

# QCAT ACT Review – QMHOA Submission

## **Part A: CONSULTATION QUESTIONS (Issues Paper No 3)**

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### **(Part 2) Overarching issues for QCAT**

#### **Delay**

**Q 2.** What is *cause of delays* based on your experience?

Non-compliance with directions and/or timelines, ‘go slow’ actions by park owner or representative

Legal representation allowed for park owner too easily, leading to introduction of sometimes confusing, derailing and unnecessary complex matters and side issues, technicality;

Use of nominees who are not empowered to make decisions at certain alternative dispute resolution (ADR) steps (eg mediation and internal negotiation) by park owner;

Continual de-prioritising manufactured home park disputes (OCL matters);

Lack of fairness shown in allocating resources to this sector

Lack of transparency and accountability for long waiting periods and time delays for each step of the QCAT dispute resolution process, particularly for the final hearing

The need to engage in ADR steps of both mediation and compulsory conferencing when internal dispute negotiations have utterly failed and where there is only the remotest if any chance of resolution at the mediation stage.

Lack of transparency in the absence of published hearing lists for the MCD/OCL sector which comprises over 50% of all cases heard by QCAT.

#### **Alternative dispute resolution**

**Q 8.** Is alternative dispute resolution helpful in resolving minor civil disputes (MCD) (for particular types of MCDs)?

Not frequently in the residential parks sector although it is mandatory presently.

**Q 9.** If so, how should ADR be used in MCDs to best facilitate dispute resolution?

- (a) Which forms of ADR are the most helpful: mediation, conciliation or compulsory conferences?

Mediation is not helpful for residential park matters generally.

(d) Should ADR be offered free of charge?

ADR should be offered free of charge to make QCAT an economical means of accessing justice.

(e) Should ADR be a pre-requisite for all cases prior to hearing? If so, should this be the case for all types of minor civil disputes?

There is little point in proceeding to mediation when internal negotiation has failed between park owners or representatives and home owners. There is rare evidence of success. Also, due to the *power imbalance* evident in the residential park situation between home owners and park owners or their representatives, there is little desire on the part of park owners to negotiate or mediate. With long delays before the different ADR steps are scheduled for manufactured home park matters and a final hearing, there is little motivation for park owners to genuinely seek to resolve issues without a hearing. The park owner generally suffers no disadvantage during the long waiting period while the home owner must continue to pay an excessive site rent or charges, tolerate uncompleted facilities or repair of these to a useable or safe state, be denied the ability to assign to a person and lose a sale, put up with problems with flooding or sinking of the house on the site, and put up with interference with their reasonable peace or privacy, including some types of harassment in the park. Until the problem of long delays is addressed and improved substantially, there is little chance that ADR steps will be successful.

### **Case Management and triaging**

**Q 11.** Should MCD matters be case managed and triaged prior to hearing?

Except for truly urgent and more serious MCD cases, it is only fair that manufactured park home owner applicants should retain their position in the queue. With a wait of up to 3 years, it is obvious that there is continued shuffling back in the queue, due to a pre-conception that other matters are more important. There should be regular publication of hearing lists and for other ADR processes to allow appropriate transparency. Long delays in processing applications and achieving a hearing allow sores to fester and ongoing disruption to reasonable peace and quiet enjoyment in living in the residential park with no real prospect of a hearing in any timely way.

**Q 12.** If so, should this be undertaken by adjudicators or can this role be delegated to registry staff?

If triaging to take account of demonstrably urgent and serious matters occurs, then whoever is genuinely best informed and qualified to make appropriate and fair decisions about case management and triaging should undertake this role.

**(Part 3) Gaps, anomalies and limitations in the jurisdiction Issues with the definition of 'minor civil dispute'**

**Clarity about the overlap with other civil jurisdictions**

**Q 20.** How should the overlap between QCAT's MCD jurisdiction and its tother civil jurisdictions conferred by an enabling Act be resolved.

