




Speech By
Hon. Yvette D'Ath

MEMBER FOR REDCLIFFE

Record of Proceedings, 2 April 2019

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

Second Reading

 **Hon. YM D'ATH** (Redcliffe—ALP) (Attorney-General and Minister for Justice) (4.41 pm): I move—
That the bill be now read a second time.

This bill is a significant step forward in protecting the rights of Queenslanders by improving fairness and providing greater rights for Queenslanders buying a vehicle. On 15 November 2018 I introduced the Queensland Civil and Administrative Tribunal and Other Legislation Amendment Bill into the parliament. The bill was initially referred to the Legal Affairs and Community Safety Committee; however, the Committee of the Legislative Assembly subsequently referred the bill to the Transport and Public Works Committee for detailed consideration. I would like to thank the Transport and Public Works Committee for its consideration of the bill. I note that the committee tabled its report on 14 February 2019 and made just one recommendation: that the bill be passed.

I would also like to thank all of the individuals and organisations who made submissions to the committee about the bill. Submissions were made by individuals and organisations with an interest in how the Queensland Civil and Administrative Tribunal, known as QCAT, operates. Submissions were also made by consumer advocates and community stakeholders who are truly passionate about justice for Queenslanders who have purchased lemon vehicles. I am pleased to see such strong community and parliamentary support for the bill. Being a responsive government is a priority for the Palaszczuk government, and this bill will enhance access to justice through QCAT for Queenslanders from all walks of life.

The bill makes a number of modest amendments to the Queensland Civil and Administrative Tribunal Act 2009 which were identified in a review of that act and will improve the operational efficiency of QCAT. Importantly, this bill also delivers on the Palaszczuk government's election commitment to improve fairness and provide greater rights for Queenslanders buying a vehicle. The purchase of a vehicle, after all, is usually the most significant investment a family or individual will make outside of buying a home.

In 2015 I asked the Legal Affairs and Community Safety Committee to hold a parliamentary inquiry into lemon laws, an inquiry into consumer protections and remedies for buyers of new motor vehicles. The committee heard many stories of the emotional toll and financial stress of dealing with having a lemon motor vehicle. A remedy is only as good as the ability to enforce it. That is the key principle of this bill. While I believe that further reforms need to be made to the Australian Consumer Law to provide for further consumer protections specifically for purchase of new motor vehicles—I will be continuing to push for these further reforms at the national level—there are a number of consumer guarantee provisions under the ACL that consumers can use right now, including guarantees that an item is fit for its purpose and that the item is of acceptable quality.

Unfortunately, what has become clear is that the process of enforcing these rights is difficult for consumers. As Caxton Legal Centre submitted to the 2015 inquiry, while there are remedies available under the ACL, in practice 'it is clear that purchasers often have difficulty enforcing their rights', 'especially when there is an argument about whether or not a defect is a major defect under the ACL'. As a result, consumers end up being stuck in a cycle of repairs, being without their car for weeks or even months on end. Consumers spend years of their life going back to dealers and manufacturers each time there is an issue. It is very stressful and takes a real toll on individuals. That is what we are aiming to fix here today.

The bill achieves the Palaszczuk government's commitment by lifting QCAT's jurisdictional limit on motor vehicle claims as defined in the bill from \$25,000 to \$100,000. This will mean that consumers who believe there has been a breach of their consumer guarantees under the Australian Consumer Law can have their matter heard by QCAT where the matter relates to new or used motor vehicles, motorhomes and caravans for claims up to \$100,000. The bill also reinstates the statutory warranty for class B older second-hand vehicles sold by motor dealers and chattel auctioneers through amendments to the Motor Dealers and Chattel Auctioneers Act 2014. Where there has been an alleged breach of a statutory warranty under the motor dealers act, affected consumers will be able to pursue a remedy through QCAT up to the value of \$100,000.

The Palaszczuk government is committed to improving access to justice for Queenslanders, and the bill absolutely delivers on this, giving consumers greater access to QCAT for most motor vehicle claims. QCAT provides an accessible and inexpensive alternative to court proceedings. QCAT aims to resolve disputes and make decisions in a way that is fair, just, accessible, quick and inexpensive. As QCAT is a tribunal, its proceedings are less formal than a court, but it still makes final decisions which can be enforced. Expanding QCAT's current jurisdiction to allow it to hear motor vehicle claims up to a value of \$100,000 will mean that consumers with claims over \$25,000, who would previously have needed to go to the Magistrates Court, will now have a simpler and cost-effective remedy available to them through the tribunal.

