

Queensland Civil and Administrative Tribunal and Other Legislation Amendment Bill 2018

Explanatory Notes

Short title

The short title of the Bill is the Queensland Civil and Administrative Tribunal and Other Legislation Amendment Bill 2018.

Policy objectives and the reasons for them

The objectives of the Queensland Civil and Administrative Tribunal and Other Legislation Amendment Bill (Bill) are to:

- amend the *Queensland Civil and Administrative Tribunal Act 2009* (QCAT Act) to implement conclusions from the *Report on the Review of the Queensland Civil and Administrative Tribunal Act 2009* (QCAT Act report) aimed at improving the operational efficiency of the Queensland Civil and Administrative Tribunal (QCAT) to better achieve the objects of the QCAT Act; and
- amend the QCAT Act, *Fair Trading Act 1989* (FT Act) and *Motor Dealers and Chattel Auctioneers Act 2014* (MDCA Act) to implement the Government's commitment to improve fairness and provide greater rights for Queenslanders buying a vehicle and address recommendation 7 of the Report *Lemon Laws – An inquiry into consumer protections and remedies for buyers of new motor vehicles* (Lemon Laws Inquiry Report), prepared by the Legal Affairs and Community Safety Committee (Committee).

Queensland Civil and Administrative Tribunal

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. Its legislative scheme comprises the QCAT Act, *Queensland Civil and Administrative Tribunal Regulation 2009* (QCAT Regulation) and *Queensland Civil and Administrative Tribunal Rules 2009* (QCAT Rules).

There are three broad operational areas covered by QCAT's original jurisdiction: human rights (e.g. guardianship and anti-discrimination); civil disputes (e.g. consumer/trader disputes and disputes about retail shop leases); and disciplinary (e.g. decisions about registration to work as a health practitioner or decisions imposing conditions on an electrical contractor's licence).

QCAT's review jurisdiction is conferred by enabling Acts and provides for QCAT to review administrative decisions made by government agencies and disciplinary bodies under enabling Acts.

QCAT's appellate jurisdiction provides for QCAT, sitting as the appeal tribunal, to hear appeals against both its own decisions and decisions of other entities (e.g. the Information Commissioner) under enabling Acts.

There are over 160 Acts and regulations (enabling Acts) which, in addition to the QCAT Act, confer original, review or appellate jurisdiction on QCAT and provide specific powers and procedures for certain matters. A provision in an enabling Act which modifies QCAT's procedures prevails over the provisions of the QCAT Act.

Under the QCAT Act, the president and deputy president must be a Supreme Court judge and a District Court judge respectively. QCAT members include senior members, ordinary members (appointed on a full, part time or sessional basis) and judicial members. Adjudicators, justices of the peace and magistrates also hear matters as provided for in the QCAT Act.

Statutory review of the *Queensland Civil and Administrative Tribunal Act 2009*

Section 240 of the QCAT Act requires the Minister to review the QCAT Act. Under section 240 the objects of the review include deciding whether the objects of the QCAT Act remain valid; deciding whether the QCAT Act is meeting its objects; deciding whether the provisions of the QCAT Act are appropriate for meeting its objects; and investigating any specific issue recommended by the Minister or the president of QCAT, including, for example, whether any provision of an enabling Act affects the effective operation of the tribunal.

On 21 September 2018 the Attorney-General tabled the QCAT Act report in the Legislative Assembly.

The QCAT Act report concluded that generally the QCAT Act is working well and that overall stakeholders support the QCAT Act and its objects. The report recommended a small number of legislative amendments to improve the operational efficiency of QCAT to better achieve the objects of the QCAT Act.

Lack of clarity about QCAT's tenancy jurisdiction

Consultation during the review of the QCAT Act raised a need to clarify that QCAT's jurisdiction in tenancy matters is limited to \$25,000. The clarification was suggested due to what appeared to be an inconsistency between section 13(4) of the QCAT Act (providing that the restriction on QCAT making an order or decision requiring the payment of more than \$25,000 does not apply to tenancy matters) and the operation of section 516 of the *Residential Tenancies and Rooming and Accommodation Act 2008* which provides that an application for more than the prescribed amount (i.e. \$25,000) under the QCAT Act should be made to a court with jurisdiction for the application amount. However, in *Avery v Pahwa* [2018] QCAT 053 it was held that there was no restriction on QCAT's jurisdiction in relation to claims for tenancy matters. Nevertheless the review concluded that the QCAT Act should be amended to clarify that QCAT does not have jurisdiction for tenancy claims of greater than the prescribed amount. This is because minor civil disputes (MCDs) are generally not suited to larger and more complex claims. MCDs are designed to be quicker and less formal than matters heard in other areas of QCAT's jurisdiction.

QCAT and motor vehicle disputes

QCAT currently has jurisdiction, among other things, to hear and decide disputes about:

- consumer guarantees under the Australian Consumer Law (ACL) for goods and services, including new and used motor vehicles and caravans; and
- repairs of defects under the MDCA Act statutory warranty, for used motor vehicles sold by motor dealers or chattel auctioneers.

The ACL is a national application law scheme which commenced on 1 January 2011. The ACL is applied as a Commonwealth law through the *Competition and Consumer Act 2010* (Cwlth) and as a law of Queensland through part 3 of the FT Act.

The ACL includes statutory consumer guarantees for consumers purchasing goods and services. There are nine consumer guarantees that generally apply to the purchase of goods which require, among other things, that the goods are of acceptable quality, fit for any disclosed purpose and match any demonstration model, sample or description provided. The consumer guarantees apply to both new and used vehicles including motorhomes and caravans.

The MDCA Act provides a statutory warranty in relation to the sale of certain used motor vehicles by motor dealers or chattel auctioneers. The statutory warranty provisions of the MDCA Act do not apply to certain types of vehicles, such as caravans.

Under the QCAT Act, claims for disputes involving the ACL consumer guarantees, including new or used vehicles and caravans, and claims for repairs of defects for used motor vehicles under the MDCA Act statutory warranty provisions are currently treated as MCDs. Under the QCAT Act, MCDs are subject to the \$25,000 MCD claim limit. Disputes involving claims over \$25,000 are dealt with in the courts.

