

We recommend changes to the assessment and enforcement of costs pursuant to the QCAT Act and *Queensland Civil and Administrative Tribunal Rules 2009 (QCAT Rules)* following a Tribunal order. Our members report the current process is less streamlined than the process under Chapter 17A of the *Uniform Civil Procedure Rules 1999 (UCPR)* and can cause delays and additional costs for parties.

The process for assessing costs is outlined in rule 87 of the QCAT Rules. It involves the appointment of an assessor who has discretion as to the procedure to be followed, providing this is consistent with the QCAT Act, the enabling Act and the QCAT Rules. Rule 87 further provides that costs are to be assessed pursuant to a scale of costs as directed by the Tribunal.

The QCAT Rules are silent on whether the assessor can consider an offer made to settle costs. Rule 733 of the UCPR, on the other hand, expressly provides for these offers to be made. This does not assist parties as, at common law, the power to make an order for costs must come from legislation. While an assessor in QCAT can decide the procedure to be followed, neither the QCAT Act nor QCAT Rules authorise an order for costs to be made if a paying party makes a successful offer. In this circumstance, the matter would need to go back to the Tribunal at more cost and inconvenience to the Tribunal and parties. Rules 733 and 734 of the UCPR cater for this.

Further, and unlike the process in a court, once the assessor has completed the assessment, the Tribunal is required to make an order about the costs payable, as the assessor's decision is not an order. Once that occurs, it will then be necessary to enforce the order by application of section 131 of the QCAT Act where there is a monetary decision. That involves another application to a court to enforce the order, which is not required under the UCPR. The UCPR

has its own mechanism whereby the judgment is automatically issued once the certificate is signed by the assessor.

Finally, we note that interest is not dealt under this process as it is, automatically, by operation of the UCPR and section 59 of the *Civil Proceedings Act 2011*.

Proposed amendments to process

In considering these issues, we note that rule 678 of the UCPR provides:

“This chapter applies to costs payable or to be assessed under an Act, these rules or order of the court.”

In *Medical Board of Queensland v Bayliss* (1999) (unreported), his Honour Justice Muir held that this provision meant that when an order for costs is made by a Tribunal under the Act (such as the QCAT Act), that then invokes Chapter 17A of the UCPR and the costs are to be assessed thereunder.

On this basis, we recommend amending section 131(1) of the QCAT Act so it provides:

“This section applies to a final decision of the Tribunal in a proceeding, that is a monetary decision or an order of the Tribunal for costs to be assessed, other than an order as referred to in section 457 of the *Legal Profession 2007*, to the extent that the decision requires payment of an amount to a person for costs to be assessed.”

We consider the advantage of this section is that pursuant to subsection (2), the order of the Tribunal is filed in the registry of competent jurisdiction. Subsection (3) then provides that on the filing of the decision, the order becomes a money order in the court which automatically triggers interest under section 59 of the *Civil Proceedings Act 2011*.

If section was amended, rule 87 of the QCAT Rules would need to be repealed.

Litigation guardians

It appropriate for QCAT to adopt a process by which litigation guardians are appointed, similar to the process under the UCPR.

Enforcement

While we acknowledge that enforcing Tribunal decisions in the Magistrates Court presents a number of issues for parties, particularly self-represented litigants, direct enforcement by the Tribunal would require considerable resources. The Magistrates Court has an established process and allocates resources for enforcement matters.

Therefore, it seems the more appropriate path may be for the Tribunal and the Court to provide greater assistance and information about the process of moving from QCAT to the Court. Increased funding for legal assistance services will also assist parties.

Question 25 and 26 – other issues /resourcing

Many of the issues of concern to our members appear to be based on the limited resources of the Tribunal. Resourcing concerns have been called out by the current and former QCAT presidents and noted in many reports and submissions, including prior QLS submissions. We acknowledge the recent increase to QCAT's funding in the state budget, but we do not consider this is sufficient based on the complex workload of the Tribunal.

Resourcing issues in the Tribunal present in a number of ways:

- Our members report that case officers are overloaded. It is imperative there are sufficient numbers of experienced/senior staff in complex jurisdictions and that adequate training is provided.
- As stated, the inadequacy of resources for digitisation of Tribunal files for most jurisdictions has an impact on users and the registry.
- As a result of backlogs, inadequate case management and other resourcing issues, there are significant delays in the resolution of matters. Many matters are lasting several years and individuals sometimes withdraw before they have an outcome because the excessive time is taking too much of a toll on their health, wellbeing and finances.

Resources could be used more efficiently. For example, in many jurisdictions, it would be appropriate to facilitate conferencing and directions hearings before a final hearing. This would assist the resolution of issues via dispute resolution pathways. We advocate for enhanced use of dispute resolution and mediation routes.

Importantly too, the funding of QCAT alone will not result in better outcomes for Queenslanders. QCAT interacts with a number of other bodies – both government and non-government who also require sufficient resources to support the Tribunal. Without a holistic approach to funding, many of the issues outlined in the QLS submissions will not be adequately addressed.

Outside of direct funding for the Tribunal itself:

- There is a need for funding for legal representation in certain QCAT matters. Additional legal assistance and advocacy is needed for guardianship and related matters, tenancy disputes and consumer disputes.
- Funding for expert reports should be provided and should include, but not be limited to, funding to support delivery of comprehensive capacity reports. Currently, QCAT does not have any funding to assist with obtaining these reports.

Both of these issues are further discussed in QLS's submission on Issues Paper 4 – Guardianship and Administration.

QLS calls for a dedicated, sustainable funding model which is informed by a QCAT funding stakeholder group (comprising groups for each division) to bring together relevant stakeholders and cross-departmental staff. This structured and strategic approach to funding will ensure the resourcing needs and implications on all areas of the justice system connected to QCAT are considered. This issue is also further explored in QLS's submission on Issues Paper 4 – Guardianship and Administration.

Other issues

- Our members consider other reforms are needed to address some of the operational issues in the Tribunal. For example, the provision of reasons for decisions remains an issue in many matters. QCAT members can make a decision without being required to give reasons, unless there is an application for same. If an application is made, there are often delays in the receipt of these decisions which has a number of flow-on impacts for parties, including with respect to appeals.
- We will discuss issues with overlapping QCAT jurisdictions in response to other issues papers, but this does cause confusion for many parties. For example, the building

disputes list has matters regarding disputes between builders and consumers, which are also traditionally civil disputes. QBCC matters are also on the administrative review lists and so there is often confusion and sometimes multiple proceedings/related matters on different lists, with a lack of clarity as to how these matters are sequenced.

- Our members report repeated difficulties in contacting the QCAT registry. We strongly recommend these processes are improved and suggest contact persons be assigned for urgent matters, complex matters and that each division or jurisdiction have a designated group of specific case managers / contact points that are accessible to parties.
- QLS also recommends further guidance, such as benchbooks, for larger areas such as guardianship be developed to support efficiencies.
- We also raise confidentiality and privacy concerns regarding non-publication of material. There are instances where QCAT daily lists have been published in local newspapers with names included, even where there is a non-publication order. We would be pleased if the Review could consider how this process can be improved.

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] [REDACTED]

Yours faithfully



Peter Jolly
President