

I hereby certify that this PUBLIC BILL has finally passed the
Legislative Assembly of Queensland.

Legislative Assembly Chamber,
Brisbane,

The Clerk of the Parliament.

14 May 2013

In the name and on behalf of the Queen, I assent to this Bill.

Pendalene Wensley
Government House,
Brisbane, *14th May,*

2013



Queensland

No. *20* of 2013

A BILL for

An Act to amend the Queensland Civil and Administrative Tribunal Act 2009
and the Queensland Civil and Administrative Tribunal Regulation 2009 for
particular purposes



Queensland

Queensland Civil and Administrative Tribunal (Justices of the Peace) Amendment Bill 2013

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2013

A Bill

for

An Act to amend the Queensland Civil and Administrative Tribunal Act 2009 and the Queensland Civil and Administrative Tribunal Regulation 2009 for particular purposes

[s 1]

The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Queensland Civil and Administrative Tribunal (Justices of the Peace) Amendment Act 2013*.

Part 2 Amendment of Queensland Civil and Administrative Tribunal Act 2009

2 Act amended

This part amends the *Queensland Civil and Administrative Tribunal Act 2009*.

3 Amendment of s 179 (Resignation)

- (1) Section 179(1), ‘addressed to the Governor’—
omit.
- (2) Section 179(2)—
omit.
- (3) Section 179(3), ‘Governor accepts’—
omit, insert—
Minister receives
- (4) Section 179(3)—

renumber as section 179(2).

4 Amendment of s 187 (Resignation)

- (1) Section 187(1), ‘addressed to the Governor’—
omit.
- (2) Section 187(2)—
omit.
- (3) Section 187(3), ‘Governor accepts’—
omit, insert—
Minister receives
- (4) Section 187(3)—
renumber as section 187(2).

5 Amendment of s 202 (Resignation)

- (1) Section 202(1), ‘addressed to the Governor’—
omit.
- (2) Section 202(2)—
omit.
- (3) Section 202(3), ‘Governor accepts’—
omit, insert—
Minister receives
- (4) Section 202(3)—
renumber as section 202(2).

6 Insertion of new s 206AA

Chapter 4, part 4, after section 206—
insert—

[s 7]

206AA Application of ss 194A and 194B

Sections 194A and 194B apply in relation to an adjudicator and the hearing of a proceeding before an adjudicator as if a reference in the sections to a member included a reference to an adjudicator.

7 Insertion of new ch 4, pt 4B

Chapter 4—

insert—

Part 4B QCAT justices of the peace

Division 1 Preliminary

206B Purpose of pt 4B

The purpose of this part is to provide for matters about the hearing of particular minor civil disputes by justices of the peace.

206C Definitions for pt 4B

In this part—

excluded minor civil dispute means any of the following minor civil disputes—

- (a) a claim to recover a debt or liquidated demand of money, with or without interest, of more than \$5000;
- (b) a claim arising out of a contract between a consumer and trader, or a contract between 2 or more traders, that is—
 - (i) for payment of money of a value of more than \$5000; or

- (ii) for relief from payment of money of a value of more than \$5000; or
- (iii) for performance of work of a value of more than \$5000 to rectify a defect in goods supplied or services provided; or
- (iv) for return of goods of a value of more than \$5000; or
- (v) for a combination of any 2 or more claims mentioned in subparagraphs (i) to (iv) where the total value of the combined claim is more than \$5000;
- (c) a claim for an amount of more than \$5000 for damage to property caused by, or arising out of the use of, a vehicle;
- (d) a claim for repair of a defect in a motor vehicle under the *Property Agents and Motor Dealers Act 2000*, section 248 or 324, if the total value of the claim is more than \$5000;
- (e) a tenancy matter that is—
 - (i) an urgent application under the *Residential Tenancies and Rooming Accommodation Act 2008*, section 415; or
 - (ii) another application under the *Residential Tenancies and Rooming Accommodation Act 2008* for a claim for more than \$5000;
- (f) a claim that is the subject of a dispute under the *Neighbourhood Disputes Resolution Act 2011*, chapter 2 and is for an amount more than \$5000;
- (g) a matter in relation to which a person may, under the *Building Act 1975*, chapter 8, part

