




Speech By
David Janetzki

MEMBER FOR TOOWOOMBA SOUTH

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QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL AND OTHER LEGISLATION AMENDMENT BILL

 **Mr JANETZKI** (Toowoomba South—LNP) (4.57 pm): I rise to speak to the Queensland Civil and Administrative Tribunal and Other Legislation Amendment Bill 2018. The opposition will not be opposing the bill. In July 2018 a statutory review of the Queensland Civil and Administrative Tribunal, QCAT, was revealed. The review outlined a number of issues with QCAT which formed the basis of many of the amendments present in this bill. The objectives of the bill are to amend the QCAT Act to improve the operational efficiency of QCAT to better achieve the objects of the QCAT Act and to implement the government's commitment to improve fairness and provide greater rights for Queenslanders buying a vehicle and address issues concerning lemon laws.

The bill seeks to enhance operational efficiency. It does so in a number of ways, but most significantly by clarifying that QCAT's tenancy jurisdiction is limited to claims of not more than \$25,000; changing the scope, timing and operation of stay orders; broadening the scope of the principal registrar so that it can now issue notices to parties or require a person to produce a document; broadening QCAT's powers to permit QCAT to reinstate proceedings dismissed in error; clarifying that an adjudicator sitting alone can constitute QCAT; and providing a legislative framework to enable QCAT to undertake conciliation, in addition to other alternative dispute resolution processes currently available.

The bill improves fairness and provides greater rights for Queenslanders buying a vehicle by increasing the jurisdictional limit from \$25,000 to \$100,000. In effect, this is an extension of QCAT's jurisdiction to hear motor vehicle disputes under the Fair Trading Act and the Motor Dealers and Chattel Auctioneers Act. This increased jurisdictional limit will apply to disputes about consumer guarantees under the Australian Consumer Law for the supply of goods or services where the action relates to a motor vehicle, including a caravan or a motorhome, as well as the Motor Dealers and Chattel Auctioneers Act 2014 in relation to statutory warranties for used motor vehicles, including motorhomes but not caravans. These amendments mean greater access to justice for consumers who have spent a considerable amount of money on purchasing a new car or caravan but which, unfortunately, have defects. The bill also reinstates limited statutory warranties applying to used vehicles that are older than 10 years and have travelled more than 160,000 kilometres, referred to as class B second-hand vehicles. These statutory warranties had existed in previous legislation.

I note that the proposed reforms do not amend any of the consumer guarantees under the Australian Consumer Law, which are already built into Queensland law. Accordingly, there appears to be no provision under the bill that would grant Queensland consumers any further warranty than that which consumers already benefit from in other Australian states. I also note that the government appears to be preparing to advocate for additional amendments to the Australian Consumer Law in relation to lemon laws, which the Attorney-General has confirmed.

To put these amendments into plain English, as we all know, cars are expensive and most likely will be the second most significant asset that Queenslanders will ever purchase apart from their family home. If a new vehicle breaks down, it can result in some despair, especially if it is accompanied by

associated job stress. Currently, Queensland consumers who have purchased a new car that has broken down can seek only \$25,000 in damages against the manufacturer at QCAT. It is no surprise that such an amount is generally well short of the cost to replace a faulty vehicle. This is not even counting for interest that may be paid on a loan and the potential of bearing significant car rental costs. Alternatively, and probably more appropriately, a consumer may sue the car dealer in the Magistrates Court under the Competition and Consumer Act 2010, where claims may be made of up to \$150,000.

By expanding QCAT's jurisdiction, that will allow consumers to apply through QCAT for an increased damages amount from \$25,000 to \$100,000, which will save motorists from attending court and the associated legal expenses. While it will save consumers and suppliers from having to spend time and money attempting to resolve any disputes through the courts, it will mean that QCAT can expect to receive a significant amount of work arising from this new jurisdictional limit and will only place more pressure on overworked staff. I will return to those concerns later.

The majority of the stakeholders who made submissions to the bill were welcoming of it. I note that the Queensland Law Society and Community Legal Centres were broadly supportive of the bill increasing access to justice, such as an increased engagement in alternative dispute resolution. The Queensland Law Society supported the proposed reforms to facilitate increased engagement in alternative dispute resolution where appropriate. However, it recommended that there needs to be more guidance about when a matter may or may not appropriately be referred for conciliation. The Queensland Law Society advised that this may include the consideration of matters where there is an obvious power imbalance between the parties. The Queensland Law Society also highlighted its concern about the inability of solicitors to appear at QCAT to assist consumers in presenting their case. The main reason for this was to assist in rectifying the power imbalance that consumers likely face when appearing before QCAT against dealers who are generally equipped with greater knowledge and legal resources.

Community Legal Centres Queensland recommended reversing the onus of proof, requiring a manufacturer to prove that the vehicle does not have the defect alleged by the consumer. It argued that this amendment would remove the need for consumers to obtain costly expert reports to substantiate their claims. The Motor Trades Association of Queensland, Lemon Laws 4 Aus, Lemon Caravans & RVs in Aus, and the Caravan Trade & Industries Association of Queensland were all supportive of the bill. They all supported increasing the amount that can be claimed through QCAT from \$25,000 to \$100,000 for disputes made under the Australian Consumer Law consumer guarantees for the supply of goods that are vehicles. Lemon Laws 4 Aus recommended that the bill should allow for inflation for future new vehicle purchases and to review the claim limit at intervals of three years so as to reflect the increasing costs of purchasing a new vehicle.

