



Speech by

Hon. Cameron Dick

MEMBER FOR GREENSLOPES

Hansard Tuesday, 19 May 2009

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL BILL

Second Reading

Hon. CR DICK (Greenslopes—ALP) (Attorney-General and Minister for Industrial Relations) (8.04 pm): I move—

That the bill be now read a second time.

This bill establishes the Queensland Civil and Administrative Tribunal. It represents the most significant structural reform to Queensland's justice system since the re-establishment of the District Court in 1959. This bill is to be debated as a cognate bill with the Queensland Civil and Administrative Tribunal (Jurisdiction Provisions) Bill 2009. The jurisdiction provisions bill amends 216 pieces of legislation to give QCAT jurisdiction for a wide range of matters. Together, the bills amalgamate jurisdiction from 23 bodies, 18 of which will be abolished, to create a one-stop shop for the community to access justice services.

This Labor government, in its previous term, gave a commitment to establish a new modern, efficient and accessible system of civil and administrative justice for Queenslanders. Several reviews and reports over the years, including the Fitzgerald report, have recommended that Queensland's system for review of administrative decisions be reformed. Most recently, in March 2008 the Legal, Constitutional and Administrative Review Committee in its report titled *The accessibility of administrative justice* recommended the establishment of a general administrative tribunal to exercise original and review jurisdiction. In March 2008 the government appointed an independent expert panel to provide advice about implementing the new tribunal. The panel was chaired by former Court of Appeal Justice Glen Williams AO, QC and included Justice Applegarth SC, who resigned from the panel upon his appointment to the Supreme Court, and Julie-Anne Schafer, the Chairperson of the Commercial and Consumer Tribunal. These bills implement the panel's recommendations and have been the subject of much consultation to ensure the bills achieve their stated objectives. I will discuss consultation further in my speech introducing the jurisdiction provisions bill.

When QCAT commences on 1 December this year it will provide a streamlined framework for administrative and civil justice. It will be able to incorporate new and emerging jurisdictions in the future, avoiding the ad hoc proliferation of tribunals. By providing a single gateway, it will also prevent confusion among members of the public about where to go for help. QCAT will provide greater access and more flexible procedures than are used in the courts and will have a more inquisitorial approach compared with the traditional court based processes. Other features of QCAT represent additional benefits compared to existing single-issue tribunals. A larger, more flexible membership structure improves the quality and consistency in decision making while maintaining the use of specialist members when necessary.

The legislation now consistently applies the right to obtain reasons for decisions made by government agencies, enhancing public accountability of official decision making. QCAT will increase access to appeals and written reasons for decisions in jurisdictions such as small claims, minor debts and guardianship.

The QCAT Bill establishes the tribunal and generally sets out its jurisdiction, procedures and membership. The objective is to establish an independent tribunal which deals with matters in a way that is accessible, fair, just, economical, informal and quick. To achieve the objective, the bill requires QCAT to comply with the rules of natural justice and to conduct its proceedings in a manner that is responsive, informal, cost-effective to parties and as expeditious as is consistent with achieving justice and to act fairly and according to the substantial merits of the case.

QCAT will have three types of jurisdiction: original, review and appellate. In its original jurisdiction, QCAT will make decisions for the first time about matters including civil disputes between parties, guardianship and administration matters and disciplinary matters. In its review jurisdiction, QCAT will review a wide range of decisions of government agencies and statutory authorities. Matters in the review jurisdiction will generally be dealt with by way of a fresh hearing. This means the tribunal will not be confined to matters that were before the decision maker and may consider new material whether or not it existed at the time the original decision was made. This is the current approach taken in most existing tribunals and similar tribunals in other jurisdictions. QCAT will also have an internal appeal jurisdiction, enabling parties to appeal from an original decision of the tribunal to the appeal tribunal.