The repealed *Property Agents and Motor Dealers Act 2000* (PAMD Act) provided a statutory warranty for certain older used motor vehicles ('class B warranted vehicles') sold by motor dealers or auctioneers. 'Class B' warranty provisions were contained in the PAMD Act up until its repeal on 1 December 2014. The MDCA Act, which replaced the PAMD Act, continues to provide a statutory warranty for what were 'class A warranted vehicles' under the PAMD Act, however 'class B' warranty provisions were not included in the MDCA Act.

Under the MDCA Act a 'warranted vehicle' (previously called a 'class A warranted vehicle' under the PAMD Act) is defined as a vehicle that:

- at the day of its sale, had an odometer reading of less than 160,000km; and
- was manufactured less than 10 years before the day of sale.

Under the PAMD Act, a 'class B warranted vehicle' was defined as a warranted vehicle that—

- at the day of its sale, had an odometer reading of 160,000km or more; or
- was manufactured at least 10 years before the day of sale.

Lemon Laws Inquiry Report and the Government's commitment to improve fairness and provide greater rights for Queenslanders buying a vehicle

On 15 July 2015, the Legislative Assembly directed the Committee to inquire into and report on whether there is a need to improve the consumer protections and remedies for buyers of new motor vehicles with numerous, severe 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 ('lemons').

On 30 November 2015, the Committee tabled the Lemon Laws Inquiry Report. Recommendation 7 of the Lemon Laws Inquiry Report is:

The committee recommends the government change the Queensland Civil and Administrative Tribunal (QCAT) jurisdictional limit of \$25,000 for matters involving new motor vehicles with major defects. Government committee members recommend the limit be removed, so no cap applies. Non-government committee members recommend the limit be increased to \$40,000.

On 1 March 2016 the Queensland Government tabled its response to the Lemon Laws Inquiry Report. The Queensland Government's response to recommendation 7 is:

The Queensland Government supports recommendation 7 in principle and will work with QCAT to determine how this recommendation can be appropriately implemented, having regard to financial and resource implications and the differing views regarding the setting of a jurisdictional limit for matters involving new motor vehicles with major defects.

In 2017, the Government committed to *improving fairness and providing greater rights for Queenslanders buying a vehicle* by:

- lifting QCAT's jurisdictional limit on motor vehicles from \$25,000 to \$100,000;
- redefining the term 'vehicle' to include motorhomes and caravans;
- reinstating the statutory warranty for 'class B' older second-hand vehicles sold by motor dealers and chattel auctioneers; and
- continuing to advocate for national laws to specifically protect new car buyers, including purchases of 'lemon' vehicles.

Consistent with the commitment by the Government, the QCAT Act report:

- committed to giving QCAT the jurisdiction for claims of up to \$100,000 for disputes made under the ACL consumer guarantees for the supply of goods that are vehicles (including caravans and motorhomes), and the MDCA Act for claims relating to statutory warranties for used motor vehicles (including motorhomes but not caravans);
- noted that the ACL consumer guarantees cover the supply of 'goods' (including second-hand goods) to 'consumers'. New motor vehicles, used motor vehicles, motorhomes and caravans are considered goods and are ordinarily covered by the ACL consumer guarantees; and

- committed to amending the MDCA Act to implement the commitment to reinstate the statutory warranty for ‘class B’ older second-hand vehicles that operated under the PAMD Act. Consistent with definitions in the MDCA Act this will include used motor vehicles, including motorhomes, but not caravans.

The QCAT Act report also noted that Queensland continues to advocate for national laws to specifically protect new car buyers (including in relation to ‘lemon’ vehicles) through both Consumer Affairs Australia and New Zealand and the Legislative and Governance Forum on Consumer Affairs. In particular, Queensland has pursued this issue as part of the recent national review of the ACL.

Achievement of policy objectives

The Bill achieves its policy objectives in the following ways.

To improve the operational efficiency of QCAT to better achieve the objects of the QCAT Act, the Bill:

- provides that QCAT’s tenancy jurisdiction is limited to claims of not more than \$25,000;
- changes 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:
 - re-open a proceeding;
 - have a decision set aside; and
 - have a decision amended by default;
- allows 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;
- provides that QCAT may 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;
- permits QCAT (including the appeal tribunal) to reinstate proceedings dismissed in error;
- allows the Minister to appoint members and others to a pool of persons who can act as senior members of QCAT from time to time. The president will then be able to select from that pool a person to act as senior member to fill any temporary senior member vacancy as necessary;
- clarifies that an adjudicator sitting alone can constitute QCAT;
- provides 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; and
- provides a legislative framework to enable QCAT to undertake conciliation.

To implement elements of the **Government’s commitment to improve fairness and provide greater rights for Queenslanders buying a vehicle** and address recommendation 7 of the Lemon Laws Inquiry Report, the Bill:

- confers QCAT with jurisdiction for actions for an amount or value of other relief of not more than \$100,000 under the:

- FT Act in relation to the ACL consumer guarantees for the supply of goods or services, where the action relates to a motor vehicle (including a caravan or a motorhome); and
- MDCA Act in relation to statutory warranties for used motor vehicles (including motorhomes but not caravans);
- amends the FT Act to provide a definition for *motor vehicle*; and
- amends the MDCA Act to implement the commitment to reinstate the statutory warranty for ‘class B’ older second-hand vehicles that operated under the PAMD Act.

In keeping with the repealed PAMD Act statutory warranty provisions, the statutory warranty framework under the MDCA Act does not include caravans and certain other types of vehicles, such as unregistered written-off vehicles, vehicles sold on consignment, commercial vehicles or motorcycles.

Under the MDCA Act (as well as the now repealed PAMD Act), a number of defects are not covered by statutory warranties, including defects in fitted airbags, tyres, batteries and spark plugs. In addition, the statutory warranty for a ‘class B warranted vehicle’ under the PAMD Act did not cover the vehicle’s air-conditioning system.