[s 7]

2A apply to the tribunal for an order requiring any of the following—

- (i) the performance of work of a value of more than \$5000;
- (ii) the payment of a contribution of an amount of more than \$5000 for fencing work;
- (iii) the payment of an amount of compensation of more than \$5000.

JPCD Act means the *Justices of the Peace and Commissioners for Declarations Act 1991*.

legally qualified QCAT justice of the peace means a QCAT justice of the peace who is an Australian lawyer.

presiding QCAT justice of the peace see section 206G.

QCAT justice of the peace means a person appointed under section 206O as a QCAT justice of the peace.

206D Relationship with other provisions of Act

For a matter for which the tribunal is constituted by 2 QCAT justices of the peace, if there is an inconsistency between a provision of this part and another provision of this Act, the provision of this part prevails to the extent of the inconsistency.

Division 2 Constitution of tribunal by QCAT justices of the peace

206E Tribunal may be constituted by QCAT justices of the peace

- (1) Despite section 165(1), the president may choose 2 QCAT justices of the peace, at least 1 of whom must be a legally qualified QCAT justice of the peace, to constitute the tribunal—
 - (a) for a matter the QCAT justices of the peace may hear and decide under section 206L; and
 - (b) at a location prescribed under a regulation.
- (2) The persons chosen by the president under subsection (1) constitute, and may exercise all the jurisdiction and powers of, the tribunal in relation to the matter.

206F Reconstitution

- (1) The president may change who is to constitute the tribunal for a matter 2 QCAT justices of the peace may hear and decide, including a change from—
 - (a) 1, 2 or 3 members to 2 QCAT justices of the peace; or
 - (b) 2 QCAT justices of the peace to 1, 2 or 3 members; or
 - (c) an adjudicator to 2 QCAT justices of the peace; or
 - (d) 2 QCAT justices of the peace to an adjudicator.

Examples of circumstances in which the president may change who is to constitute the tribunal—

[s 7]

- a QCAT justice of the peace constituting the tribunal becomes unavailable
 - a QCAT justice of the peace constituting the tribunal has or acquires an interest, financial or otherwise, that may conflict with the proper performance of his or her functions
 - one of the parties to the proceeding objects to a QCAT justice of the peace constituting the tribunal
 - the presiding QCAT justice of the peace refers a matter to the president under section 206N.
- (2) The tribunal as reconstituted must continue to hear the matter and decide it and, for that purpose, may have regard to the decisions and any record of proceedings of the tribunal as previously constituted, including any record of evidence.

206G Presiding QCAT justice of the peace

For a matter for which the tribunal is constituted by 2 QCAT justices of the peace, the presiding QCAT justice of the peace is—

- (a) if only 1 of the 2 QCAT justices of the peace is a legally qualified QCAT justice of the peace—the legally qualified QCAT justice of the peace; or
- (b) otherwise—the QCAT justice of the peace nominated by the president.

Division 3 Decisions of QCAT justices of the peace

206H Differing decisions of QCAT justices of the peace

If the tribunal for a particular matter is constituted by 2 QCAT justices of the peace and the decisions of the QCAT justices of the peace differ, the tribunal's decision is the decision of the presiding QCAT justice of the peace.

206I Deciding question of law

If a question of law arises in a proceeding for a matter for which the tribunal is constituted by 2 QCAT justices of the peace, the tribunal's decision on the question is the decision of the presiding QCAT justice of the peace.

