

# QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL (JUSTICES OF THE PEACE) AMENDMENT BILL 2013

## Explanatory Notes

### Short title

The short title of the Bill is the Queensland Civil and Administrative Tribunal (Justices of the Peace) Amendment Bill 2013.

### Policy objectives and the reasons for them

The objective of the Bill is to enable the Queensland Civil and Administrative Tribunal (QCAT), for certain types of matters, to be constituted by two justices of the peace, one of whom must be a lawyer.

The Bill implements the Government's election commitment to expand and enhance the role of justices of the peace in the community. The Bill will enable the conduct of a trial of the expansion of the role of justices of the peace to hear minor civil disputes, excluding disputes with a value of more than \$5,000 and urgent residential tenancy matters, in QCAT.

The trial will be conducted over six months commencing June 2013 at Brisbane, Ipswich, Southport, Maroochydore and Townsville. The objectives of the trial are to:

- reduce the average time taken to finalise all minor civil dispute applications and improve the clearance rate for all minor civil dispute applications in the trial sites;
- reduce the cost of hearing minor civil disputes within the trial scope;
- enable QCAT adjudicators, judicial registrars (who act as QCAT adjudicators in regional areas) and magistrates (who act as QCAT members in regional areas) to deal with more complex matters;
- recognise the substantial voluntary contribution of JPs to the community and provide opportunities to improve, develop and expand their role; and
- contribute to Government commitments to improve the administration of Queensland's justice system and frontline justice services for Queenslanders.

### Achievement of policy objectives

The objective is achieved by amending the *Queensland Civil and Administrative Tribunal Act 2009* (the QCAT Act) to enable justices of the peace to be appointed to QCAT by Governor in Council and to enable the tribunal to be constituted by two justices of the peace, one of whom must be a lawyer, to hear and decided certain minor civil disputes.

The Bill provides for similar appointment, resignation, removal and immunity provisions for justices of the peace as for QCAT members and adjudicators. However, it limits the jurisdiction of justices of the peace to minor civil disputes, excluding disputes with a value of more than \$5000 and urgent residential tenancy matters, and to locations specified in the *Queensland Civil and Administrative Tribunal Regulation 2009*. The Bill amends the *Queensland Civil and Administrative Tribunal Regulation 2009* to specify the trial locations and to set out the sitting fee for justices of the peace.

The Bill does not amend the *Justices of the Peace and Commissioners for Declarations Act 1991* and does not affect the status of the justices of the peace appointed to QCAT as justices of the peace under that Act. The appointed justices will still be able to perform the normal justice of the peace duties outside of QCAT and will still be able to use the title ‘justice of the peace (qualified)’ or ‘justice of the peace (magistrates court)’ for this purpose.

## **Alternative ways of achieving policy objectives**

There are no alternative ways of achieving the objective. Legislative amendments are required to enable JPs to constitute QCAT.

## **Estimated cost for government implementation**

The Government has allocated additional funds of \$1.608 million over two years for this initiative which is related to an election commitment. This amount includes funds for evaluation and a three month extension of sittings while the trial evaluation is being finalised.

## **Consistency with fundamental legislative principles**

**Legislation should have sufficient regard to the rights and liberties of individuals - *Legislative Standards Act 1992*, section 4(2)(a)**

Clause 7, new section 206P (Criminal history checks)

This provision enables the Minister to obtain information from the Police Commissioner about the criminal history of a justice of the peace or a person who is being considered for appointment as a QCAT justice of the peace. ‘Criminal history’ is defined in schedule 3 of the QCAT Act to include convictions that have become spent under the *Criminal Law (Rehabilitation of Offenders) Act 1986* and charges. In relation to prospective QCAT justices of the peace, the request for information from the Police Commissioner may only be made with the consent of the relevant person. This provision replicates similar provisions for members and adjudicators currently in the QCAT Act.

The provision also includes the following safeguards:

- the person to which the police information relates must be given the information and a reasonable opportunity to make representations to the Minister about the information before the Minister uses the information; and

- the Minister must ensure the report containing the information is destroyed as soon as practicable after it is no longer needed for the purpose for which it was requested from the Police Commissioner.