The PAMD Act also enabled buyers to waive the ‘class B’ statutory warranty for a restorable vehicle when buying from a motor dealer, and in effect, required the ‘class B’ statutory warranty to be waived when buying a restorable vehicle by auction. The waiver provisions contained in the PAMD Act will also be reinstated through the Bill. As with the PAMD Act, a ‘restorable vehicle’ is a warranted vehicle that is more than 20 years old and is being offered for sale for restoration. The reinstatement includes provisions to ensure that when selling a restorable vehicle without a warranty, motor dealers and auctioneers will be subject to certain advertising, disclosure and other requirements before selling or auctioning the vehicle.

As with the ‘class A’ warranty provisions under the MDCA Act, the ‘class B’ statutory warranty provisions being reinstated under the MDCA Act provide protections that add to the existing protections under the consumer guarantees provided under the ACL.

To ensure that QCAT has sufficient flexibility to deal with motor vehicle proceedings in a timely way, which reduces costs to QCAT and consumers, and ensures accessibility, it is proposed:

- that these proceedings will not form part of QCAT’s MCD jurisdiction, but will be heard as part of QCAT’s original ‘other civil disputes’ jurisdiction regardless of the amount of the claim or value of relief (i.e. not more than \$100,000); and
- to provide QCAT with flexibility in the way the tribunal hears motor vehicle disputes (e.g. having regard to the complexity of the proceeding and the amount of the claim).

The Bill will amend the FT Act and the MDCA Act to provide QCAT with express powers to conduct **expedited hearings** for motor vehicle proceedings if the amount or value of other relief sought is not more than \$25,000; or the president considers it appropriate, having regard to a number of factors including the complexity of the issues relating to the proceeding. **Adjudicators** will also be able to hear and decide matters if the amount or other relief sought is not more than \$25,000 or if the matter is conducted as an expedited hearing. Finally the only **costs** order QCAT can make for motor vehicle proceedings is to order a party who is a

respondent to pay to the applicant an amount of the prescribed application fee paid by the applicant.

Alternative ways of achieving policy objectives

There are no alternative ways of achieving the policy objectives underlying the specific reforms under the Bill.

Estimated cost for government implementation

QCAT's costs for implementing the expanded motor vehicle jurisdiction will be addressed through normal budget processes. Any costs to departments or agencies arising from the implementation of the legislative amendments will be met from existing resources.

Consistency with fundamental legislative principles

Legislation should have sufficient regard to the rights and liberties of individuals - *Legislative Standards Act 1992, section 4(2)(a)*

The Bill is generally consistent with fundamental legislative principles. However clause 43 (the transitional provisions) provides for certain existing rights of action in relation to motor vehicle proceedings to be treated in different ways. The effect of clause 43 is that:

- if a matter has commenced (but not been finalised) in QCAT before the new provisions commence, the matter will be dealt with under the provisions which existed before the Bill commenced; and
- if a matter arises before the new provisions commence, but proceedings have not commenced, the matter will be dealt with under the new provisions.

The difference in how these matters are treated (with persons whose matters relating to motor vehicles have not yet commenced in QCAT receiving the benefits of the new jurisdiction) is considered justified in order to provide administrative certainty and clarity for QCAT and parties. Alternatively a distinction could have been made in relation to when the cause of action arose (i.e. before or after the commencement), however there are potentially many difficulties in ascertaining when a cause of action arose, and such an approach would not provide certainty and clarity.

Clause 43 also provides for a *relevant tenancy matter* to be transferred to a court of competent jurisdiction if on commencement it is the subject of a proceeding before the tribunal exercising its original jurisdiction and the tribunal has not made a final decision in the proceeding.

This is a transitional provision as a result of the Bill providing that QCAT's tenancy jurisdiction is limited to claims up to the prescribed amount for MCDs (i.e. \$25,000). The impact on a person's rights as a result of the automatic transfer of relevant tenancy matters (that is tenancy matters for an amount or other relief of a value greater than \$25,000) is considered justified because it is consistent with the intention that tenancy matters are confined to the prescribed amount for MCDs. It will also provide administrative certainty and clarity for QCAT and parties in dealing with relevant tenancy matters that may be on foot at the time of commencement.

Consultation

Review of the QCAT Act

In December 2012 the Department of Justice and Attorney-General (DJAG) published a Consultation Paper asking questions related to the review's terms of reference. DJAG received 97 submissions in response to the Consultation Paper.

In early 2015 the Attorney-General wrote to key stakeholders seeking further submissions, given the Government's commitment to consultation and the time that had passed since the submissions were provided in 2013. The views expressed in the further 14 submissions in 2015 were, on the whole, consistent with those expressed previously.

Key issues most commonly addressed in submissions included: whether there should be a 'hierarchy' in the objects of the QCAT Act if there is a conflict between objects; whether costs and fees affect QCAT's accessibility; QCAT's regional service; legal representation; QCAT's jurisdictional limits for certain types of matters; QCAT's constitution, including the impact of specific provisions conferring jurisdiction; QCAT's independence; and QCAT's appellate jurisdiction.

Most stakeholders were supportive of QCAT and the QCAT Act. In particular, stakeholders commented that QCAT has continued to deliver fair and just outcomes and provides a less formal, cheaper and more accessible option for resolving disputes than the courts. An overwhelming number of stakeholders also supported maintaining the judicial status of QCAT's president and deputy president, commenting that the actual and perceived independence of the tribunal is of fundamental importance.

Consultation on the Bill

Government commitment relating to the purchase of 'lemon' cars and other motor vehicles

The following stakeholders were consulted on the proposal to reinstate the 'class B' statutory warranty: Motor Trades Association of Queensland; Royal Automobile Club of Queensland; Caxton Legal Centre; Queensland Law Society (QLS); Queensland Consumers Association; Legal Aid Queensland.

Consultation did not highlight any significant stakeholder concerns with the proposal to reinstate the 'class B' statutory warranty.

Other consultation

The President of QCAT was consulted. A consultation Bill was provided to QCAT, the QLS and the Bar Association of Queensland.