206J Referring question of law to president

- (1) For a matter for which the tribunal is constituted by 2 QCAT justices of the peace, the presiding QCAT justice of the peace may refer a question of law before the tribunal to the president.
- (2) Subsection (1) applies whether or not the question has been decided by the tribunal under section 206I.
- (3) If the president decides a question of law referred to the president under subsection (1), the decision of the president is the tribunal's decision on the question.

[s 7]

206K Giving decision

A document setting out the decision in a proceeding of the tribunal constituted by 2 QCAT justices of the peace may be signed by—

- (a) if the rules provide for the document to be signed by the presiding member—the presiding QCAT justice of the peace; and
- (b) if the rules provide for the document to be signed by a member of the tribunal—a QCAT justice of peace constituting the tribunal.

Division 4 General matters about tribunal constituted by QCAT justices of the peace

206L Functions generally

- (1) Two QCAT justices of the peace may hear and decide a matter that is a minor civil dispute, other than an excluded minor civil dispute, if chosen by the president to constitute the tribunal for the matter.
- (2) If the tribunal is constituted for a matter by 2 QCAT justices of the peace, the tribunal can not make an order or decision under section 13(2) that—
 - (a) purports to require payment of an amount, performance of work or return of goods of a value of more than \$5000; or
 - (b) purports to grant relief of a value of more than \$5000 from the payment of an amount; or
 - (c) combines 2 or more orders mentioned in section 13(2)(a)(i) to (iv) and purports to

award or declare entitlements or benefits (or both) of a total value of more than \$5000.

- (3) This section has effect despite the JPCD Act, section 29(3) and (4).

206M Independence

- (1) In constituting the tribunal, QCAT justices of the peace are not subject to direction or control, other than as provided under this Act.
- (2) However, a QCAT justice of the peace must comply with the procedural directions given by the president.

Note—

Under section 206T a QCAT justice of the peace may be removed from office for contravening this subsection.

206N Referring matters to president

- (1) This section applies if—
- (a) a matter is before 2 QCAT justices of the peace constituting the tribunal; and
 - (b) the tribunal considers it would be more appropriate for the matter to be decided by the tribunal as constituted by—
 - (i) 1, 2 or 3 members; or
 - (ii) an adjudicator.
- (2) The presiding QCAT justice of the peace must refer the matter to the president.

206O Appointment

- (1) As many QCAT justices of the peace as are required for the proper functioning of the tribunal must be appointed.

[s 7]

- (2) A QCAT justice of the peace must be appointed by the Governor in Council on recommendation from the Minister after consultation with the president.
- (3) A QCAT justice of the peace is appointed under this Act and not under the *Public Service Act 2008*.
- (4) An appointment of a QCAT justice of the peace must be made in writing.
- (5) Subject to subsection (8), for selecting a person for recommendation for appointment under this section, the Minister must advertise for applications from appropriately qualified persons to be considered for selection.
- (6) A person is eligible for appointment as a QCAT justice of the peace if the person is—
 - (a) a justice of the peace (qualified); or
 - (b) a justice of the peace (magistrates court); or
 - (c) a justice of the peace under the JPCD Act, section 19(1A); or
 - (d) a lawyer who is a justice of the peace under the JPCD Act, section 41(a).
- (7) A person appointed as a QCAT justice of the peace holds office for the period, of at least 3 years but not more than 5 years, stated in the person's instrument of appointment.
- (8) A person appointed as a QCAT justice of the peace may be reappointed, whether or not the vacancy in the office of the QCAT justice of the peace has been advertised.
- (9) A QCAT justice of the peace may be appointed only on a sessional basis.
- (10) In this section—

justice of the peace (magistrates court) means a person appointed under the JPCD Act, section 15 to the category of justice of the peace (magistrates court).

justice of the peace (qualified) means a person appointed under the JPCD Act, section 15 to the category of justice of the peace (qualified).