QCAT will be led by a president who is a Supreme Court judge and a deputy president who is a District Court judge. Supreme and District Court judges may also be appointed to sit as supplementary members on the tribunal. The presence of judicial members will enhance public confidence in the integrity of QCAT and ensure its independence and impartiality. It will also promote decision making of the highest quality.

Magistrates are also appointed as members of QCAT to hear minor civil disputes. This is the small claims and minor debt jurisdiction that magistrates currently hear. They may also be appointed as supplementary members for other types of matters. Magistrates will most likely be required to sit on QCAT matters in regional areas. QCAT will also have senior and ordinary members who will either be legally qualified or who will have particular expertise in areas within QCAT's jurisdiction.

Approximately 180 sessional members currently support the tribunals which will amalgamate into QCAT. The QCAT Bill will enable these members to be transitioned into QCAT for two years. It is anticipated that QCAT will have a pool of sessional members similar in size and skill set to the current sessional member arrangements. QCAT will also have legally qualified adjudicators, similar to judicial registrars in the Magistrates Court, to sit on less complex matters such as minor civil disputes and non-contentious matters.

Subject to specific qualification requirements in enabling acts, the president will decide which members and the number of members who will hear matters. For example, the Legal Profession Act 2007 will require QCAT, when hearing matters under that act, to be constituted by a judicial member who is a Supreme Court judge. In deciding who is to hear a matter the president must consider the nature, importance and complexity of the matter and the need for the tribunal to have special knowledge or expertise. No more than three members may hear a particular matter.

The QCAT Bill sets out the powers of QCAT and some of its procedures. Detailed procedures will be set out in the QCAT rules to provide flexibility for different types of proceedings. The rules of evidence do not apply. QCAT must, however, observe natural justice, act fairly, and in accordance with the substantial merits of the case. As part of its objective to deliver quick and effective justice, alternative dispute resolution will form part of the fabric of QCAT. Mediation and compulsory conferences may be held at any stage with the aim of settling the dispute.

To ensure QCAT remains as informal and as economical as possible, parties will generally represent themselves. However, if the interests of justice or the rules of natural justice require a party to be represented, QCAT will grant leave for the representation. To ensure QCAT is a low-cost jurisdiction, parties must generally bear their own costs unless the tribunal considers it is appropriate in the interests of justice to award costs.

One of the most significant reforms contained in this legislation is a requirement for QCAT to give reasons, orally or in writing, for its final decision. If the reasons are given orally, a party has 14 days to ask for written reasons which must then be provided within 45 days of the request. This is a new requirement for some amalgamating tribunals, for example the Small Claims Tribunal. Decisions of QCAT may be appealed to the appeal tribunal within QCAT. A party may then appeal a decision of the appeal tribunal to the Court of Appeal on a question of law with leave of the court. However, if a judicial member originally heard the matter, the appeal is to the Court of Appeal. Appeals from decisions of a judicial member are as of right on questions of law and with leave of the appeal tribunal or Court of Appeal on questions of fact or mixed questions of fact or law.

Different rules apply to minor civil disputes. Appeals can only be made with the leave of the appeal tribunal. This reflects the purpose of this jurisdiction, which is to quickly achieve finality in these disputes. However, this appeal right represents a significant enhancement of the current appeal rights for these

matters. Currently, judicial review is the only means of reviewing the original decision for small claims. There is currently no right of appeal from decisions of the Magistrates Court in minor debt claims. While the QCAT registry will be centrally located at 259 Queen Street, in Brisbane's CBD, the tribunal will service Queenslanders across the state.

A number of initiatives will be implemented independent to the legislation that will also ensure QCAT's effective operation, including a standardised case management system, the automation of many tribunal processes and a new user-friendly website to help users understand how to apply to QCAT.

The bills give effect to a major commitment of this government to provide users with a simple, quick and effective process for resolving disputes and reviewing administrative decisions. We are committed to providing a justice system that is fair and accessible and meets the needs of Queenslanders in the 21st century—and QCAT will help us to meet these objectives. On behalf of the state government and the people of Queensland, I commend the bill to the House.