**Legislation should not confer immunity from proceeding or prosecution without adequate justification - *Legislative Standards Act 1992*, section 4(3)(h)**

Clause 7, new section 206BA(6), amendment to section 237 (Immunity of participants etc)

New section 206BA(6) applies section 237 of the QCAT Act to extend the current protections and immunities of a Supreme Court judge to justices of the peace appointed to QCAT. Section 237 currently gives these protections and immunities to members, adjudicators and the principal registrar when performing quasi-judicial functions. The immunity will ensure that justices of the peace appointed to QCAT can act with appropriate confidence in carrying out their judicial role in the community interest. This role would be difficult to carry out if the office holders or others involved in the proceeding were subject to allegations and litigation taken against them personally for their actions in the office or in a proceeding. Decisions of a justice of the peace appointed to QCAT are subject to the supervision of the appeal tribunal and courts.

**A Bill should have sufficient regard to the institution of Parliament – a Bill should only authorise the amendment of an Act by another Act – *Legislative Standards Act 1992*, section 4(4)(c)**

Clause 7, new section 206BB (Expiry of pt 4B)

New section 206BB is a sunset clause expiring new part 4B one year after the day of commencement. The new section enables the expiry date to be extended by regulation for up until three years after commencement. There is a possibility that the trial or a modified version of the trial may be extended beyond six months, depending on the findings of the evaluation. Extension of the expiry date without the requirement to amend the Act will facilitate a smooth an efficient extension of the trial. This provision does not authorise a regulation to amend the content of the Act. It merely extends the timeframe of its operation but limits the overall operation of the provisions to a total of three years.

## Consultation

The President of QCAT, the Chief Magistrate, Legal Aid Queensland, the Residential Tenancies Authority, the Real Estate Institute of Queensland (REIQ), the Queensland Law Society (QLS), the Bar Association of Queensland, the Queensland Association of Independent Legal Services, the Queensland Public Interest Law Clearing Housing, the Tenants Union of Queensland (TUQ), the Association of Justices of the Peace and Commissioners for Declarations Inc, the Justice of the Peace Society (Qld), the Queensland Justices Association (QJA), the Caboolture Region Justices Association Inc and the Gold Coast Justices Association Inc (GCJA) were invited to comment on a draft Bill.

Submissions were received from the QJA, the GCJA, three legally qualified justices of the peace, the REIQ, the QLS and the TUQ. Where possible, concerns related to the draft Bill have been addressed in the final Bill. These changes included increasing and equalising the sitting fee for justices of the peace appointed to QCAT.

## **Consistency with legislation of other jurisdictions**

The Bill is specific to the State of Queensland, and is not uniform with or complementary to legislation of the Commonwealth or another state.

## Notes on provisions

### Part 1 - Preliminary

*Clause 1* states the short title of the Act.

### Part 2 – Amendment of the Queensland Civil and Administrative Tribunal Act 2009

*Clause 2* states that this part amends the *Queensland Civil and Administrative Tribunal Act 2009*.

*Clause 3* amends section 179 to enable the president or deputy president of QCAT to resign from these roles by giving a signed letter of resignation to the Minister. The resignation takes effect on the day the letter is received by the Minister or on a later day stated in the letter. Similar amendments are made to the resignation provisions for members (section 187) and adjudicators (section 202) and a similar provision is inserted for QCAT justices of the peace in clause 7. Currently, the president, deputy president, members and adjudicators may only resign by a letter addressed to the Governor and resignation takes effect when the Governor accepts the resignation. The purpose of the amendments is to streamline the resignation process and align it with the resignation process for other statutory officers appointed by Governor in Council, such as the Chairperson of the Crime and Misconduct Commission, the Adult Guardian and the Legal Services Commissioner.

*Clause 4* amends section 187 to enable members to resign by giving a letter of resignation to the Minister, similar to the amendment made by clause 3 for the president and deputy president.

*Clause 5* amends section 202 to enable adjudicators to resign by giving a letter of resignation to the Minister, similar to the amendment made by clause 3 for the president and deputy president.

*Clause 6* inserts new section 206AA which applies sections 194A and 194B to adjudicators. These sections were inserted into the Act by the *Civil Proceedings Act 2011* to enable members to finalise part heard matters after their appointments expire or after the date of resignation. This situation applies equally for matters being heard by adjudicators. New section 206Z applies these sections to QCAT justices of the peace.