Consistency with legislation of other jurisdictions

The Bill is specific to the State of Queensland, and is not uniform with or complementary to legislation of the Commonwealth or another State.

While the Bill is not intended to achieve uniformity with tribunal legislation in other jurisdictions, the QCAT Act report considered tribunal legislation operating in other jurisdictions.

Notes on provisions

Part 1 Preliminary

Clause 1 states that when enacted, the Bill may be cited as the *Queensland Civil and Administrative Tribunal and Other Legislation Amendment Act 2018*.

Clause 2 provides for commencement of the Bill on a date to be fixed by proclamation.

Part 2 Amendment of Fair Trading Act 1989

Clause 3 states that this part amends the *Fair Trading Act 1989*.

Clause 4 amends section 50 (Proceedings referred to court of competent jurisdiction). This section allows QCAT (referred to as the tribunal in the FT Act) and a court (subject to the jurisdictional limit) to hear and decide matters under the Australian Consumer Law as a law of Queensland (ACL Queensland).

The amendment reflects the expanded QCAT jurisdiction for motor vehicle matters in new section 50A.

Clause 5 inserts new sections 50A (Tribunal's jurisdiction for particular matters relating to motor vehicles); 50B (Expedited hearing); 50C (Costs); and 50D (Constitution of tribunal).

New section 50A (Tribunal's jurisdiction for particular matters relating to motor vehicles) provides that a person may apply for an order mentioned in subsection (2) for an action that is: under a provision of the ACL Queensland listed in the table to this section; relates to a motor vehicle; and seeks an amount or value of other relief of not more than \$100,000.

While QCAT can already hear proceedings for the ACL Queensland, including proceedings about motor vehicles, this is restricted (under section 50 of the FT Act) to matters that would be a minor civil dispute within the meaning of the QCAT Act. That is, it is restricted to matters where the claim is limited to the prescribed amount (i.e. \$25,000).

Subsection (2) provides that in a proceeding under subsection (1), the tribunal may only make the following orders: to require a party to a proceeding to pay a stated amount to a stated person; that a stated amount is not due or owing by the applicant to a stated person, or by any party to the proceeding to the applicant; to require a party to the proceeding, other than the applicant, to perform work to rectify a defect in goods or services to which the claim relates; to require a party to the proceeding to return goods that relate to the claim and are in the party's possession or control to a stated person; a combination of 2 or more of these orders.

Subsection (3) provides that the tribunal cannot make an order under subsection (2) that: purports to require payment of an amount, performance of work or return of goods of a value of more than \$100,000; or purports to grant relief of a value of more than \$100,000 from the payment of an amount; or combines 2 or more orders and purports to award or declare entitlements or benefits (or both) of a total value of more than \$100,000.

Subsection (4) provides a definition of *motor vehicle*, which refers to the definition under the *Motor Dealers and Chattel Auctioneers Act 2014*, section 12.

New section 50B (Expedited hearing) provides for certain proceedings about motor vehicles under section 50A to be conducted as an expedited hearing under the QCAT Act, section 94 if: the amount or value of other relief sought in the proceeding is not more than \$25,000; or the president of the tribunal considers it appropriate having regard to the factors listed in paragraph (b).

New section 50C (Costs) provides for costs orders that the tribunal may make under section 102(1) of the QCAT Act against a party to a proceeding under new section 50A. The only costs order the tribunal can make is to order a party who is a respondent to pay to the applicant the amount of any prescribed application fee paid by the applicant.

New section 50D (Constitution of tribunal) provides that for section 195(b) of the QCAT Act, an adjudicator may hear and decide a proceeding under new section 50A if the amount or value of other relief sought in the proceeding is not more than \$25,000, an expedited hearing is to be conducted for the proceeding or if both of the above apply.

Part 3 Amendment of Motor Dealers and Chattel Auctioneers Act 2014

Clause 6 states that this part amends the *Motor Dealers and Chattel Auctioneers Act 2014*.

Clause 7 omits the words ‘oral or written’ from section 69 (Licensees to notify chief executive of changes in circumstances) which gives the chief executive flexibility to determine the way that licensees must report changes in their prescribed circumstances, such as name, business name, postal address and telephone number, to the chief executive. The amendment is intended to reduce red tape on licensees.

Clause 8 inserts a new paragraph (d) into section 100(2) (Application of div 6) to clarify that motor dealers licensed under the MDCA Act are not required to provide a cooling-off period following the sale of a used vehicle to a person holding a licence under a corresponding law that is similar to a motor dealer licence. Under the MDCA Act a ‘corresponding law’ means a law of another state or New Zealand that provides for the same matter as this Act or a provision of this Act.

Clause 9 amends section 116 (Unwarranted vehicles to be identified when offered for sale) to reinstate the relevant subsection of section 316 (Unwarranted vehicles to be identified when offered for sale) of the now repealed PAMD Act, to require motor dealers to advertise or display for sale a restorable vehicle in the way prescribed by regulation. A maximum penalty of 100 penalty units applies to a failure to comply with a prescribed requirement.

Clause 10 inserts a new section 116A (Waiver of statutory warranty for restorable vehicles) which reinstates section 316A (Waiver of statutory warranty for restorable vehicles) of the now repealed PAMD Act, to require motor dealers to provide a written notice to a proposed buyer to allow the buyer to waive the ‘class B’ statutory warranty when purchasing a restorable vehicle on the signing of the notice.

Clause 11 amends section 146 (Unwarranted vehicles to be identified when offered for sale) which reinstates the title and relevant subsections of section 238 (Unwarranted and restorable vehicles to be identified when offered for sale) of the now repealed PAMD Act, to require a

chattel auctioneer to advertise or display for sale a restorable vehicle in the way prescribed by regulation. A maximum penalty of 100 penalty units applies to a failure to comply with a prescribed requirement.