Given the increase in QCAT's jurisdictional limit, motor vehicle claims captured by the bill will no longer be heard in QCAT's minor civil dispute jurisdiction. However, to ensure QCAT continues to be able to deal with motor vehicle disputes in a way that is fair, just, accessible, quick and inexpensive, the bill provides QCAT with flexibility in the way that it hears and determines motor vehicle matters. First, QCAT will have express powers to conduct expedited hearings if the claim is not more than \$25,000 or if the president considers it appropriate having regard to a number of factors, such as the complexity of the proceeding. Second, and as I will discuss in more detail shortly, to remove the possibility of costs being awarded against consumers seeking a remedy in relation to a motor vehicle, the bill provides that the only costs order QCAT can make is to order a respondent to pay the applicant an amount of any prescribed application fee. Consumers will have the benefit of a sliding scale of fees, from \$26.35 to \$338.20. Third, the bill enables an adjudicator to hear and decide motor vehicle proceedings for claims of not more than \$25,000 or where the matter is conducted as an expedited hearing.

In relation to submissions made on the bill and evidence provided to the committee, I was pleased to see the overall support for the increase in QCAT's jurisdictional limit for motor vehicle claims up to a value of \$100,000. However, some submissions sought further legislative reforms. In particular, a number of submissions sought a further increase to the new \$100,000 limit for QCAT or even for no limit to apply. Overall, the government considers that the \$100,000 claim limit reflected in the bill is a reasonable and balanced approach. It means that QCAT can consider disputes about most vehicles typically used by families such as SUVs, sedans and most caravans and motorhomes. Any further increase in QCAT's jurisdictional limit for these matters could be at odds with the established jurisdictional limits in the courts. In this respect, I note that the Magistrates Court has a limit of claims up to \$150,000 and the District Court up to \$750,000. Many submissions on the bill also supported the proposed limit. The Caravan Trade & Industries Association noted that the new limit will save consumers and suppliers from having to spend precious time and money attempting to resolve any disputes through the courts and agreed that QCAT delivers fair and just outcomes for consumers and suppliers via an independent and objective process. This is not just fair and equitable for consumers; it will help industry, too.

While there were mixed views on the issue of legal representation in QCAT proceedings, the bill does not change the position that currently applies in relation to legal representation before QCAT more generally. Section 43 of the QCAT Act essentially provides that parties should represent themselves unless the interests of justice require otherwise. However, there are some exceptions and a party may be represented as of right either by a legal representative or someone else if they are a child or a person with impaired capacity, if the proceeding relates to disciplinary action, or if an enabling act provides that

the person may be represented. In addition, a party, including a party to a dispute about a motor vehicle, may be represented if the tribunal has given the party leave to be represented and the tribunal is satisfied that the interests of justice require it.

Section 43(3) provides a list of factors for QCAT to consider in deciding whether to give a party leave to be represented, including whether the proceeding is likely to involve complex questions of fact or law. This means the need for legal representation is considered in the individual circumstances but also in the context of the QCAT Act's objectives—that is, to carry out its functions in a way that is fair and just, economical, informal and quick. The Palaszczuk government is acutely aware that allowing legal representation as of right has the potential to significantly disadvantage consumers and would undermine the objective of this bill. The main objective of this bill is to reduce costs to consumers by providing a hearing that is fair, just, economical, informal and quick. If consumers were to be put into a position where they would need to obtain legal representation because the respondent, particularly manufacturers and large retailers, has retained legal representation, this would significantly detract from the objective of this bill. This government's position is not to commit to legal representation at QCAT as of right. QCAT was established as a low-cost jurisdiction to allow persons to resolve disputes in a timely and cost-effective manner. The existing provisions for legal representation in QCAT are adequate to allow legal representation in appropriate matters.