[159] '*Another option could be to clarify, in the QCAT Act, the circumstances in which these other civil disputes can be heard as a minor civil dispute*' (Issues paper No 3)

[160] '*If the procedural differences are removed for the different types of minor civil disputes and other civil disputes, so that all types of disputes are handled in the same way once they are lodged in QCAT, the overlap would become irrelevant. This is discussed further below*'. (Issues paper No 3)

**Clarity about the pre-claim requirements for dispute resolution**

**Q 21.** How should the pre-claim requirements for dispute resolution in the enabling Acts be clarified?

There are no pre-claim requirements other than those specified in the Manufactured Homes Act. Any prerequisites to an application for a QCAT hearing are found in the ADR process and eligibility to be an applicant sections of the Act.

**Damages in consumer claims**

**Q 28.** Should the consumer law limb of QCAT's MCD jurisdiction include claims for damages?

Yes. It should also be extended to other civil matters and this should be included in enabling Acts under orders the tribunal can make.

**Clarifying the definition of minor civil dispute**

**Q 30.** Should the definition of minor civil dispute be repealed and either:

(a) QCAT be granted jurisdiction over al civil disputes under \$25,000. If so, should this be subject to specific carve outs?

Yes, with specific carve outs of fair work and personal injury

(b) QCAT's consumer and trader jurisdiction be expanded to match that of the Magistrates Court?

Also a possible option as long as the amendments were able to increase efficiency and allow decision makers to concentrate on substantive matters and hopefully therefore offset the

problem of increased applications to be handled, exacerbating presents pressures causing long unacceptable delays for a hearing.

### **Procedural issues in civil disputes**

**Q 31.** Should the operation of the tribunal be changed so that the tribunal follows the same steps and processes and has the same powers no matter in which of the jurisdictions the claim is made?

Yes

**Q 32.** Should the QCAT adopt a simplified version of the UCPR such as the simplified procedures in Part 9 of the UCPR with provisions to ensure informality is maintained?

Yes. Retention of informality is important for manufactured park home owners who are often older persons and not infrequently in ill health.

#### *Simplifying and standardising procedures*

*[205] The different processes that apply to each type of minor civil dispute were inherited from the jurisdictions that existed before QCAT was established. After 16 years of operation, it is opportune to take a step back and question whether there is any ongoing need to maintain these differences. The inconsistent procedural differences are likely to lead to inefficiency causing delay and consequent strain on the tribunal and on QCAT users. (from Issues Paper No.3)*

*[206] The Magistrates Courts similarly hear a wide range of matters, but all matters are heard under a single set of uniform but flexible rules that avoids the issues that QCAT is experiencing (from Issues Paper No 3.)*

### **Issues with QCAT's powers for deciding MCD matters**

**Q 33.** Should QCAT have broader powers to make additional types of orders when dealing with MCD matters?

Yes, if jurisdiction isn't transferred to the Magistrates Court or a new tribunal established within the Magistrates Court. Preference is to transfer jurisdiction.

#### **(Part 4) Transfer of jurisdiction**

**Q38.** If no to Q37, (*Should QCAT retain jurisdiction for minor civil disputes, including each of the following broad areas -(a) minor debt disputes, etc?*) what forum should have jurisdiction to hear and decide each of those disputes? For example: (a) the *Magistrates Courts*, or (b) a *newly established tribunal* to hear these matters within the Magistrates Courts?

For residential park disputes, either option would be preferable to the current situation under QCAT. However, a newly established tribunal with less formality within the Magistrates Court would be better suited to the demographic of manufactured park home owners.

**Q39.** If disputes should be heard by another tribunal, should there be changes to the jurisdiction to address the jurisdictional problems identified in Part 3? For example, should a Small Claims Tribunal be able to hear claims for unliquidated demands, detinue or conversion?

Yes.

**Q40.** What decision makers should hear each of these matters? For example, should Magistrates hear these matters, or judicial registrars, or both?

Preferably Magistrates or some judicial person who is suitably familiar with manufactured home parks legislation.