Clause 12 inserts a new section 146A (Bidders to register for auction of restorable vehicles) which reinstates section 238A (Bidders to register for auction of restorable vehicle) of the now repealed PAMD Act, to require that before a restorable vehicle is offered for sale, chattel auctioneers must invite persons intending to bid for the vehicle to register as a bidder for the sale. They must also inform registered bidders that the person agrees to purchase the restorable vehicle on the condition that the person is taken to waive the 'class B' statutory warranty when the contract for the purchase of the restorable vehicle is entered into.

Clause 13 amends section 147 (Announcements before auction) which reinstates the relevant subsection of section 239 (Announcements before auction) of the now repealed PAMD Act, to require a chattel auctioneer, to announce immediately before the auction of a restorable vehicle that the vehicle is a restorable vehicle and it is a condition of the sale that the registered bidder to whom the vehicle is sold is taken to waive the statutory warranty when the contract for purchase of the restorable vehicle is entered into. The chattel auctioneer must also announce that they will not accept bids from a person who is not a registered bidder.

Clause 14 inserts a new section 147A (Effect of sale of restorable vehicle to registered bidder) which reinstates section 239A (Effect of sale of restorable vehicle to registered bidder) of the now repealed PAMD Act, to provide that the statutory warranty for a restorable vehicle sold at auction stops having effect when the contract for the purchase of the vehicle is entered into.

Clause 15 omits the words 'oral or written' from section 188(1) (Motor salespersons to notify chief executive of changes in circumstances) which gives the chief executive flexibility to determine the way that motor salespersons must report changes in their prescribed circumstances, such as name, postal address and telephone number, to the chief executive. The amendment is intended to reduce red tape on motor salespersons.

Clause 16 amends schedule 1, section 1 (Definitions for sch 1) to insert references to the definitions for *built date*, *class A warranted vehicle* and *class B warranted vehicle*. These definitions relate to the statutory warranty provisions under the MDCA Act.

Clause 17 replaces schedule 1, section 3 (Meaning of *warranted vehicle*) to reinstate the definitions for *warranted vehicle*, *class A warranted vehicle* and *class B warranted vehicle* under new sections 3, 3A and 3B, respectively, which were previously contained in schedule 2 of the now repealed PAMD Act. The clause also inserts a new section 3C that retains the definition of 'built date' currently in the MDCA Act.

Clause 18 inserts into schedule 1, section 4 (Meaning of *warranty period*) the warranty period for a *class B warranted vehicle* sold by a chattel auctioneer or a motor dealer, which reinstates the warranty period contained in section 236 (Meaning of *warranty period*), for an auctioneer, and section 314 (Meaning of *warranty period*), for a motor dealer, of the now repealed PAMD Act.

Clause 19 amends schedule 1, section 5 (Application of sch 1) to clarify that licensees under the MDCA Act, are not required to provide a statutory warranty on selling a used motor vehicle to another licensee under the MDCA Act or to a person holding a license, under a corresponding law that is similar to a licence under the MDCA Act. Under the MDCA Act a ‘corresponding law’ means a law of another state or New Zealand that provides for the same matter as this Act or a provision of this Act.

Clause 20 inserts new heading for schedule 1, part 2, division 1 (General).

Clause 21 replaces schedule 1, sections 13 and 14 with new division 2 (Warrantor’s failure to repair).

New section 13 (Application of division) provides that new division 2 applies if the warrantor has by warranty advice or otherwise refused to accept that a defect is covered by the statutory warranty or accepted that the defect is covered by the statutory warranty but: failed to repair the defect within the repair period; or failed to repair the defect so that the defective part can be reasonably relied on to perform its intended function.

New section 14 (Jurisdiction of QCAT) enables the buyer to apply, as provided under the QCAT Act, to QCAT for an order under new section 15 if the amount or value of other relief sought is no more than \$100,000.

New section 15 (Orders QCAT may make) lists the orders that QCAT may make in a proceeding under new section 14. These amendments are necessary as warranty claims under the MDCA Act will no longer be heard under QCAT’s MCD jurisdiction, to which section 13 of the QCAT Act relates.

Subsection (1) provides that in a proceeding under section 14, QCAT may only make the following orders: that a defect is or is not a defect covered by the statutory warranty; to extend the warranty period for the warranted vehicle to a specified date; to declare the warranted vehicle is covered by the statutory warranty until a specified date; to require a party to the proceeding to pay a stated amount to a stated person; that a stated amount is not due or owing by the applicant to a stated person, or by any party to the proceeding to the applicant; to require a party to the proceeding, other than the applicant, to perform work to rectify a defect in the warranted vehicle; to require a party to the proceeding to return the warranted vehicle if it is in the party’s possession or control to a stated person; a combination or 2 or more of these orders.

Subsection (2) provides that without limiting subsection (1)(d), QCAT may make an order that the warrantor pay to the buyer a stated amount QCAT decides is the reasonable cost of having a defect repaired if: the warrantor has, by warranty advice or otherwise, refused to accept that the defect is covered by the statutory warranty; and the buyer has had the defect repaired by another person; and QCAT decides that the defect was one to which the statutory warranty applied.

Subsection (3) provides that QCAT can not make an order under subsection (1) that: purports to require payment of an amount, performance of work or return of the warranted vehicle of a value of more than \$100,000; or purports to grant relief of a value of more than \$100,000 from the payment of an amount; or combines 2 or more orders mentioned in subsection (1) and purports to award or declare entitlements or benefits (or both) of a total value of more than \$100,000.

Subsection (4) provides that QCAT may also make an order under subsection (1)(b) or (c) only if it is satisfied: the vehicle was not able to be used by the buyer for a period during the warranty period; and the period from which the order is to be effective to the date the warranty period is to end, and the period during which the vehicle was able to be used by the buyer, taken together, are not more than 3 months.

New section 16 (Contravention of QCAT order) provides that if QCAT makes an order under new section 15 in the buyer's favour and the warrantor contravenes the order, the contravention is a ground for starting disciplinary proceedings under section 194. Subsection (2) provides that subsection (1) does not limit any right the buyer may have to enforce the order.

