

30 January 2026

The Honourable David Thomas  
Reviewer

By email: [gcatactreview@justice.qld.gov.au](mailto:gcatactreview@justice.qld.gov.au)

Dear Mr Thomas,

**Queensland Civil and Administrative Tribunal Act Statutory Review 2025-26**

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The Office of the Information Commissioner (**OIC**) welcomes the opportunity to contribute to the Statutory Review of the *Queensland Civil and Administrative Tribunal Act 2009* (**QCAT Act**).

OIC notes the Statutory Review will consider the legislative framework that regulates the functions and operations of the Queensland Civil and Administrative Tribunal (**QCAT**) and identify ways to alleviate the significant pressures it is currently facing.

QCAT has jurisdiction to review certain decisions of the Information Commissioner, decide questions of law arising in external reviews, and hear and decide privacy complaints. In addition, the QCAT Appeal Tribunal has jurisdiction to hear appeals on questions of law of judicial function decisions as well as questions of law of decisions of the Information Commissioner on external reviews.

OIC's comments respond to the consultation questions in the Issues papers relating to QCAT's procedures, information in review proceedings, and judicial/senior leadership positions.

**About OIC**

OIC is an independent statutory body that reports to the Queensland Parliament. The Information Commissioner is an Officer of Parliament and is charged with functions under the *Right to Information Act 2009* (**RTI Act**) and the *Information Privacy Act 2009* (**IP Act**).

The RTI Act promotes openness, accountability and transparency by facilitating greater access to government-held information. It promotes the administrative release of government-held information as a matter of course, with formal access applications under the RTI Act being necessary only as a last resort.

The IP Act provides safeguards for the handling of personal information in the public sector environment. It sets out the Queensland Privacy Principles (**QPPs**) which govern the collection, management, use and disclosure of personal information by Queensland public sector agencies. An agency will not necessarily breach privacy principles relating to disclosure of personal information where disclosure is required or permitted under another Act.

## **QCAT's procedures**

### Registry powers

*Consultation question: Should the registrar's powers to reject or refuse applications, referrals and other documents be amended and, if so, how? ...<sup>1</sup>*

It is submitted that consideration be given to broadening the registrar's powers so that they are able to reject an application which lists the Information Commissioner or OIC as a party to the proceeding, where the proceeding is an appeal from a decision of the Information Commissioner under section 119 of the RTI Act.

The Information Commissioner's position is that they are not a proper party to an appeal from an external review decision made by the Information Commissioner.

QCAT has previously decided to remove the Information Commissioner as a respondent in the following appeal proceedings brought under section 132 of the IP Act: *Stiles v Information Commissioner* [2021] QCATA 152; *Underwood v Metro North Hospital and Health Service & Anor* [2022] QCACA 124; and *Stella v Information Commissioner & Anor* [2024] QCATA 24.

The recent amendment to section 119 of the RTI Act codifies the previous decisions of QCAT, by way of inclusion of new subsection (6) which provides: 'For an appeal against a decision of the information commissioner under subsection (1), the participants in the external review, other than the information commissioner, are parties to the appeal.'

Currently, where the Information Commissioner is listed as a party, OIC must appear before the Tribunal to request an order that the Information Commissioner be removed (which, as outlined in the case law referred to above, has historically been granted). This is a drain on the resources of OIC and QCAT.

### Vexatious litigants

*Consultation question: Should QCAT have the power to declare an individual to be a vexatious litigant in relation to QCAT proceedings? ...<sup>2</sup>*

The Information Commissioner has a power under section 114 of the RTI Act to declare an applicant vexatious. It is submitted that such a power should be available to QCAT.

There are situations in which an applicant applying for external review at OIC may not meet the threshold of being a vexatious applicant under the RTI Act, but their repeated efforts to seek to litigate matters may meet the threshold of a vexatious litigant. In such circumstances, QCAT may need the ability to declare the person a vexatious litigant and a power to do so would be appropriate.

### Legal representation

*Consultation question: Should the QCAT Act allow for 'as of right' legal representation, and, if so, when should it be allowed?<sup>3</sup>*

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<sup>1</sup> QCAT's objects and procedures: Issues paper 1 – Consultation question 3.

<sup>2</sup> As above - Consultation question 4.

<sup>3</sup> QCAT's objects and procedures: Issues paper 1 - Consultation question 15.

Appeals from a decision of the Information Commissioner under section 119 of the RTI Act are appeals on a question of law.<sup>4</sup> Accordingly, it is the Information Commissioner's view that legal representation should be allowed without parties to the appeal needing to apply. This would ensure that the QCAT member is effectively assisted in hearing and deciding the matter.