#### **Part 5: Other issues**

##### **Monetary limit**

**Q41.** What should be the monetary limit for minor civil disputes, whether in QCAT or the Magistrates Courts?

Increasing the monetary limit will most likely increase the number of applications which is a problem if QCAT is already overburdened unless other procedural changes occur and inefficiencies are rectified. However, the \$25,000 limit, set in 2010, is a relatively small amount in today's terms and \$50,000 would be more useful and better reflect present inflation for some consumer claims or damages claims where, or if, allowed.

##### **Legal representation**

**Q44.** Should QCAT (or the Magistrates Courts or related tribunal) allow for 'as of right' legal representation in MCD matters?

No. Legal representation generally disadvantages manufactured park home owners due to their limited economic/financial resources and creates an unfair playing field. It also

encourages more formality and technicality which conflicts with the objective of QCAT and increased non-compliance or a more casual approach to directions and orders adds to requested extensions, adjournments and further delays which is unfair. Residential park dispute matters are not generally complex and should not attract or need legal representation. Most park owners or their non-legal representatives are sophisticated business persons with adequate capacity to present their own case and represent themselves .

**Q45.** Should appointed representatives have obligations to assist the tribunal to meet its objectives?

Yes. This includes compliance with directions and orders, and not applying for unnecessary extensions and adjournments to prepare lengthy submissions which may not infrequently be off-point and add complexity to the core issue(s) unreasonably.

## **PART B: SUBMISSIONS**

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### **INTRODUCTION**

The Queensland Manufactured Home Owners' Association (Inc) (QMHOA) is the lead not-for-profit organization which assists and informs manufactured home owners (MHOs) living in residential parks throughout Queensland about their rights and obligations under the *Manufactured Homes (Residential Parks) Act 2003* (MHA). The organization also acts as an advocate for improvements in legislation and regulation of the industry to protect the interests and lifestyle for all MHOs or prospective MHO by maintaining regular contact and interface with Government and other stakeholders.

The Manufactured Homes (Residential Parks) Act 2003 (Qld) is an enabling Act conferring jurisdictional authority on QCAT under its Minor Civil Dispute/OCL jurisdiction to hear residential park dispute matters.

QMHOA makes the following QCAT Act (the Act) review submissions according to the terms of reference published by the Justice Department, and with reference to the objects of the review in section 240 of the Act.

The questions explored are whether the objects of the QCAT Act remain relevant, whether the QCAT Act meets its objectives, whether the provisions of the Act are appropriate for meeting the objectives and whether the current legislation creates hurdles to procedural efficiency.

QMHOA has identified particular issues affecting disputes arising in the Manufactured Homes context that hinder QCAT's ability to meet its objectives efficiently and effectively. The issues relate to lack of fairness, informality and timeliness.

QMHOA also expresses its firm opposition to legal representation as-of-right being introduced in QCAT manufactured home park disputes.

## **FAIRNESS**

Fairness is inextricably linked to the objects of the QCAT Act" *to have the tribunal deal with matters in a way that is accessible, fair, just, economical, informal and quick*". An aspect of fairness relates to non-compliance with QCAT Orders.

Fairness is affected by non-compliance with QCAT processes or QCAT Orders. To remedy non-compliance of a QCAT Order, an application to the Magistrates Court must be made. This process adds another layer and another jurisdiction for a MHO to navigate and more time, expense and angst to reach a resolution. For the process to be fair, QCAT's needs the ability to apply meaningful sanctions where non-compliance with its processes and Orders occur.

### Examples on non-compliance

#### *1. George Reginald Coates v Hazelmere Village RLLC Pty Ltd (OCL046-23)*

The Park Owner introduced new claims/material on several occasions during the process, which extended the matter. e.g. during a compulsory conference, the Park Owner introduced a new, but false claim that there was a space on the homeowner's site large enough to store his caravan. The matter was delayed for many months to allow evidence to be filed but none was forthcoming. No meaningful sanctions were applied by the Tribunal. On another occasion material was submitted late by the Park Owner (PO) who, then, after the late filing, applied for, and was granted, leave for the delayed filing. No meaningful sanctions were applied by the Tribunal despite no substantive reason being supplied.