Lemon Laws 4 Aus stressed that the general culture within the new car retailing sector needs to significantly improve, indicating that the government should be proactive in ensuring that the motor vehicle industry upholds the highest standards. Recommendations were also made relating to further enforcement with possible criminal charges for misleading and deceptive conduct that may be necessary to improve industry practice.

I now turn to the question of QCAT resourcing. In December 2009, QCAT commenced operations to undertake 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. I acknowledge the impressive commitment that QCAT members and staff have for their cause in delivering access to justice, but there are no doubt concerns about QCAT's expanded jurisdiction and the associated additional costs that will be brought into being because of this expanded jurisdiction.

In this regard, I would like to refer to the comments made in the public hearing by Queensland Law Society President Bill Potts, who noted that QCAT was already 'in a very poor position financially' and that members and registry staff had been 'stretched beyond all reasonable and proper levels of tolerance'. It is worth reflecting on the path of QCAT from 2009 to today. In 2017-18, QCAT settled over 31,000 matters before it. Over the duration of its existence, we have seen QCAT get across-the-board a one per cent increase despite there being a 14 per cent increase in cases lodged. The appropriate resourcing of QCAT has long been an issue. I will return to the comments of the Queensland Law Society president, Bill Potts, in one of his contributions at the start of the year. He said that the government appeared to be deaf to the needs of the resourcing of QCAT.

I hear what the Attorney-General promised in that there would be a one-off allocation of \$500,000-odd to the operations of QCAT going forward. Now, all I hear is a one-off. It is obvious from the contribution of Mr Potts, the president of the Queensland Law Society—and I am yet to come to the comments of the president of QCAT, Justice Daubney, in relation to the resourcing of QCAT—that a one-off allocation of funding may address in the short term some backlog of matters but in no way will it ever address the longstanding, long-running trend towards additional jurisdictional expansion in QCAT

and the need to appropriately resource this growth. It must always be remembered that QCAT is on the front line, at the coalface of most Queenslanders' interaction with the law. It deals with a range of civil matters, whether that is chasing tenants for rent, or matters relating to people in particular professions, such as doctors or lawyers. QCAT offers an adjudication process through all of these professions and professional standards. QCAT deals with blue cards. It deals with dividing fences. Together with the Magistrates Court, QCAT is on the front line, at the coalface of the legal system in Queensland and, currently, it is under resourced.

I turn to comments of Mr Justice Daubney in his annual report for 2017-18. He made the comment—

It is not hyperbolic to say that many of these proceedings are literally life-changing.

These are the issues that I referred to in relation to that front line of Queenslanders' interaction with the judicial system.

Justice Daubney went on to say a number of other things that should be sounding alarm bells but, as Mr Potts has said, it appears the government is deaf to the alarm bells that are being sounded by Justice Daubney and Mr Potts. Justice Daubney in his message in the annual report commented that—

A lack of appreciation in some quarters of the true ambit of QCAT's diverse jurisdictions has led to an unfortunate underappreciation of the resources necessary to provide the broad and important range of justice services which fall under QCAT's remit.

That does not sound to me like Justice Daubney just wants a one-off allocation to deal with a short-term backlog; that to me sounds like a cry for help for additional resources for one of our most important jurisdictions in the Queensland legal system. Justice Daubney goes on to say—

I am hopeful that the Executive Government will recognize and urgently address these resourcing issues.

I do not hear anything from the Attorney-General here today that would convince me that the executive government has heard this cry for help from Justice Daubney. I have just heard about a one-off allocation and a fresh lick of paint on a building. That is not going to be sufficient to deal with the long-term trend towards the ever-expanding jurisdiction of QCAT. That will continue to be a major problem. In the words of Justice Daubney—

QCAT has grown and must continue to mature in order to meet the demands of its ever-increasing workloads and the legitimate expectations of access to civil justice by the citizens of Queensland's burgeoning population.

Those expectations are not met by underestimating the importance of the role played by QCAT in the civil justice system of our state. In a direct message to the Attorney-General and to the arm of executive government that, in the words of Bill Potts, are deaf to the demands and requirements of delivering justice in Queensland, the Attorney-General must fight harder for the resources that are necessary to support this jurisdiction. To finish with the words of Justice Daubney in relation to community expectations—

Nor can they be met unless and until QCAT's resourcing issues are adequately addressed.

The opposition is very happy to support the bill. These are necessary reforms to lemon laws and, indeed, to the operational efficiency of QCAT and the operation of the jurisdiction administratively throughout Queensland.

Mr Minnikin: Show us the money!

Mr JANETZKI: I will take the interjection from the member for Chatsworth, there is a need to show us the money because it is not good enough to expand ever more the jurisdiction of QCAT but to underresource it so grievously.