



Speech By  
**Hon. Yvette D'Ath**


**MEMBER FOR REDCLIFFE**

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Record of Proceedings, 15 November 2018

**QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL AND OTHER  
LEGISLATION AMENDMENT BILL**

**Introduction**

 **Hon. YM D'ATH** (Redcliffe—ALP) (Attorney-General and Minister for Justice) (12.05 pm): I present a bill for an act to amend the Fair Trading Act 1989, the Motor Dealers and Chattel Auctioneers Act 2014, the Queensland Civil and Administrative Tribunal Act 2009 and the Residential Tenancies and Rooming Accommodation Act 2008 for particular purposes. I table the bill and explanatory notes. I nominate the Legal Affairs and Community Safety Committee to consider the bill.

*Tabled paper:* Queensland Civil and Administrative Tribunal and Other Legislation Amendment Bill 2018 [1913](#).

*Tabled paper:* Queensland Civil and Administrative Tribunal and Other Legislation Amendment Bill 2018, explanatory notes [1914](#).

I am pleased to introduce the Queensland Civil and Administrative Tribunal and Other Legislation Amendment Bill 2018, a bill for an act to amend the Fair Trading Act 1989, the Motor Dealers and Chattel Auctioneers Act 2014, the Queensland Civil and Administrative Tribunal Act 2009 and the Residential Tenancies and Rooming Accommodation Act 2008.

Before I go to the elements of this bill, I want to acknowledge in the gallery today Connie Cicchini and Stewart Lette, who have been strong advocates for the reforms that we are introducing today in relation to lemon laws. I thank them for their ongoing advocacy on this matter. I also want to acknowledge Ashton Wood for his efforts and ongoing campaigning to see protection and improvements on consumer rights around lemon vehicles.

The purpose of this bill is twofold. Firstly, it delivers on the implementation of recommendations from the review of the QCAT Act. Secondly, I am very pleased that, through this bill, we are delivering on the Palaszczuk government's promise to introduce laws to help purchasers of lemon motor vehicles.

In December 2009, the Queensland Civil and Administrative Tribunal commenced operation, undertaking the work of 18 tribunals with 23 jurisdictions, the minor debt claims jurisdiction of the Magistrates Court and almost all the administrative review jurisdiction of the courts. QCAT's legislative scheme comprises the Queensland Civil and Administrative Tribunal Act 2009, the Queensland Civil and Administrative Tribunal Regulation 2009 and the Queensland Civil and Administrative Tribunal Rules 2009. There are also over 160 acts and regulations, known as enabling acts, that confer original, review or appellate jurisdiction on QCAT and provide specific powers and procedures for certain matters.

The establishment of QCAT addressed longstanding concerns about the proliferation of tribunals in Queensland and the need for a single recognisable gateway to increase the community's access to justice and increase the efficiency and quality of decision-making. As such, the objectives of the QCAT Act include ensuring that QCAT deals with matters in a way that is accessible, fair, just, economical, informal and quick. This bill contributes to these objectives.

As required under section 240, the QCAT Act has been reviewed to determine whether its objects remain valid, whether the act is meeting its objects, whether the provisions of the act are appropriate to meet its objects and to investigate issues raised by me as Attorney-General or by QCAT's president. On 21 September 2018, I tabled the report, *Review of the Queensland Civil and Administrative Tribunal Act 2009*, in the Legislative Assembly. Overall, the QCAT Act report concludes that the QCAT Act is working well and that stakeholders support the act and its objects.

However, the QCAT Act report recommends a small number of legislative amendments to improve QCAT's operational efficiency to better achieve the objects of the QCAT Act. After almost 10 years, there is room for some minor updating. The bill will therefore implement a number of conclusions of the QCAT Act report.

The bill will make amendments to the QCAT Act to change the scope, timing and operation of stay orders, including allowing QCAT to stay the operation of part of a reviewable decision; allowing QCAT to impose conditions on a stay order; and broadening the circumstances in which QCAT can grant a stay to include cases where a person applies to reopen a proceeding; have a decision set aside and have a decision amended by default.