#### *2. W & T Enterprises (Qld) Pty Ltd v Copeland and Priestley (OCL004-24)*

At final hearing, the Applicant arrived but then absented herself from the waiting area. Calls and searches failed to locate her, causing the matter to be heard in her absence. She then later claimed to have been present but denied entry to court room. Tribunal allowed the case to be re-opened.

#### *3. Trevor Vandreike and ors v Serenitas Communities Holdings Pty Ltd ATF Serenitas Communities Trust and Serenitas Operations Pty Ltd (OCL015-23)*

The Park Owner employed a leading Australian law firm and engaged a Barrister as special Counsel, resulting in a significant increase in material submitted to the Tribunal. The delays this caused were exacerbated by repeated failure of the Park Owner to submit material by the due date. No meaningful sanctions were applied by the Tribunal.

## **INFORMALITY**

## Erosion of the informality principle

The relevant Objects of the Act at section 3(b) states that it aims '*to have the tribunal deal with matters in a way that is accessible, fair, just, economical, informal and quick; and ...'*

To achieve the objects of this Act, the tribunal must – section 4(c) *ensure 'proceedings are conducted in an informal way that minimises costs to parties, and is as quick as is consistent with achieving justice;'*...

Section 28(d) states that the Tribunal '*must act with as little formality and technicality and with as much speed as the requirements of this Act,...*'

An underlying principle of QCAT's functioning is minimisation of formality in its proceedings generally.

## **Factors/ aspects resulting in erosion of informality and technicality**

### Requirement for minimisation of formality and technicality

When a lawyer represents a Park Owner, the level of technicality and formality is likely to be escalated at directions hearings, and various stages prior to a final adjudication/decision because of their legal expertise/familiarity with a range of court procedures. Their very presence adds more people to the matter and potentially a further layer of communication where further technicality and complexity may be introduced. A significant number of MHO litigants are disadvantaged by increased formality and their lack of understanding of the formalities. The presence of opposing lawyers results in their need to seek their own legal representation, adding further formality. This process defeats the informality objects of the Act.

### Legal representation as-of-right

Legal representation as-of-right would increase the likelihood of requests for a face-to-face or remote (Zoom) hearing due to a perceived advantage in cross-examining witnesses. Legal representation as-of-right would result in the erosion of informality.

QCAT natural justice provisions can be argued to allow a request for a hearing to be granted, where reasonably, the matter is seemingly capable of being heard on the papers. This defeats informality objects of the Act.

In *Coates v Hazelmere 2023*, the Park Owner argued for, and was granted, a face-to-face hearing even though the matter was a simple interpretation of a site agreement term, with no witnesses and only 3 short statements of evidence filed.

### Face-to-face/remote hearings

Face-to face/remote hearings, where not strictly needed, cause delays in reaching a final decision. Factors involved are the availability of a QCAT Member, a physical space/room, ability of parties to travel to hearing venue, a lawyer's other court commitments.

## Hearing Plans/Hearing Books

Hearing Plans and Hearing Books have eroded informality. They may assist the Tribunal member, but they cause angst and disadvantage to the MHO. They should be required only in complex matters because their introduction defeats the informality principle.

## Lodgement Timelines

Strictly applied timelines can place an unfair strain on self-represented parties. For example, a decision handed down in early December incorporated a 28-day deadline for lodgement of an appeal. As QCAT closes for the holiday break, the 28 days becomes in effect 15 days to file before the 28-day deadline which would actually occur before QCAT resumes business. Lodgement timelines for applications should be automatically set on a reasonable basis given the time of year, allowing extra time corresponding with the holiday/closure time which has been lost. If considered necessary to provide fairness and certainty for the potential party or Appellant, such an additional provision could be specifically included under the discretionary provisions of section 61 of the QCAT Act and this automatic extension advised with any relevant deadline materials supplied eg Appeals information provided with an original decision.

## **TIMELINESS**

The QCAT Annual Report 23/24 reported that the wait times from lodgement to both hearing and mediation were over target timeframes, increasing significantly for some matters since 2022-2023. Over the reporting period in Southeast Qld., the average time from application to mediation were 29 weeks. **5 weeks is the target time. The delays are almost 6 times over the target times.** As of 25 September 2025, QCAT time frame for completion of matters relating to Community Living was 145 weeks or 2.78 years.