New section 17 (Expedited hearing) provides for certain proceedings about warranted vehicles under new section 14 to be conducted as an expedited hearing under the QCAT Act, section 94, if: the amount or value of other relief sought in the proceeding is not more than \$25,000; or the president of QCAT considers it appropriate having regard to the factors listed in paragraph (b).

New section 18 (Costs) provides for costs orders that QCAT may make under section 102(1) of the QCAT against a party to a proceeding under new section 14. The only costs order QCAT may make is to order a party who is a respondent to pay to the applicant the amount of any prescribed application fee paid by the applicant.

New section 19 (Constitution of QCAT) provides that for section 195(b) of the QCAT Act, an adjudicator may hear and decide a proceeding under new section 14 if the amount or value of other relief sought in the proceeding is not more than \$25,000, an expedited hearing is to be conducted for the proceeding or if both of the above apply.

New section 20 (Applications for more than QCAT's jurisdictional limit) applies if: a provision of this division provides that an application may be made to QCAT about a matter; and a person seeks the payment of an amount or other relief of a value greater than \$100,000 in relation to the matter.

Subsection (2) provides that a provision of this division about the matter applies: as if a reference to QCAT were a reference to the court having jurisdiction for the recovery of a debt equal to the amount or value of relief sought; and with all other necessary changes to give effect to paragraph (a).

Clause 22 amends schedule 3 (Dictionary) to insert references to definitions for *built date*, *class A warranted vehicle*, *class B warranted vehicle* and *registered bidder*. A definition for *restorable vehicle* is also provided.

Part 4 Amendment of Queensland Civil and Administrative Tribunal Act 2009

Clause 23 states that this part amends the *Queensland Civil and Administrative Tribunal Act 2009*.

Clause 24 amends section 12 (When jurisdiction for minor civil dispute exercised) as a consequence of amendments to the definition of *minor civil dispute* under clause 44. Subclause (1) omits 'to (g)' from the definition of *relevant person*, paragraph (b) as a consequence of the amendment under subclause (2). Subclause (2) omits paragraph (e) from the definition of *relevant person* under subsection (4). Subclause (3) renumbers at subsection (4), definition *relevant person* paragraphs (f) to (h) as a consequence of the amendment under subclause (2). This amendment and the amendments in clause 44 will mean that proceedings that relate to a warrantor's failure to repair under the MDCA Act, schedule 1, section 13 will no longer be part of QCAT's MCD jurisdiction.

Clause 25 amends section 13 (Deciding minor civil dispute generally). Subclauses (1) and (2) amend subsections (2)(a) and (4) as a consequence of amendments to the definition of *minor civil dispute* under clause 44. Subclause (2) also omits subsection (4)(b) to clarify that the tribunal's jurisdiction to make an order or decision for a tenancy matter under subsection (3) is limited to the prescribed amount for an MCD.

Clause 26 amends section 22 (Effect of review on reviewable decision). Subclauses (1) and (2) amend subsections (2) and (3) to enable the tribunal to stay the operation of part of a reviewable decision. Subclause (3) amends subsection (6) to enable the tribunal to impose conditions on an order it considers appropriate and provide for the lifting of the order if stated circumstances occur.

Clause 27 amends section 42 (Joining parties). Subclause (1) amends the heading to reflect new subsection (1A). New subsection (1A) enables the tribunal to order that a party be removed from a proceeding if the tribunal 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 the proceeding, whether or not the party was one originally.

Subclause (3) amends subsection (2) to enable the tribunal to make an order under new subsection (1A) on the application of a person or on its own initiative. Subclause (4) renumbers new subsection (1A) and subsection (2) as subsections (2) and (3).

Clause 28 makes a consequential amendment to section 48 (Dismissing, striking out or deciding if party causing disadvantage) to reflect the new provisions inserted by clause 31 allowing QCAT to conduct conciliation as well as mediation.

Clause 29 amends section 49 (Restriction on new application or referral). Subclause (1) amends the heading to reflect new subsections (5) and (6). New subsection (5) enables the tribunal to order that a proceeding be reinstated if the tribunal considers that the proceeding has been dismissed or struck out in error. New subsection (6) enables the tribunal to act under new subsection (5) on the application of a party to the proceeding or on the tribunal's own initiative.

Clause 30 inserts new section 51A (Effect of application under s 51 on decision by default). New subsection (1) provides that an application under section 51 to set aside or amend a decision by default does not affect the operation of the decision or prevent the taking of action to implement the decision. However, new subsection (2) enables the tribunal to make an order staying the operation of the decision by default until the application to set aside or amend the decision is finally decided.

New subsection (3) enables the tribunal to act under new subsection (2) on the application of the party to the decision by default or on its own initiative.

Clause 31 inserts new chapter 2, part 6, division 1A (Conciliation). These new provisions will provide a framework for the tribunal to conduct conciliation as well as mediation (already provided for in chapter 2, part 6, division 3) as part of the tribunal's alternative dispute resolution processes.

New section 66A (Referral by tribunal or principal registrar) enables the tribunal or the principal registrar to refer the parties to a proceeding to attend conciliation, with or without the consent of the parties. The principal registrar must give each party written notice of the referral for conciliation as stated in the QCAT Rules. As new section 66A provides the tribunal with discretion to refer parties to a proceeding to attend conciliation, it is not mandatory for the tribunal to use conciliation for all proceedings.

New section 66B (Personal or representative attendance) enables the relevant entity to direct a party to a proceeding to attend a conciliation in person or to be represented by a person who has authority to settle the dispute the subject of the proceeding for the party. New section 66B also defines *relevant entity*.

New section 66C (Purpose) provides that the purpose of conciliation for a proceeding is to promote the settlement of the dispute the subject of the proceeding.

New section 66D (Function of conciliator) provides that the function of a conciliator under this division is to promote the settlement of the dispute the subject of the proceeding by: identifying and clarifying the issues in dispute in the proceeding and how the law applies to the issues; and arranging negotiations between the parties to the proceeding and assisting in the conduct of the negotiations; and promoting the open exchange of information between the parties to the proceeding; and giving parties to the proceeding information about how the QCAT Act, enabling Acts and the QCAT Rules apply to the proceeding.