206P Criminal history checks

- (1) This section applies in relation to the following persons—
 - (a) a QCAT justice of the peace;
 - (b) a person who is being considered for appointment as a QCAT justice of the peace (a *prospective QCAT justice of the peace*).
- (2) The Minister may ask the commissioner of the police service for—
 - (a) a written report about the person’s criminal history; and
 - (b) a brief description of the circumstances of a conviction or charge mentioned in the person’s criminal history.
- (3) However, if the request relates to a prospective QCAT justice of the peace, the Minister may make the request only if the person has given the Minister written consent for the request.
- (4) The commissioner of the police service must comply with the request.
- (5) However, subsection (4) applies only to information in the commissioner’s possession or to which the commissioner has access.
- (6) Before using information obtained under subsection (2) to decide whether a person should continue to be a QCAT justice of the peace, or be

[s 7]

nominated for appointment as a QCAT justice of the peace, the Minister must—

- (a) disclose the information to the person; and
 - (b) allow the person a reasonable opportunity to make representations to the Minister about the information.
- (7) The Minister must ensure a report given under this section is destroyed as soon as practicable after it is no longer needed for the purpose for which it was requested.

206Q Disclosure of changes in criminal history

- (1) If there is a change in the criminal history of a person who is a QCAT justice of the peace, the person must, unless the person has a reasonable excuse, immediately disclose the change to the Minister.

Maximum penalty—100 penalty units.

- (2) For a QCAT justice of the peace who does not have a criminal history, there is taken to be a change in the person's criminal history if the person acquires a criminal history.
- (3) To comply with subsection (1), the information disclosed by the person about a conviction for an offence in the person's criminal history must include the following—
- (a) the existence of the conviction;
 - (b) when the offence was committed;
 - (c) details adequate to identify the offence;
 - (d) whether or not a conviction was recorded;
 - (e) the sentence imposed on the person.

206R Conditions of appointment

- (1) A QCAT justice of the peace holds office on the following conditions—
 - (a) the conditions stated in this part;
 - (b) the conditions decided by the Governor in Council and stated in the instrument of appointment of the QCAT justice of the peace, to the extent the conditions are not inconsistent with this part.
- (2) A QCAT justice of the peace is entitled to be paid the daily sitting fee prescribed under a regulation.
- (3) Subsection (2) has effect despite the JPCD Act, section 35(1).

206S Resignation

- (1) A QCAT justice of the peace may resign from office by giving the Minister a signed letter of resignation.
- (2) The resignation takes effect when the Minister receives the resignation or, if a later day is stated in the letter of resignation, the later day stated in the letter.

206T Removal from office

- (1) The Governor in Council may, on the Minister's recommendation, remove a person who is a QCAT justice of the peace from office if—
 - (a) the person—
 - (i) is mentally or physically incapable of satisfactorily performing the person's functions; or
 - (ii) has performed the person's functions carelessly, incompetently or

[s 7]

- inefficiently, including by contravening a condition of the person's appointment, section 173(3) (as applied under section 206Z) or section 206M; or
- (iii) has engaged in conduct that would warrant dismissal from the public service if the person were a public service officer; or
 - (b) the person has been convicted of an indictable offence, whether dealt with on indictment or summarily; or
 - (c) the person becomes an insolvent under administration as defined under the Corporations Act; or
 - (d) the person ceases to be eligible for appointment as a QCAT justice of the peace.
- (2) If the person has been suspended under section 206U, the Minister may make a recommendation under subsection (1) only if the person has been given an opportunity to make oral and written submissions to—
- (a) the person conducting the investigation in relation to which the person has been suspended; and
 - (b) either the president or deputy president.
- (3) Also, the Minister must consult the president before making a recommendation under subsection (1).

206U Suspension

The president, with the Minister's approval, may suspend a QCAT justice of the peace from office if the president believes there may be grounds for the removal of the QCAT justice of the peace from office.