*Clause 7* inserts new part 4B into chapter 4.

New section 206B states that the purpose of this part is to provide for the hearing of particular minor civil disputes by the justices of the peace.

New section 206C sets out the definitions for part 4B. It includes the definition of ‘excluded minor civil dispute’. These disputes are excluded by new section 206L from the jurisdiction of justices of the peace when constituting the tribunal. An excluded minor civil dispute is a minor civil dispute where the claim involves an amount greater than \$5000 or where the application is an urgent application under section 415 of the *Residential Tenancies and Rooming Accommodation Act 2008*. A minor civil dispute is defined in the schedule 3

dictionary of the QCAT Act to include specific types of matters with a value of no more than the prescribed amount which is defined as \$25,000.

Restricting the jurisdiction of QCAT justices of the peace to claims of \$5000 or less will enable members, adjudicators and magistrates sitting as members of QCAT to deal with more complex matters, while ensuring justices of the peace deal with more minor matters.

Urgent residential tenancy applications are also excluded because most of these disputes seek the termination of a tenancy and the issue of a warrant of possession which is usually executed by police within two to three weeks of the decision. These decisions can have a significant detrimental and rapid impact upon the housing of the respondent. While these decisions are subject to the same appeal and reopening rights as other minor civil dispute decisions, the speed with which they are enforced may effectively prevent an aggrieved respondent from contesting the decision. Experienced decision makers are therefore required for these matters.

QCAT also prioritises the listing of urgent residential tenancy disputes to resolve these disputes quickly. In order to maintain and meet the QCAT benchmark of hearing urgent residential tenancy disputes within three weeks QCAT requires a high degree of consistency and certainty in the availability of decision makers to hear these matters that may not be achieved with volunteer justices of the peace.

New section 206D provides that part 4B prevails over another provision of the Act to the extent of any inconsistency.

New section 206E enables the president to choose two QCAT justices of the peace to constitute the tribunal for hearing and deciding matters under new section 206L at a location prescribed in a regulation. At least one of the justices of the peace chosen by the president must be legally qualified. This provision reflects the approach taken for members and adjudicators in section 165 of the QCAT Act.

New section 206F enables the president to change who constitutes the tribunal from two justices of the peace to members or to an adjudicator and vice versa. This provision is similar to section 168 of the QCAT Act which enables the president to reconstitute the tribunal between members and adjudicators.

New section 206G amendment provides that the legally qualified justice of the peace is the presiding justice of the peace. Section 170 of the QCAT Act is the equivalent provision for presiding members.

New section 206H provides that where the tribunal is constituted by two QCAT justices of the peace and the two justices disagree, the decision of the tribunal is the decision of the presiding justice of the peace. This reflects the approach taken in section 115(1) of the QCAT Act in relation to members.

New section 206I provides that the legally qualified QCAT justice of the peace (as the presiding QCAT justice of the peace) is to decide questions of law arising in proceedings. This reflects the approach taken in section 116(2) of the QCAT Act in relation to members.

New section 206J enables the presiding QCAT justice of the peace to refer a question of law before the tribunal to the president. This reflects the approach taken in section 117 of the QCAT Act for presiding members.

New section 206K enables the presiding QCAT justice of the peace to sign a document setting out the decision of the tribunal if the Rules provide for the document to be signed by a presiding member of QCAT. It also enables the decision document to be signed by a QCAT

justice of the peace if the Rules provide for the document to be signed by a member of QCAT. The effect of this provision is to apply rule 88 of the *Queensland Civil and Administrative Tribunal Rules 2009* to QCAT justices of the peace.

New section 206L sets out the functions of justices of the peace appointed to QCAT. It provides that two QCAT justices of the peace may hear and decide a minor civil dispute that is not an excluded minor civil dispute. An excluded minor civil dispute is defined in new section 206C. The new section also overrides the application of section 29(3) and (4) of the *Justices of the Peace and Commissioners for Declarations Act 1991* which limits the powers of justices of the peace generally unless another Act expressly excludes the operation of these subsections (section 29(7) of the *Justices of the Peace and Commissioners for Declarations Act 1991*).

