

4 April 2013

Research Director
Legal Affairs and Community Safety Committee
Parliament House
George Street
Brisbane QLD 4000

By email and by post: lacsc@parliament.qld.gov.au

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

The Real Estate Institute of Queensland ("REIQ") appreciates the opportunity to provide its comments in relation to *Queensland Civil and Administrative Tribunal (Justices of the Peace) Amendment Bill 2013* ("Bill").

The Real Estate Institute of Queensland Limited – an introduction

The REIQ has been the peak professional association for the Queensland real estate sector for more than 90 years. Since its beginnings in 1918, the REIQ has grown to represent about 75% of Queensland's real estate professionals. Our membership comprises approximately 1,600 agency offices and an estimated 12,000 real estate practitioners across the State.

REIQ members specialise in all facets of real estate including, property management, residential sales, commercial and industrial sales, auctions, business broking and buyers agency work. Our members are spread across the state in city, rural and regional areas.

Today, the REIQ is recognised as the state's leading authority on real estate and property related issues. The REIQ also holds an excellent reputation as the provider of high quality accredited training courses and professional development training programs. Additionally, we are regarded as a reliable source of up to date market data and information and is the first point of contact for the public on all real estate related matters.

REIQ's response to the Bill

The REIQ strongly supports the objectives of the Bill 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;

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- recognise the substantial voluntary contribution of justices of the peace 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

In principle, the REIQ supports the proposed amendments to allow for justices of the peace ("JPs") to adjudicate certain minor civil disputes matters in the QCAT.

As a membership organisation representing real estate practitioners who practise in the area of property managers management, we are regularly informed of the lengthy time delays associated with tenancy related applications. Although time delays do vary across the State, we understand that in extreme cases, waiting periods of up to 6 weeks apply for urgent matters and up to 15 weeks for non-urgent matters. The consequence of these time delays can be financially distressing for landlord owners who are required to meet ongoing financial obligations while they are awaiting the resolution of a dispute. Similarly, these time delays can cause considerable stress for both parties to a dispute.

The objects of the *Queensland Civil and Administrative Tribunal Act 2009* ("QCAT Act") include the tribunal dealing with matters "in a way that is accessible, fair, just, economical, informal and quick" (s 3(b)).

Unfortunately, it appears that the tribunal is not, in some instances, dealing with matters in a "quick" manner as contemplated in the QCAT. Again, we acknowledge that time periods vary across the state.

We anticipate that the proposed amendments would considerably reduce these time delays provided that a sufficient number of JPs are appointed and jurisdictional limitations are reasonable, as discussed in detail below.

Our concerns

Although we support, in principle, the proposed amendments in the Bill, we do have some concerns regarding the proposed amendments.

Jurisdictional limitations

The proposed amendments limit the jurisdiction of JPs to:

- urgent applications made under the *Residential Tenancies and Rooming Accommodation Act 2008* ("RTRA"); and
- applications made under the RTRA for a claim for more than \$5,000.

Unfortunately, we have been unable to establish the number of non-urgent applications made under the RTRA that are for claims over the specified monetary threshold. We do know however that the majority of applications dealt with by QCAT are RTRA related applications. Based on anecdotal information, we strongly suspect the majority of these applications are non-urgent applications. We are therefore concerned that the monetary threshold requirement for non-urgent may limit the number of RTRA related applications JPs may hear.

Whilst we appreciate that there is likely to be some basis for the proposed jurisdictional limits, the purpose of the amendments may be undermined if these limitations result in JPs being unable to hear most residential tenancy applications.

We recommend that further analysis of the proposed jurisdictional limitations be undertaken to ensure these limitations do not exclude the very same applications that the Bill is purporting to positively impact on.

Daily sitting fees

The REIQ is concerned by the low daily sitting fees that are proposed.

Whilst we understand these fees are designed to reflect the voluntary nature of JPs' activities, we are concerned that the fees are too low and will not attract adequate numbers of JPs and/or the quality of candidate required for such an important role.

We strongly recommend that higher fees be considered at a level that is commensurate with the work being performed.

Adequate skill and knowledge

We are concerned that JPs may not have the necessary skills and knowledge required to adjudicate the matters they are entitled to hear and determine under the Bill.

The RTRA is a large and at times, complex piece of legislation. Additionally, tenancy disputes can be highly emotive due to their nature and parties can be difficult to deal with.

The REIQ believes all JPs should be required to undertake a minimum level of training to ensure they have certain skills and knowledge to deal with tenancy related applications.

We note that the proposed amendments to section 173 of the QCAT Act provide the president with extended powers to require JPS to undertake professional development training and continuing education and activities.

We recommend that as a minimum, all JPs be required to undertake training in relation to the RTRA as well as training related to dispute resolution and procedural fairness principles and processes.

Review and monitoring mechanisms

We note that a number of safeguard mechanisms already exist in the QCAT Act to protect against JPs hearing matters they are not adequately trained or suited to hear and/or dealing with questions and issues they are not properly able to deal with.

Most relevant is section 167 of the QCAT Act. This provision requires the president in choosing the persons who are to constitute the tribunal for a particular matter, or the number of persons who are to constitute the tribunal, to consider:

- the nature, importance and complexity of the matter;
- the need for the tribunal hearing the matter to have special knowledge, expertise or experience relating to the matter;
- any provision of the QCAT Act, an enabling Act or the rules that may be relevant;

- any other matter the president considers relevant.

Additionally, section 117 of the QCAT Act allows the presiding member to refer a question of law before the tribunal to the president. Meanwhile, pursuant to section 118, the president may refer a question of law in a proceeding before the tribunal to the Court of Appeal.

In addition to the above mechanisms, we recommend that JPs be required to observe a certain number of matters before they are entitled to adjudicate. Other safeguard mechanisms should also be considered if the use of JPs is extended beyond the trial period. Such measures may include, random audits and quality checks performed by experienced adjudicators and mandatory ongoing professional development training.

Conclusion

The ongoing efficiency and effectiveness of QCAT is critical to the Queensland community and to parties involved in tenancy and other minor civil disputes.

We wish to confirm that no aspect of this submission is confidential.

If you wish to discuss any aspect of this matter, please do not hesitate to contact Ms Antonia Mercorella, General Counsel on 3249 7325 or via email: gc@reiq.com.au .

Yours faithfully

A handwritten signature in black ink, appearing to be 'Peter Brown', with a long horizontal stroke extending to the right.

Peter Brown
Acting Chief Executive Officer