The bill will also amend the QCAT Act to allow the principal registrar to issue notices to a party to attend a hearing or proceeding or to require a person to produce a stated document or thing to QCAT; allow QCAT to remove a party to a proceeding if QCAT considers that the party's interests are not, or are no longer, affected by the proceeding, or the party is not a proper or necessary party to proceedings; permit QCAT, including the appeal tribunal, to reinstate proceedings dismissed in error; allow the Attorney-General to appoint members and others to a pool of persons who can act as senior members of QCAT from time to time; clarify that an adjudicator sitting alone can constitute QCAT; and provide the appeal tribunal with discretion to remit all matters, including where the appeal is on a question of fact or mixed law and fact, back to the tribunal.

The bill also introduces a legal framework for conciliation, giving QCAT another mechanism, alongside mediation and compulsory conferences, to add to QCAT's alternative dispute resolution processes. It will not be mandatory for QCAT to use conciliation for every matter, but having a legislative framework in the QCAT Act provides another option to assist QCAT to resolve disputes before a hearing.

The bill also clarifies that QCAT's tenancy jurisdiction is limited to claims for \$25,000. A perceived lack of clarity about the limit of QCAT's jurisdiction in these matters was raised during the review, and in the decision of *Avery v Pahwa* QCAT held that there was no restriction on QCAT's jurisdiction in relation to residential tenancy matters. The QCAT Act report concluded that the QCAT Act should be amended to provide that QCAT's jurisdiction for tenancy matters is limited to \$25,000, the prescribed amount for all minor civil disputes under that act. The bill also makes a consequential amendment to the Residential Tenancies and Rooming Accommodation Act 2008. These amendments reflect that the framework for minor civil disputes is generally not suitable for larger or more complex claims.

Perhaps some of the most significant amendments in the bill, however, are those relating to QCAT's expanded motor vehicle jurisdiction. We are delivering on our promise to Queenslanders to improve consumer rights when it comes to lemon vehicles in Queensland. These amendments are being made to implement elements of this government's 2017 commitment to improve fairness and provide greater rights for Queenslanders buying a vehicle. They will also address recommendation 7 of the 2015 report of the Legal Affairs and Community Safety Committee, *'Lemon' laws—inquiry into consumer protections and remedies for buyers of new motor vehicles*, which recommended a change to QCAT's current jurisdictional limit of \$25,000 for matters involving new motor vehicles with major defects.

During the previous parliament, I asked the Legal Affairs and Community Safety Committee to look at whether there is a need to improve the consumer protections and remedies for buyers of new motor vehicles with numerous defects that reoccur despite multiple repair attempts or where defects have caused a new motor vehicle to be out of service for a prolonged period of time. These vehicles are more colloquially known as lemons. We did this because the Palaszczuk government recognises that there are serious issues concerning lemon motor vehicles. I have had many conversations with people who have bought a lemon car or caravan—two of those people are sitting in the gallery today. I have heard far too many stories of people being pushed to the brink by manufacturers and dealers insisting on new cars being returned for repairs over and over again, if they offer a repair at all.

In its report, the parliamentary committee recognised the many stresses that owning a lemon vehicle may impose on an individual or a family. A car can be a significant expense, often purchased with finance. The purchase of a new car is usually the biggest purchase a person will make in their

lifetime other than their home. If the car has persistent and ongoing defects an owner can spend significant time requesting repairs, refunds or replacements, visiting or negotiating with the dealer and their vehicle servicing department, writing to the manufacturer and seeking reports from independent mechanics and specialists.

On a personal level, this can create health costs, emotional and financial stress and financial loss where a motor vehicle is ultimately traded in at below cost. Without the means to attend work, a person's ability to earn a livelihood and meet their family's needs may be compromised. I have also heard many stories of pensioners who have purchased a caravan to serve as their home but have found themselves bogged down in an endless cycle of repairs and litigation. Caravans are not inexpensive and many new caravans cost anything from \$40,000 up to, or even more than, \$100,000. For some purchasers it is a recreational vehicle for holidays, but for others it is actually their home. Queenslanders buying a caravan as an affordable home are the very people who may find commencing an action in the Magistrates Court to be cost prohibitive.