New section 66E (Procedure) provides that conciliation must be held in private unless the conciliator directs otherwise. Conciliation may be conducted in the way decided by the conciliator, which must be a way complying with the QCAT Rules.

New section 66F (Who may be a conciliator) provides a person may be a conciliator for a proceeding only if the person is a member, an adjudicator, the principal registrar or a person approved by the principal registrar as a conciliator for the tribunal. The principal registrar may approve a person as a conciliator for the tribunal only if the principal registrar is satisfied, having regard to the person's qualifications and experience, the person is a suitable person to conduct conciliation.

New section 66G (Disclosure of interests) applies if a conciliator who is to conduct conciliation has or acquires an interest, financial or otherwise, that may conflict with the proper performance of the conciliator's functions in the conciliation. The conciliator must disclose the nature of the interest to the president and not take part in the conciliation or exercise powers for it, unless all parties to the proceeding and the president agree otherwise.

New section 66H (Member or adjudicator conducting conciliation) applies if the person conducting conciliation for a proceeding is a member or adjudicator. The person must not constitute the tribunal for the proceeding unless all the parties to the proceeding agree otherwise.

New section 66I (Notification of outcome) applies in relation to conciliation conducted by a conciliator other than the principal registrar the subject of the proceeding. If parties to a proceeding agree to settle the proceeding or part of a proceeding at conciliation, the conciliator must notify the principal registrar that the parties have agreed to settle the dispute. If a conciliator has attempted unsuccessfully to settle a proceeding by conciliation, the conciliator must notify the principal registrar that the conciliation was unsuccessful.

New section 66J (Inadmissibility of particular evidence) provides that evidence of anything said or done during conciliation for a proceeding is not admissible at any stage of the proceeding or in another civil proceeding before a court or another tribunal. This does not apply to: evidence that all parties to the proceeding have agreed may be admitted into evidence; or evidence of an order made or direction given at conciliation or the reasons for the order or direction; or evidence of anything said or done that is relevant to a proceeding for an offence relating to the giving of false or misleading information or for contempt.

Clause 32 makes a consequential amendment to section 85 (Settlement at mediation) to reflect the new provisions inserted by clause 31 allowing QCAT to conduct conciliation as well as mediation.

Clause 33 makes a consequential amendment to section 86 (Settlement other than in compulsory conference or at mediation) to reflect the new provisions inserted by clause 31 allowing QCAT to conduct conciliation as well as mediation.

Clause 34 amends section 97 (Requiring witness to attend or produce document or thing) to enable the principal registrar, by written notice, to require a person to attend at a stated hearing of a proceeding to give evidence or produce a stated document or other thing to the tribunal.

New subsection (2A) enables the principal registrar to give a notice under subsection (1) on the application of a party to a proceeding.

Subclause (3) makes a consequential amendment to subsection (4). Subclause (4) renumbers section 97(2A) to (5) as section 97(3) to (6).

Clause 35 inserts new section 138A (Effect of application under s 138 on decision in proceeding).

New subsection (1) provides that an application under section 138 to set aside or reopen a proceeding does not affect the operation of a decision made by the tribunal in the proceeding or prevent the taking of action to implement the decision. However, new subsection (2) enables the tribunal to make an order staying the operation of the decision made by the tribunal until the application to reopen the proceeding is finally decided.

New subsection (3) enables the tribunal to act under new subsection (2) on the application of the party to the decision to reopen the proceeding or on its own initiative.

Clause 36 amends section 147 (Deciding appeal on question of fact or mixed law and fact) to enable the appeal tribunal to set aside a decision on a question of fact only or a question of mixed law and fact and return the matter to the tribunal or other entity who made the decision for reconsideration.

Clause 37 replaces section 191 (Acting senior members and ordinary members) with new sections 191 (Acting senior members) and 191A (Acting ordinary members). Previous section 191 (Acting senior members and ordinary members) provided for the appointment of both acting senior members and acting ordinary members.

New section 191 (Acting senior members) enables the Minister to establish a pool of persons to act as senior members. The president may then select a person from that pool to act as a senior member to fill any temporary senior member vacancy as necessary.

New subsection (1) requires the Minister to establish a pool of persons to act as senior members (the *senior members pool*). New subsection (2) provides that the Minister may approve a person as a member of the senior members pool only if the person is eligible to be appointed to the office of senior member under section 183(4).

New subsection (3) provides that the Minister may approve a person as a member of the senior members pool for a specified time and cancel the approval of a person as a member of the senior members pool at any time. New subsection (4) provides that the Minister may approve a person as a member of the senior members pool only after consultation with the president.

New subsection (5) provides that if there is a vacancy in the office of a senior member or the member is absent or for any other reason is unable to perform the functions of the office, the president may appoint a person from the senior members pool to act as the senior member for a period of not more than 6 months. New subsection (6) provides that a person appointed to act as a senior member has the functions of the member's office and is taken to be a senior member for all purposes relating to the QCAT Act or an enabling Act.

New subsection (7) provides that without limiting subsection (6), section 187 (Resignation) applies to a person acting as senior member as if the person were a senior member.

New subsection (8) enables the president to appoint a person to act as a senior member for a further period in specified circumstances. New subsection (9) enables the president to cancel the appointment of a person to act as a senior member at any time.

New section 191A (Acting ordinary members) continues to enable the Minister to appoint an acting ordinary member in accordance with previous section 191 (Acting senior members and ordinary members).

Clause 38 amends section 206C (Definitions for pt 4B) to omit paragraph (d) from the definition *excluded minor civil dispute* as a consequence of the amendments to the definition of *minor civil dispute* under clause 44. Subclause (2) renumbers paragraphs (e) to (g) of the definition *excluded minor civil dispute* as paragraphs (d) to (f).

Clause 39 makes a consequential amendment to section 216 (False or misleading information) to reflect the new provisions inserted by clause 31 allowing QCAT to conduct conciliation as well as mediation.

Clause 40 amends section 218 (Contempt of tribunal) by inserting ‘or the principal registrar’ as a consequence of the amendment to section 97.