New section 206M provides for the independence of QCAT justices of the peace in constituting the tribunal. This is similar to section 196 of the QCAT Act for adjudicators.

New section 206N provides, in a similar way to section 197 of the QCAT Act for adjudicators, for the tribunal as constituted by two justices of the peace to refer a matter to the president if the tribunal considers it would be more appropriate for an adjudicator or member/s to hear and decide the matter.

New section 206O enables the appointment of justices of the peace to QCAT by Governor in Council on recommendation of the Minister after consultation with the president. This section is similar to the appointment provisions for members and adjudicators in the QCAT Act. Subsection (3) clarifies that a justice of the peace is appointed to QCAT under this Act and not the *Public Service Act 2008*. Subsection (5) requires the Minister to advertise for applications. Subsection (6) sets out the eligibility criteria for a justice of the peace to be appointed to QCAT. The person must be:

- a justice of the peace (qualified) or
- a justice of the peace (magistrates court) or
- a retired or resigned judicial officer who is a justice of the peace by virtue of the office under section 19(1A) of the *Justices of the Peace and Commissioners for Declarations Act 1991* or
- a lawyer who is a justice of the peace under section 41(a) of the *Justices of the Peace and Commissioners for Declarations Act 1991*. This type of justice of the peace held office immediately before commencement of that Act and did not transition to a justice of the peace (commissioner for declarations) under section 42(1) of that Act because the person is a lawyer (see the exception in section 41(3) of the *Justices of the Peace and Commissioners for Declarations Act 1991*).

Subsection (7) provides that the term of office must not be longer than five years but no less than three years. Subsection (8) provides that a QCAT justice of the peace may be reappointed without advertising the vacancy. Subsection (9) provides that a QCAT justice of the peace may only be appointed on a sessional basis. This section, other than subsection (6), is similar to the appointment provisions for members (section 183 of the QCAT Act) and adjudicators (section 198 of the QCAT Act).

New section 206P sets out the requirement for criminal history checks of justices of the peace appointed to QCAT and prospective QCAT justices of the peace similar to the requirements for senior and ordinary members (section 184 of the QCAT Act) and adjudicators (section 199 of the QCAT Act). It enables the Minister to obtain a report on the criminal history of a

QCAT justice of the peace or a person who is being considered for appointment as a senior QCAT justice of the peace. Criminal history is defined in schedule 3 of the QCAT Act to include charges and convictions. Before using the information to decide a nomination for appointment or whether a person should continue to be a QCAT justice of the peace, the Minister must disclose the information to the person and allow the person a reasonable opportunity to make representations to the Minister about the information. The Minister must ensure a report on a person's criminal history is destroyed as soon as practicable after it is no longer needed.

New section 206Q requires a justice of the peace appointed to QCAT to immediately disclose a change in his or her criminal history to the Minister, unless he or she has a reasonable excuse. A change in criminal history also includes acquiring a criminal history. Criminal history includes charges and convictions. A maximum penalty of 100 penalty units applies. If the change is a conviction for an offence, this clause sets out certain information about the conviction which must be disclosed by the member. This provision is similar to the requirement for members and adjudicators to disclose any changes to their criminal histories in sections 185 and 200 of the QCAT Act.

New section 206R sets out the conditions of appointment for QCAT justices of the peace. It also provides for the payment of a daily sitting fee prescribed under a regulation. The amendment to the *Queensland Civil and Administrative Tribunal Regulation 2009* in clause 12 sets out the daily sitting fee to be paid to QCAT justices of the peace. Subsection (3) overrides the operation of section 35(1) of the *Justices of the Peace and Commissioners for Declarations Act 1991* which prohibits a justice of the peace from seeking or receiving any reward in connection with the performance of the functions of the office.

New section 206S enables a QCAT justice of the peace to resign by giving the Minister a signed letter of resignation. This is the same as for members and adjudicators in sections 187 and 202 of the Act as amended by clauses 4 and 5 of this Bill.

New section 206T sets out the basis upon which a QCAT justice of the peace may be removed from office by the Governor in Council. The Minister may only recommend to Governor in Council the removal of a QCAT justice of the peace who has been suspended under new section 206U if the justice of the peace has been given the opportunity to make written and oral submissions to the person conducting the investigation in relation to the suspension and to the president or deputy president. The Minister must consult the president before making a recommendation for removal to Governor in Council. This provision is similar to the removal from office provisions for members and adjudicators in sections 188 and 203 of the QCAT Act.

