

30.4.13

LEGAL AFFAIRS AND COMMUNITY SAFETY COMMITTEE

Report No. 28 on the Queensland Civil and Administrative Tribunal (Justices of the Peace) Bill 2013

QUEENSLAND GOVERNMENT RESPONSE

INTRODUCTION

On 19 March 2013 the Queensland Civil and Administrative Tribunal (Justices of the Peace) Bill 2013 (the Bill) was introduced into the Parliament.

The Bill was subsequently referred to the Legal Affairs and Community Safety Committee (the Committee) with a report back date of 24 April 2013.

On 24 April 2013, the Committee tabled Report No. 28 in relation to the Bill (the Report).

The Queensland Government response to the Report's recommendations on matters raised by the Committee and key fundamental legislative principles is provided below.

RESPONSE TO RECOMMENDATIONS:

Recommendation 1

The Queensland Civil and Administrative Tribunal (Justices of the Peace) Bill 2013 be passed.

Queensland Government response:

The Queensland Government thanks the Committee for its timely consideration of the Bill and appreciates the Committee's recommendation that the Bill be passed.

Recommendation 2

That a program of regular, continual professional development opportunities be provided to the QCAT JPs.

Queensland Government response:

The Government notes that the Bill provides the framework for a six month trial for certain justices of the peace to constitute QCAT for certain matters. The trial will be evaluated.

There are a number of safeguards in relation to the proposed amendment including section 167 of the *Queensland Civil and Administrative Tribunal Act 2009* (the QCAT Act) which provides that the President is to consider certain factors, including the nature, importance and complexity of the matter, in choosing the persons who are to constitute the tribunal for a particular matter.

In addition, as noted in the Committee's Report, clause 7 of the Bill (proposed new section 206J) allows the presiding QCAT justice of the peace to refer a question of law before the tribunal constituted by two justices of the peace to the president.

Further, clause 7 of the Bill (proposed new section 206N) provides that if the tribunal constituted by two justices of the peace considers it would be more appropriate for the matter to be decided by the tribunal constituted by one, two or three members; or by an adjudicator; then the presiding QCAT justice of the peace must refer the matter to the president.

As noted in the Department of Justice and Attorney-General advice to the Committee on submissions made to the Committee, the applicant justices of the peace have had to undergo comprehensive, compulsory five day training delivered by experienced QCAT members, adjudicators and staff.

The training included the fundamental principles of respect for the law, fairness (encompassing natural justice and procedural fairness), as well as modules on the subject matter constituting QCAT's minor civil disputes jurisdiction.

The training materials included tribunal decisions relevant to the modules to illustrate practical application of the principles and all participants' competency was assessed through a practical, performance based exercise. In addition all participants were strongly encouraged to observe QCAT hearings following the completion of the training and before the trial commences

Legal support by an experienced QCAT member or adjudicator is also to be provided to the justice of the peace panels on sitting days.

Regular, continual professional development opportunities for the QCAT JPs will be considered as part of the decisions on the future of the trial following receipt of the evaluation report.

Recommendation 3

That the evaluation framework for the QCAT JP trial captures information on the skills and experience of the participating applicants, appropriately anonymised and sorted into broad categories (such as years of age, gender, post-admission legal experience, other qualifications etc.)

Queensland Government response:

As the Committee has noted in its Report, the evaluation framework is currently being finalised. The Committee's recommendation about the information to be captured will be considered as part of that process. QCAT's evaluation database has been set up to capture the skills and experience of the JP's participating in the trial.

It is intended that the evaluation will include seeking feedback from QCAT clients, justices of the peace participating in the trial and other stakeholders.

Recommendation 4

That the evaluation framework for the QCAT JP trial is made publicly available prior to the expiration of the trial and the results of the evaluation are tabled in the Legislative Assembly prior to any decision to continue the trial for an extended period.

Queensland Government response:

The Government will make the evaluation framework publicly available prior to the expiration of the trial.

The Government will also release the results of the evaluation at an appropriate time.

Fundamental legislative principles

The Queensland Government notes that the Committee gave detailed consideration to the application of fundamental legislative principles to the Bill. In particular the Committee's report brings to the attention of the House whether the Bill has sufficient regard to the rights and liberties of individuals and to the institution of Parliament.

The Government notes the Committee's comments that:

- public policy considerations such as maintaining public confidence in QCAT's integrity justify the Bill's provisions regarding criminal history checks on serving and prospective justices of the peace;
- it is appropriate in the circumstances for the Bill to apply the immunity to justices of the peace constituting the tribunal in the same manner as to QCAT members; and
- in this instance the Bill's inclusion of the extension of the trial by regulation is justified.

The Government also notes the Committee's comments that early executive action (eg advertising, screening and training of applicants) to prepare for the roll out of the trial could be considered as failing to give due respect to the deliberations of the Committee and Parliament. The Government notes that these preparatory steps were taken to facilitate the early roll out of the trial if the legislation is passed by the Parliament. The Government has at all times acknowledged that the legislative framework to facilitate the trial is ultimately a matter for Parliament.

The Government notes the Committee's comments regarding the Explanatory Notes to the Bill.

The Queensland Government thanks the Committee for its consideration of the application of fundamental legislative principles in the Bill.