### Other issues

*Consultation question: Are there any other operational or procedural issues you would like to tell the Review about that impact on QCAT's ability to perform its statutory functions in an accessible, economical and timely manner?*<sup>5</sup>

QCAT has jurisdiction to hear and decide privacy complaints referred to it by the Information Commissioner.<sup>6</sup> OIC wishes to highlight that the recent introduction of the Mandatory Notification of Data Breach (**MNDB**) scheme<sup>7</sup> could result in an increase to QCAT's workload, particularly in the event of a large data breach whereby numerous affected individuals elect to have their privacy complaint referred to QCAT.

### **Information in review proceedings**

#### Non-party access of information

Members of the public may appeal a decision of the Information Commissioner to QCAT under section 119 of the RTI Act. As noted above, pursuant to section 119(6) of the RTI Act, the Information Commissioner is not a party to any appeal.

As a result, OIC is not always aware of when a decision of the Information Commissioner has been appealed. OIC relies on agencies to keep the Information Commissioner informed of whether the agency receives notice of an appeal, and of the outcome of that appeal. The number of appeals, and the outcome of appeals, is critical information to OIC, both in terms of OIC's reporting obligations, and of advising agencies and the community that a decision of the Information Commissioner is the subject of an appeal.

OIC contacted QCAT in 2025 to ask whether a practice, procedure or practice direction could be established by QCAT to enable the proactive provision of information to OIC concerning appeals to QCAT of a decision of the Information Commissioner on an external review.

The Principal Registrar considered this request, and advised that the ability for OIC, as a non-party to a proceeding, to access information held by QCAT for a proceeding is limited by the legislative framework for non-party access set out in sections 229 and 230 of the QCAT Act. A practice direction must not be inconsistent with the provisions of the QCAT Act, an enabling act or the rules. On the basis of the provisions in the QCAT Act, OIC was advised that QCAT was unable to implement a practice, procedure or practice direction to proactively notify OIC when an appeal is filed or the outcome of an appeal.

Amendment of the QCAT Act to allow for this type of information to be shared with OIC would be beneficial in ensuring OIC can properly comply with its reporting obligations, and ensure decision-making is consistent with QCAT jurisprudence.

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<sup>4</sup> Section 119(3) of RTI Act.

<sup>5</sup> *QCAT's objects and procedures: Issues paper 1* – Consultation question 25.

<sup>6</sup> Section 176 of IP Act.

<sup>7</sup> Chapter 3A of IP Act.

## Legal status of information provided to QCAT

*Consultation question: Should the legal status of information provided to QCAT by the agency under section 21 of the QCAT Act be clarified? If so, how?<sup>8</sup>*

The Information Commissioner's position is that the legal status of information provided to QCAT should be clarified, such that information is not on the public record and only available to the applicant upon request. The Information Commissioner has broad powers under the RTI Act<sup>9</sup> to access information as part of an external review, including documents protected by legal professional privilege. It is the view of the Information Commissioner that appropriate safeguards should be put in place by QCAT to ensure that the material is protected by its status once filed in the Tribunal.

## **Judicial and senior leadership positions**

### Judicial leadership positions

*Consultation question: Should the QCAT Act continue to require the QCAT President to be a judge of the Supreme Court?<sup>10</sup>*

It is submitted that the QCAT Act should continue to require the QCAT President to be a judge of the Supreme Court given their role in and responsibility for presiding over the Tribunal.

### Senior leadership positions

*Consultation question: Should QCAT's senior leadership be expanded? If so, how should this be achieved? ...<sup>11</sup>*

A requirement that a judicial member hear appeals brought under the RTI Act can mean that there is a delay on matters being heard. If QCAT's leadership were expanded to provide for additional Deputy Presidents (who are judicial members), and such members were tasked with hearing and determining appeals brought under the RTI Act, such a change could alleviate delays in the hearing and determination of matters.

Thank you for the opportunity to make a submission. We trust our comments will assist the Statutory Review. Should you require further information, please contact us at [policy@oic.qld.gov.au](mailto:policy@oic.qld.gov.au) or on 07 3234 7373.

Yours sincerely



Joanne Kummrow  
**Information Commissioner**

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<sup>8</sup> *Merits review: Issues paper 2* – Consultation question 25.

<sup>9</sup> See sections 100-103 of RTI Act.

<sup>10</sup> *Leadership, governance and appointments: Issues paper 7* – Consultation question 1.

<sup>11</sup> As above – Consultation question 8.