The possibility of having costs awarded against a consumer can act as a significant disincentive to making a claim. Accordingly, the position under the bill is that QCAT may make an order relating to costs only against a respondent only where there has been a final decision and only to order the party to pay the amount of any prescribed application fee. While a number of different views were expressed on this issue to the committee, the bill essentially extends the current cost order arrangements for consumers making claims in QCAT's minor civil dispute jurisdiction to motor vehicle claims captured by the bill. Consistent with existing cost order arrangements, consumers will only be able to claim the costs of their QCAT fee. It means that consumers can make their claims in the knowledge that costs cannot be awarded against them for respondents' legal fees or the costs of respondents' expert reports. This gives claimants certainty and consistency, something which is valued given the potential stress of legal proceedings. Many of QCAT's procedures and processes can be distinguished from those of the courts. It is QCAT's relative informality that will continue to make this jurisdiction an accessible one for consumers.

I note non-government members of the Transport and Public Works Committee expressed their support for the bill but made a statement of reservation regarding the demand pressures on QCAT with this expanded jurisdiction. In particular, I note the opposition members' statement that QCAT has an already overexpanded jurisdiction. My question—and what I look forward to hearing from the opposition members in their contributions to the debate on this bill—is what do the opposition members of the committee mean by this statement? What matters come before QCAT now that they believe should not anymore because the jurisdiction is, in the opposition's words, overexpanded? What areas of rights, including consumer rights, does the opposition propose people should not be able to enforce through QCAT? Does the opposition propose to remove jurisdiction to hear certain matters from QCAT and create new tribunals for those matters and at what cost, or is the opposition proposing that people will need to take these matters to a higher court?

QCAT covers an increasingly wide range of jurisdictions—from minor civil disputes through to complex guardianship decision-making. Each year around 60,000 Queenslanders access QCAT services. I am pleased to advise that this financial year the Department of Justice and Attorney-General has reallocated an additional \$530,000 to QCAT to assist in addressing workloads. The one-off allocation will provide additional funding for sessional members and support staff of the tribunal. QCAT will also benefit from in excess of \$2 million in capital funding for refurbishment work to its premises at 259 Queen Street. These works will deliver functional improvements to public facilities including hearing and mediation rooms and improve the general work environment for members and staff. Since the Palaszczuk government was elected in 2015, QCAT has received an increase in its operational budget of nearly \$3 million. This contrasts with QCAT's operational budget under the LNP which had remained stagnant and had actually received a cut in the financial year 2014-15.

Importantly, I want to note that amendments in this bill arising from the review of the Queensland Civil and Administrative Tribunal Act 2009 will contribute to improving the operational efficiency of QCAT. I want to thank the QCAT president, deputy president, members, adjudicators and registry staff for their hard work and dedication in continuing to deliver accessible civil justice, including our justices of the peace.

I also want to deal briefly with the committee's description of a small drafting point on page 38 of its report. As part of the reforms to increase QCAT's operational efficiency, the bill will add new subsection (3) to section 97 of the QCAT Act to allow QCAT's principal registrar, on the application of

a party, to give a notice requiring a witness to attend or produce a document or thing. At the moment only the tribunal may give a notice under section 97(1). Section 97(2) provides that in addition to being able to give the notice on the application of a party the tribunal may give the notice on its own initiative. The committee commented in its report—

... as the intention is that the registrar cannot give a notice on their own initiative, it might be preferable that this be put beyond any doubt, for example by adding the word 'only' in section 97(3), so it reads:

(3) The principal registrar may give a notice under subsection (1) only on the application of a party to a proceeding.

While careful consideration has been given to whether such an amendment should be made to section 97, I do not think such an amendment is necessary. The proposed power of the principal registrar to give a notice under section 97(1) is a discretionary power which is conferred in express terms and limited by the proposed new subsection (3) that provides this power may only be exercised on application of a party. I thank the committee for querying this issue but propose no amendment to section 97(3).

Finally, I foreshadow that I intend to move amendments to the Civil Proceedings Act 2011 and the Supreme Court of Queensland Act 1991 during consideration in detail to facilitate the increased use of referees in civil proceedings. The amendments, which will provide referees with the same immunity that is currently given to assessors and allow court rules to be made for the use of referees in court proceedings, are being progressed in response to a request received from the Chief Justice and the Supreme Court Rules Committee.

Again I want to thank the Transport and Public Works Committee for its consideration of the bill and acknowledge the valuable contribution of all stakeholders who made submissions and participated in the public hearings. I particularly want to thank those advocates who I know will be attending the gallery tomorrow and others who could not be here who have advocated for these important reforms for so long and I look forward to continuing to work with them in the next stage, being further reforms to our Australian consumer laws. I commend the bill to the House.