QCAT's Strategic Plan 2023-25 sets out QCAT's four key organisational values, namely being:

- accessible
- trustworthy
- timely
- inclusive.

[https://www.qcat.qld.gov.au/\\_\\_data/assets/pdf\\_file/0018/821322/qcat-annual-report-2023-24.pdf](https://www.qcat.qld.gov.au/__data/assets/pdf_file/0018/821322/qcat-annual-report-2023-24.pdf)

While various pressures on the QCAT's work have been identified, the growing backlog of cases resulting in hearing delays is at the heart of many of the problems.

The delays reported in the QCAT Annual Report 23/24 are a serious failure of QCAT to provide a quick and timely process. Delays in the process inevitably cause angst, frustration and loss of trust in QCAT to deliver on its aims. An analysis of trends to date indicates that in 2024-25, the increase in QCAT's workload will continue year-by-year. Refer to QCAT Annual Report 23/24 page 46.

For parties to MHA disputes, the wait time has continued to extend to unfair and extremely lengthy periods such as up to 3 years. The following QCAT applications evidence this point:

1. *W&T Enterprises(Qld ) Pty Ltd Copeland & Priestley* (commenced January 2024)
2. *Coates v Hazelmere Village RLLC Pty Ltd* (commenced April 2023)

3. *Vandreike & Ors v Serenitas Communities Pty Ltd* (commenced 2023).

Justice delayed is justice denied.

Section 28 (3) of the QCAT Act states that: *In conducting a proceeding, the tribunal—*

*(d) must act with as little formality and technicality and with as much speed as the requirements of this Act ...*

Given the lengthy delays experienced by applicant parties under the MHA, section 28 of the QCAT Act does not function as intended.

Erosion of quiet enjoyment and reasonable peace

Manufactured Home Owners (MHOs), though not a homogeneous group, consist of a significant number of persons who are aged, some suffering poor health who have less resources and are less sophisticated compared to Park Owners. Long delays in resolving disputes with Park Owners impact significantly on their quiet enjoyment and reasonable peace in living in the park and create a highly stressful environment.

Power imbalance

Long delays in resolving disputes tip the scales favour of the Park Owner. Where matters involve site rental disputes [the most common dispute area], the MHO must continue to pay an excessive site rent or charges, but in other matters must continue to tolerate uncompleted facilities or repair of these to a useable or safe state, be denied the ability to assign to a person and lose a sale, put up with problems with flooding or sinking of the house on the site, and put up with interference with their reasonable peace or privacy, including some types of harassment in the park. Park Owners have little motivation to act in the spirit of the QCAT Act to resolve disputed matters.

Park owner non-compliance

The following cases included with relevant detail in previous sections of this submission provide some examples of non-compliance by Park Owners, or “go-slow” actions which cause unnecessary delays to proceedings.

*George Reginald Coates v Hazelmere Village RLLC Pty Ltd* (OCL046-23)

*W & T Enterprises (Qld) Pty Ltd v Copeland and Priestley* (OCL004-24)

*Trevor Vandreike and ors v Serenitas Communities Holdings Pty Ltd ATF Serenitas Communities Trust and Serenitas Operations Pty Ltd* (OCL015-23)

Non-compliance has occurred where Park Owners have failed to forward copies of documents to the MHO. The Tribunal has accepted this without comment or sanctions.

Delays have been caused by some Park Owners who have appointed nominees for mediation sessions where the nominee is not empowered to make decisions on behalf of the Park Owner. The Tribunal has not commented on the abuse of the spirit of the QCAT Act.

#### Fostering alienation

Long periods of non-resolutions allow '*sores to fester*' within Parks and between MHOs and Park Owners/Managers.