This is absolutely about providing access to justice, something that has been denied to purchasers of lemon vehicles for too long. Consumer guarantees contained in the Australian Consumer Law, the ACL, require suppliers and manufacturers to guarantee, among other things, that motor vehicles are of acceptable quality and fit for purpose. Generally speaking, the ACL consumer guarantees apply to goods and services across the marketplace, including new and used motor vehicles, motorhomes and caravans. The guarantees also set out what consumers have to do in order to obtain a refund, replacement or repair. In relation to the ACL consumer guarantees, as members of the House will recall, recommendation 4 of the Legal Affairs and Community Safety Committee's report on lemon laws recommended that our government pursue national action on lemon laws to ensure that there is a consistent national approach to this issue. In 2016, the Palaszczuk government was successful in getting the issue of lemon laws to form part of the recent review of Australia's consumer laws.

I recently attended a meeting of federal, state and territory consumer affairs ministers, the Consumer Affairs Forum, where ministers voted on a number of reforms that would have the effect of bringing in national lemon laws. While I am very pleased that, following the Palaszczuk government's push for national laws, the Australian Consumer Law will be amended to clarify that multiple non-major failures can amount to a major failure, I am disappointed that further necessary reforms were not endorsed at this meeting. However, I am pleased that Queensland was able to ensure that the issue will be considered at a future meeting although delaying important protections for consumers. I will continue, as will the Palaszczuk government as a whole, to push for further reforms, including the right to a refund if a motor vehicle becomes immobile or undriveable because of a fault within a short specified period of time, for example 60 days. If a consumer cannot obtain a suitable remedy in negotiation with the dealer or manufacturer, they have the option of seeking a remedy through QCAT or the courts.

QCAT also hears and decides disputes about repairs of defects under the Motor Dealers and Chattel Auctioneers Act 2014 statutory warranty framework, which applies to used motor vehicles sold by motor dealers and chattel auctioneers. The statutory warranty under the Motor Dealers and Chattel Auctioneers Act does not apply to certain types of vehicles, such as caravans. These motor vehicle proceedings are currently heard as minor civil disputes under the QCAT Act, which are limited to the prescribed amount of \$25,000. Beyond this limit, consumers need to initiate proceedings in the Magistrates Court or District Court, which have limits of \$150,000 or \$750,000 respectively. The bill will extend QCAT's jurisdiction for motor vehicle related claims under the Fair Trading Act and Motor Dealers and Chattel Auctioneers Act from \$25,000 to \$100,000. The new limit of \$100,000 will increase access to justice as consumers who have problems with vehicles of a higher value will be able to have their matter heard by QCAT.

This bill will also reinstate the statutory warranties that applied to older second-hand vehicles under the now repealed Property Agents and Motor Dealers Act 2000. This will mean there will be a statutory warranty for cars which are more than 10 years old or which have clocked up more than 160,000 kilometres. These matters will not form part of QCAT's minor civil disputes jurisdiction but QCAT's original jurisdiction—that is, part of the jurisdiction conferred on QCAT by various enabling acts.

To reduce costs to consumers and to QCAT and ensure accessibility, the bill will provide QCAT with flexibility in the way that these proceedings are heard. This will be achieved by enabling QCAT to conduct expedited hearings if the claim in the proceeding is not more than \$25,000 or if the president of QCAT considers it appropriate having regard to a number of factors, such as the nature and complexity of the proceeding. The bill will also enable an adjudicator to hear and decide such proceedings. It is important that consumers have certainty that costs will not be awarded against them

in this forum. To remove the possibility of costs being awarded against consumers, the bill will restrict costs orders for all motor vehicle proceedings to orders that a respondent pay the applicant an amount of any prescribed application fee.

In conclusion, this bill delivers on another Palaszczuk government commitment to improve consumer protections and remedies for buyers of motor vehicles in Queensland and create efficiencies and improvements to QCAT which supports better access to justice for Queenslanders. However, reform on lemon vehicles cannot stop here with this bill. That is why I intend to continue my fight at a national level for proper reform on the issue of consumer rights and defective motor vehicles. I commend the bill to the House.

### **First Reading**

**Hon. YM D'ATH** (Redcliffe—ALP) (Attorney-General and Minister for Justice) (12.19 pm): I move—

That the bill be now read a first time.

Question put—That the bill be now read a first time.

Motion agreed to.

Bill read a first time.

### **Referral to Legal Affairs and Community Safety Committee**

**Mr DEPUTY SPEAKER** (Mr Weir): Order! In accordance with standing order 131, the bill is now referred to the Legal Affairs and Community Safety Committee.