New section 206U empowers the president, with the Minister's approval, to suspend a QCAT justice of the peace from office if the president believes there may be grounds for removal from office. This provision is similar to the suspension provisions for members and adjudicators in sections 189 and 204 of the QCAT Act.

New section 206V requires the president to appoint a person to investigate the conduct of a QCAT justice of the peace suspended under new section 206U or the circumstances that led to the suspension. The investigator must give a report on the investigation to the Minister, the president and the justice of the peace. The report may recommend removal from office on a ground mentioned in new section 206T(1). The Minister may use the report to decide whether or not to recommend the removal of the justice of the peace to Governor in Council under section 206T(1). If the Minister decides not to make the recommendation, the president must immediately cancel the justice of the peace's suspension. This provision is similar to the

investigation provisions for members and adjudicators in sections 190 and 205 of the QCAT Act.

New section 206W provides for the appointment and reappointment of an acting QCAT justice of the peace by the Minister for a period of six months or less if there is a vacancy in the office or the QCAT justice of the peace is absent or for any reason cannot perform the functions of a QCAT justice of the peace. A person may also be re-appointed, if the re-appointment does not immediately follow the person's previous appointment or if the total period of appointment or reappointment does not exceed six months. The Minister may only appoint a person to act as a QCAT justice of the peace if the person was eligible for appointment as a QCAT justice of the peace under section 206O. Before appointing an acting QCAT justice of the peace, the Minister must first consult with the president. The Minister may cancel an acting appointment at any time. This provision is similar to acting provisions for members and adjudicators in sections 191 and 206 of the QCAT Act.

New section 206X states that the purpose of division 5 of part 4B is to provide for how certain provisions of the Act apply for the tribunal as constituted by two justices of the peace and to ensure the effective operation of new part 4B.

New section 206Y applies certain sections in chapters 1 and 2 of the QCAT Act to QCAT justices of the peace.

New section 206Z applies certain sections in chapter 4 of the QCAT Act to QCAT justices of the peace.

New section 206BA applies certain sections in chapter 5 of the QCAT Act to QCAT justices of the peace.

New section 206BB provides that part 4B expires one year after commencement. It also enables a regulation to extend the period by no more than three years after commencement.

*Clause 8* replaces the heading of chapter 10.

*Clause 9* replaces the heading of chapter 11. The effect is to combine the transitional provisions for the *Forensic Disability Act 2011*, the *Civil Proceedings Act 2011* and for this Bill into a single chapter 10.

*Clause 10* inserts transitional provisions for this Bill.

New section 285 provides that, for the first appointment of QCAT justices of the peace under new section 206O, the Minister may recommend a person for appointment to Governor in council without complying with section 206O(5) in relation to advertising. The Bill will commence on assent. This provision is required because of the anticipated short time frame between passage and assent and commencement of the trial on the announced date. In order to commence the trial in the first week of June 2013, recruitment and selection processes must occur prior to commencement of the Act.

It should be noted that the positions were widely advertised in Queensland and in the proposed trial sites prior to introduction of this Bill.

New section 286 enables QCAT justices of the peace to continue to hear and decide part heard matters after expiry of part 4B under new section 206BB.

New section 287 clarifies that amendments made to the *Queensland Civil and Administrative Tribunal Regulation 2009* by this Act does not affect the power of Governor in Council to further amend the Regulation or to repeal it.

### **Part 3 – Amendment of Queensland Civil and Administrative Tribunal Regulation 2009**

*Clause 11* states that part 3 amends the *Queensland Civil and Administrative Tribunal Regulation 2009*.

*Clause 12* amends the Regulation to insert a new part 5.

New section 17 prescribes the locations at which the tribunal may be constituted by justices of the peace. The prescribed locations are the sites for the trial.

New section 18 prescribes the daily sitting fee for QCAT justices of the peace. It is intended that the fee reflect the essentially voluntary nature of the office.

New section 19 provides that part 5 expires upon the expiry of chapter 4, part 4B of the QCAT Act.