#### No present accountability for long waiting periods and time delays for residential park dispute resolution -lack of transparency

Failure to make available hearing lists and lists regarding other aspects of QCAT processes e.g. Mediation, Compulsory Conferences, on a regular or time-to- time basis, does not facilitate the Object contained in section 3(e) '*to enhance the openness and accountability of public administration*'. This promotes mistrust and lack of confidence in the fairness of allocation of QCAT resources in the manufactured homes sector due to concern with unaccountable continued low prioritisation leading to lengthy waiting periods.

#### **LEGAL REPRESENTATION AS OF RIGHT**

The submission confirms QMHOA's support for the continued requirement for leave, granted infrequently, and only where the basis of complexity is truly and clearly made out. The submission emphasizes the negative impact of an automatic right to legal representation on the underlying principles of QCAT being an economical, informal and non-technical forum for timely access to justice.

Relevant Objects of the Act are Section 3(a) and (b), Section 4 (a), (b) and (c) which seeks to "*ensure proceedings are conducted in an informal way that minimises costs to parties, and is as quick as is consistent with achieving justice; and ...*"

Section 43 (1) establishes that "*The main purpose of this section is to have parties represent themselves unless the interests of justice require otherwise.*"

Section 43(2)(a) states that a party "may appear without representation; or (b) may be represented by someone else if—

- (i) the party is a child or a person with impaired capacity; or...
- (iv) the party has been given leave by the tribunal to be represented.

(3) In deciding whether to give a party leave to be represented in a proceeding, the tribunal may consider the following as circumstances supporting the giving of the leave—

- (b) the proceeding is likely to involve complex questions of fact or law.
- (c) another party to the proceeding is represented in the proceeding.

(d) all of the parties have agreed to the party being represented in the proceeding

QMHOA firmly holds that legal representation-as-of-right in a QCAT setting, would have a negative effect on MHOs.

Legal representation as-of right would impact on the Objects of the QCAT Act by impacting on the cost, fairness and justness to MHOs seeking to resolving a dispute.

There is a substantial core of MHOs who would be disadvantaged because of a lack of the ability to afford to employ legal representation, more so if the matter(s) proceeded to appeal. The uneven economic resources between an MHO and a Park Owner would mitigate against achievement of the Objects in section 3(b) '*to have the tribunal deal with matters in a way that is accessible, fair, just, economical, informal and quick genuine accessibility to its services*'. This remains true despite the existence of some free legal services such as LawRight who are limited by lack of resources to meet demand.

*'It is important that practitioners should not seek to confect complexity where none exists for the purposes of obtaining leave (to represent)'* as quoted by Glen Cranwell, Member QCAT. Once legal representation occurs, the situation often appears to be that, rather than assisting the Tribunal with complex legal matters, the level of complexity is increased.

The confecting of complexity occurred in *Trevor Vandreike and ors v Serenitas Communities Holdings Pty Ltd ATF Serenitas Communities Trust and Serenitas Operations Pty Ltd (OCL015-23)*. The case commenced as a straightforward interpretation of one clause in the legislation. After legal representation was granted, the QCAT Member found that he had to 7 different issues, as well as 15 pieces of legislation.

Legal representation as-of-right would impact negatively on MHOs in relation fairness, informality and timeliness.

## **CONCLUSION**

The questions explored with reference to section 240(2) of the QCAT Act (Objects of the Review) are whether:

- 1 the objects of the QCAT Act remain relevant
- 2 the QCAT Act meets its objectives
- 3 the provisions of the Act are appropriate for meeting the objectives
- 4 any provision of an enabling Act affects the effective operation of the tribunal and creates hurdles to procedural efficiency

QMHOA submits that the Objects of the QCAT Act remain valid, and that the Object in section 3(b) '*to have the tribunal deal with matters in a way that is accessible, fair, just, economical, informal and quick*' is highly relevant for manufactured park home owners. It further has submitted that the Object in section 3(e) '*to enhance the openness and*

*accountability of public administration*'. regarding accountability and transparency is closely tied to its function and facilitation.

### **Does the QCAT Act meet its objects?**

It is QMHOA's view that the present QCAT DR system fails conspicuously and convincingly to provide the necessary means of accessing justice for MHOs in a manner which in any clear way aligns with the Objects of the Act, notably section 3(b). Nor is any system of accountability available for this failure evident or a transparent means of identifying reasons for such problems as long delays.