206V Investigation about suspension

- (1) As soon as practicable after suspending a QCAT justice of the peace under section 206U, the president must appoint a person (the *investigator*) to undertake an investigation into the conduct or circumstances that led to the suspension.
- (2) The investigator must—
 - (a) investigate the conduct or circumstances leading to the suspension; and
 - (b) report to the Minister on the investigation; and
 - (c) give a copy of the report to the QCAT justice of the peace and the president.
- (3) The investigator's report under subsection (2) may include a recommendation that the QCAT justice of the peace be removed from office on a ground mentioned in section 206T(1).
- (4) The Minister may use a report given to the Minister under subsection (2)(b) about a QCAT justice of the peace to decide whether or not to make a recommendation under section 206T(1) about the QCAT justice of the peace.
- (5) If the Minister decides not to make a recommendation under section 206T(1) about a QCAT justice of the peace, the Minister must notify the president and the QCAT justice of the peace of the decision as soon as practicable.
- (6) If the president is notified under subsection (5) that the Minister has decided not to make a recommendation under section 206T(1) about a QCAT justice of the peace, the president must immediately cancel the suspension of the QCAT justice of the peace.

[s 7]

206W Acting QCAT justices of the peace

- (1) If there is a vacancy in the office of a QCAT justice of the peace or the QCAT justice of the peace is absent or for any other reason is unable to perform the functions of the office, the Minister may appoint a person to act as the QCAT justice of the peace for a period of not more than 6 months.
- (2) The Minister may appoint only a person who is eligible to be appointed under section 206O.
- (3) The Minister may appoint a person to act as a QCAT justice of the peace only after consultation with the president.
- (4) A person appointed to act as a QCAT justice of the peace—
 - (a) has all the functions of the office to which the person is appointed; and
 - (b) is taken to be a QCAT justice of the peace for all purposes relating to this Act or an enabling Act.
- (5) Without limiting subsection (4), section 206S applies to a person acting as a QCAT justice of the peace as if the person were a QCAT justice of the peace.
- (6) A person appointed to act as a QCAT justice of the peace may be appointed by the Minister to act as a QCAT justice of the peace for a further period if—
 - (a) the term of the appointment does not immediately follow the person's previous appointment as acting QCAT justice of the peace; or
 - (b) the appointment is continuous on 1 or more of the person's previous appointments as acting QCAT justice of the peace and the

total period of the continuous appointments
is not more than 6 months.

- (7) The Minister may at any time cancel the appointment of a person to act as a QCAT justice of the peace.

Division 5 Application of particular provisions for pt 4B

206X Purpose of div 5

This division provides for how particular provisions of this Act apply—

- (a) in relation to the tribunal as constituted by 2 QCAT justices of the peace; and
- (b) to ensure the effective operation of this part.

206Y Application of chs 1 and 2 provisions

- (1) Section 4 applies as if a reference in section 4(f), (g) and (h) to adjudicators included a reference to QCAT justices of the peace.
- (2) Sections 61, 62, 63 and 86 apply as if a reference in sections 61(5)(b), 62(7)(b), 63(6)(b) and 86(4) to a legally qualified member included a reference to a legally qualified QCAT justice of the peace.
- (3) Section 95 applies as if the reference in section 95(5) to a member included a reference to a QCAT justice of the peace.
- (4) Section 96 applies as if—
 - (a) a reference in section 96(1) and (5) to an adjudicator included a reference to a QCAT justice of the peace; and

[s 7]

- (b) the reference in section 96(2) to a legally qualified member included a reference to a legally qualified QCAT justice of the peace.
- (5) Section 128 applies as if—
 - (a) the reference in section 128(2)(a) to the office of a member included a reference to the office of a QCAT justice of the peace; and
 - (b) section 128(2)(b) included a reference to a defect or irregularity in, or in connection with, the appointment of a QCAT justice of the peace or acting QCAT justice of the peace.