It would seem that the overload of cases deriving from other enabling Acts, the present lack of available suitable members/adjudicators and the continued and inexplicable low priority given to applications brought under the MHA will serve to perpetuate the unfair lengthy wait periods for the progress of the QCAT dispute resolution process and especially to a final QCAT hearing.

There is a prevailing perception, it appears, that MHO disputes are less important than others under the MCD umbrella and more specifically, *Other Civil Disputes*, and this is seemingly borne out by the continually extended and long delays. This and the lack of transparency in, and accountability for, long and ever-increasing delays currently experienced by an MHO in following the process and arriving at a final hearing, has eroded confidence very considerably in an application to the present QCAT as a means of achieving justice in resolution of their relevant matters.

### **Appropriateness of provisions of Act for meeting its objects**

While acknowledging that generally the provisions of the Act are adequate, QMHOA believes systemic and operational shortcomings create an unfair situation which effectively fails to allow a realistic access to justice if there is no real prospect of a timely hearing due to continued shuffling backwards and de-prioritisation on the *Minor Civil Dispute* (MCD) List, and these deficiencies have generated a sense of abandonment by QCAT. More provision for accountability for such as the present unacceptable situation for residential park disputes within the Act and issue of specific practice directions by the President or his delegate to enable transparency with the system is required. The current legislation does not appear to adequately provide for procedures/practices related to the publication of hearing, mediation and compulsory conference lists.

The Act in section 43(1) requires self-representation as a general underlying principle of QCAT's operation which underpins the objects of fair, informal, economical and quick. QMHOA supports this concept. QMHOA believes that the overuse or abuse of section 43(3)(b) in applying for and obtaining leave for park owner representation under the guise of complex issues mitigates against achieving the Object in section 3(b). QMHOA contends that

the presence of lawyers detracts significantly from QCAT's ability to provide the obligatory, more appropriate level of informality and non-technicality. Not infrequently, this legal presence slows proceedings by introduced technicality and side issues and seeking extensions and adjournments, and most often requesting physical hearings, further exacerbating the major problem of extremely lengthy delays in working through the QCAT dispute resolution process.

When William E Gladstone, stated in 1868 'justice delayed is justice denied' he echoed numerous previous declarations including the Magna Carta of 1215 which said, 'To no one will we sell, to none will we deny or delay right or justice' This long-recognised need for timeliness is indeed extremely pertinent today and a critical factor for consideration in reviewing the functioning of QCAT, where for many manufactured home owners, it is incontrovertibly shown that justice is delayed, and denied, for increasingly unacceptable time periods.

### **Does the MHA (Enabling Act) create hurdles to procedural efficiency for QCAT?**

*Prolonged time frame when all mediation steps are required.*

Mediation has been shown to be mostly futile when internal negotiations and dispute resolution process (using MHA Form 11) fail and merely extends the time for dispute resolution. A new (originating) application and filing fee payment must then be made to the tribunal to commence proceedings for directions leading to a final hearing in QCAT (sections 107, 108, 115, 116). As a Compulsory Conference is set at this point, it would seem to be better suited to the circumstances of residential park disputes which have not been able to be resolved internally than mediation which only extends the time frame significantly to seek resolution in QCAT.

### *Orders*

The orders able to be made by the tribunal in section 117 are not sufficiently wide. While section 117(b) '*any other order the tribunal considers appropriate to resolve the dispute*' provides discretion to the adjudicator, some clarification/listing as to types of orders eg compensation and damages, would provide greater certainty and allow applicants to include the various orders in applications and submissions. This would allow greater clarity for both parties to the dispute.