206Z Application of ch 4 provisions

- (1) Section 169 applies as if—
 - (a) a reference in section 169(1) and (2) to a member included a reference to a QCAT justice of the peace; and
 - (b) the definition *proceeding* in section 169(3) did not include a compulsory conference.
- (2) Sections 172, 173 and 174 apply as if the references in sections 172(2), 173(1) and 174(2)(b) to members included references to QCAT justices of the peace.
- (3) Sections 173, 182 and 194A apply as if the references in sections 173(1), 182(1) and (2) and 194A to a member included a reference to a QCAT justice of the peace.
- (4) Section 194B applies as if the reference in section 194B(1) to a member resigning under chapter 4, part 3 were a reference to a QCAT justice of the peace resigning under section 206S.

206BA Application of ch 5 provisions

- (1) Sections 216, 218, 235 and 236 apply as if a reference in the sections to an official included a reference to a QCAT justice of the peace.
- (2) Section 217 applies as if a reference in the section to a member included a reference to a QCAT justice of the peace.
- (3) Section 219 applies as if the reference in section 219(6) and (7) to the presiding member included a reference to the presiding QCAT justice of the peace.
- (4) Section 228 applies as if a reference in the section to an adjudicator included a reference to a QCAT justice of the peace.
- (5) Sections 233 and 234 apply as if the reference in the sections to a prescribed person included a reference to a QCAT justice of the peace.
- (6) Section 237 applies as if a reference in section 237(1) to a member included a reference to a QCAT justice of the peace.

Division 6 Expiry

206BB Expiry of pt 4B

- (1) This part expires 1 year after the day this section commences.
- (2) However, before the end of the period mentioned in subsection (1), a regulation may extend the period before expiry to not more than 3 years after the day this section commences.

8 Replacement of ch 10, hdg

Chapter 10, heading—

[s 9]

omit, insert—

Chapter 10 Other transitional provisions

Division 1 Transitional provision for Forensic Disability Act 2011

9 Replacement of ch 11, hdg

Chapter 11, heading—

omit, insert—

Division 2 Transitional provision for Civil Proceedings Act 2011

10 Insertion of new ch 10, div 3

After section 284—

insert—

Division 3 Transitional provisions for Queensland Civil and Administrative Tribunal (Justices of the Peace) Amendment Act 2013

285 First appointment of QCAT justices of the peace

- (1) This section applies to the first appointment of QCAT justices of the peace under section 206O made by the Governor in Council after this section commences.
- (2) Section 206O(5) does not apply in relation to the appointment.

286 Existing matters

- (1) This section applies if, immediately before the expiry of chapter 4, part 4B, the tribunal as constituted by 2 QCAT justices of the peace under that part has started to hear a matter but has not finally dealt with the matter.
- (2) The tribunal may continue to hear and decide the matter as if chapter 4, part 4B had not expired.

287 Amendment of Queensland Civil and Administrative Tribunal Regulation 2009

The amendment of the *Queensland Civil and Administrative Tribunal Regulation 2009* by the *Queensland Civil and Administrative Tribunal (Justices of the Peace) Amendment Act 2013* does not affect the power of the Governor in Council to further amend the regulation or to repeal it.

Part 3

Amendment of Queensland Civil and Administrative Tribunal Regulation 2009

11 Regulation amended

This part amends the *Queensland Civil and Administrative Tribunal Regulation 2009*.

12 Insertion of new pt 5

After section 16—

insert—

Part 5 QCAT justices of the peace

17 Prescribed location for tribunal constituted by QCAT justices of the peace—Act, s 206E

For section 206E of the Act, the following locations
are prescribed—

- (a) Brisbane;
- (b) Ipswich;
- (c) Maroochydore;
- (d) Southport;
- (e) Townsville.

18 Daily sitting fee payable to QCAT justices of the peace—Act, s 206R

For section 206R(2) of the Act, the prescribed daily
sitting fee is \$100.

19 Expiry of pt 5

This part expires on the day chapter 4, part 4B of the
Act expires.