*Limitation of joining parties to a residential park dispute*

There is no provision in the *Manufactured Homes (Residential Parks) Act (2003)* (MHA) for allowing home owners across a number of residential parks where the residential park dispute arises out of facts or circumstances that are the same as, or similar to, the facts or circumstances of the individual dispute or dispute of one park, to be joined. Due to ownership of multiple parks by the same park owner (usually a corporation), the same

problems can be experienced following the same conduct, practices, communications or policies of that common park owner. Section 141 of the MHA appears only to provide for joining of home owners within the one park to the dispute resolution process and subsequently, an application to the tribunal. While there is provision in the QCAT Act for joining parties to a proceeding, it is unclear whether 'a residential park dispute' under section 14A of the MHA could be interpreted as a dispute across parks owned by the same park owner. However, if this were possible, this would assist the problem of the present very unfair and long delays of years and lack of timeliness for QCAT proceedings, reduce some of the queued duplicated matters, and make more efficient and economical use of QCAT resources, including staff, members, and venues.

### **Summary of QMHOA recommendations**

#### **Recommendation - Fairness**

- That the basic principle of fairness be applied in practice in relation to section 61 of the Act.
- That it be required that the discretionary powers of the Tribunal to 'give relief from procedural requirements' to a party or potential party to a proceeding be exercised only after the opposing parties have been given a chance to challenge on the basis of prejudice or detriment which would or could result.
- That the exercise of section 61(2) be restricted by requiring 'exceptional circumstances' and that this qualification be added to this sub-section.
- That the powers of section 47(2) be utilised where section 47(1) is made out and meaningful sanctions such as costs orders, guillotine orders dismissing the matter or orders to progress the matter to final hearing be given. This is not known to have occurred in any MH Act disputes.
- That the discretionary powers of section 48(2) be applied more consistently and fairly where there is evidence of conduct such as in section 48(1)(a) non-compliance or other section 48(1) conduct.

#### **Recommendation – Informality**

*(see also Response to Consultation Questions 31-32)*

- That QCAT's principle of informality and minimal technicality be given greater importance.
- Self-representation or non-legal representation be required for the most part.
- That section 61(1) or (3) clarify and provide for an automatic extension period of time equivalent to any QCAT closures and holiday periods eg Christmas closure.
- That any submission deadline material or Appeals brochure/fact sheet be amended to include such automatic extension information.

## **Recommendation – Timeliness**

**(see also response to Consultation Questions 2, 11-12, 31-32)**

- QMHOA preference is for a transfer of jurisdiction to a new tribunal established within the Magistrates Court to address the problem of lengthy delays. This is explained at **Consultation Question 38** in Part A of this submission.
- That, if a transfer of jurisdiction is not accepted, that an arbitrator with suitable expertise and knowledge of the Manufactured Homes industry be made available as an alternative to proceeding to a QCAT hearing. That would provide a way by which lengthy delays could be minimized. The necessary consent of both parties could be a limiting factor.
- That increased transparency and accountability are required. In practice, there is no such specific requirements currently for the progressing/ordering/prioritising of applications.
- That, excepting for clearly urgent cases, applications brought under the MHA should retain their 'queued position' and be granted fair priority.
- That projected hearing lists should be published by Registry in consultation with relevant Senior Members (at the direction of the President) at regular intervals or from time to time, and that further delays and deviations should be genuinely on the basis of urgent hearings advancing in the queue. Relevantly the QCAT Rules would allow generally for list compilation. This would seem to require a Practice Directions from the President under the powers given in section 226(1). The President may also make a Practice Direction about operational and procedural matters relevant to these lists. **Refer to QCAT Rules 5 Divisions of tribunal etc. and 6 Operation of divisions of tribunal etc.**
- That QCAT standardise processes for different types of MCDs and adopt a simplified version of the UCPR such as in Part 9 with provisions to ensure informality is maintained. This should help to circumvent the inefficiency resulting from procedural differences required for different types of MCDs potentially causing delay and burden on the tribunal. **(see para 205 Issues Paper No 3)**

## **Recommendation – Legal Representation 'as of right'**

**(see also Response to Consultation Questions 44 -45)**

- That the status quo of self-representation, excepting for the provision of section 43 (1) '*interests of justice*', remain.
- That resorting to section 43(3)(b) to allow legal representation occur infrequently and only where there is clearly evidenced relevant complex issues and questions of fact and law and a demonstrably cogent need to assist the adjudicator.