Clause 41 amends section 237 (Immunity of participants etc.) to omit the definition of *conciliator* as clause 44 inserts a definition for *conciliator* in schedule 3.

Clause 42 renumbers chapter 10, division 2, heading (Transitional provision for Civil Proceedings Act 2011) as chapter 10, part 1.

Clause 43 inserts new chapter 10, part 2 (Transitional provisions for Queensland Civil and Administrative Tribunal and Other Legislation Amendment Act 2018).

New section 285 inserts definitions for *motor vehicle*, *motor vehicle matter* and *relevant Act* for new part 2.

New section 286 (Existing motor vehicle matters before the tribunal) applies in relation to a motor vehicle matter that, on commencement, is the subject of a proceeding before the tribunal exercising its original jurisdiction. It also applies to a motor vehicle matter that is the subject of a decision of the tribunal exercising its original decision made before the commencement, if, on the commencement, either an appeal against the decision has started before a relevant appeal entity but has not been finally dealt with, or the period within which an appeal against the decision may be started before a relevant appeal entity has not passed.

Subsection (2) provides that the QCAT Act and the relevant Act, as unamended, continue to apply in relation to the matter as if this Act had not been enacted.

Subsection (3) provides that the tribunal and the relevant appeal entity must deal with the matter under this Act as unamended and have only the functions under this Act or the relevant Act, as unamended, in relation to the matter.

Subsection (4) specifies that *relevant appeal entity* means the appeal tribunal or the Court of Appeal, and that *unamended*, in relation to this Act or a relevant Act, means as in force before commencement.

New section 287 (Existing motor vehicle matters if proceeding not started) applies if, immediately before the commencement, a person could have started a tribunal proceeding in the tribunal’s original jurisdiction for a motor vehicle matter within a particular period (the *prescribed period*) and on the commencement, the person has not started such a proceeding.

Subsection (2) provides that a proceeding for the matter may be started under this Act, as amended, within the prescribed period and in the way the proceeding could be started if the matter had arisen after commencement.

Subsection (3) provides that if a proceeding for the matter is started under this Act, this Act and the relevant Act, as amended, apply to the matter; and the tribunal must deal with the matter under this Act, as amended, and has, and only has, functions under this Act or the relevant Act, as amended, in relation to the matter.

Subsection (4) provides that this section applies despite the *Acts Interpretation Act 1954*, section 20.

Subsection (5) specifies that *unamended*, in relation to this Act or a relevant Act, means as in force on the commencement.

New section 288 (Additional jurisdiction for existing motor vehicle matters if proceeding not started) applies to a motor vehicle matter arising before the commencement if: the tribunal did not have jurisdiction to hear and decide the matter immediately before the commencement; and the tribunal would have jurisdiction to hear and decide the matter if the matter had arisen after the commencement; and immediately before the commencement, a person could have started a proceeding before a court for the matter within a particular period (the *prescribed period*); and on the commencement, the person has not started the proceeding.

Subsection (2) provides that the tribunal has jurisdiction to deal with the matter under this Act.

Subsection (3) provides that a proceeding for the matter may be started under this Act within the prescribed period; and in the way the proceeding could be started if the matter had arisen after the commencement.

Subsection (4) provides that if a proceeding for the matter is started under this Act, the tribunal must deal with the matter under this Act and has, and only has, functions under this Act or the relevant Act in relation to the matter.

Subsection (5) provides that this section applies despite the *Acts Interpretation Act 1954*, section 20.

New section 289(1) and (2) (Transfer of particular tenancy matters) provides for a *relevant tenancy matter* to be transferred to a *relevant court* if, on the commencement, it is the subject of a proceeding before the tribunal exercising its original jurisdiction and the tribunal has not made a final decision in the proceeding.

This is a transitional provision as a result of the Bill providing that QCAT's jurisdiction for tenancy matters is limited to claims under the prescribed amount for MCDs (i.e. \$25,000).

Subsection (3) provides that the proceeding for the matter is taken to have been started before the court when it was started before the tribunal.

Subsection (4) provides that the tribunal may make the orders or give the directions it considers appropriate to facilitate the transfer.

Subsection (5) provides that an order under subsection (4) has effect despite any other Act or law.

Subsection (6) inserts definitions for *relevant court* and *relevant tenancy matter*.

Clause 44 amends schedule 3 (Dictionary).

Subclause (1) inserts a definition for *conciliator*, which means a person who conducts conciliation under this Act.

Subclause (2) amends the definition of *constitute* to clarify that in relation to an adjudicator, constitute means to constitute the tribunal by sitting alone. This amendment is consistent with section 165(1) of the QCAT Act, which requires the president to choose 1, 2 or 3 members, or an adjudicator, to constitute the tribunal for particular matter.

Subclause (3) amends the definition of *minor civil dispute* by omitting item 1, paragraph (d). This amendment reflects the extension of QCAT's jurisdiction for a claim for repair of a defect under the MDCA Act, schedule 1, section 14 under clause 21 from \$25,000 (the *prescribed amount* under the QCAT Act) to \$100,000.

Subclause (4) amends the definition of *minor civil dispute* by renumbering item 1, paragraph (g), note, 'paragraph (g)' as paragraph (f) as a consequence of omitting item 1, paragraph (d).

Subclause (5) amends the definition of *minor civil dispute* by renumbering item 1, paragraphs (e) to (g) as a consequence of the omission of item 1, paragraph (d) under subclause (3).

Subclause (6) amends the definition of *minor civil dispute* by inserting new item 3. New item 3 provides that paragraph (1)(b) does not apply to a claim in a proceeding to which the FT Act, new section 50A applies. This amendment reflects the extension of QCAT's jurisdiction for proceedings about motor vehicles under clause 5 from \$25,000 (the *prescribed amount* under the QCAT Act) to \$100,000.

Subclause (7) amends the definition of *non-publication order*, paragraph (b) to reflect the repeal of the *Adoption of Children Act 1964* and insert 'a confidentiality order under the *Adoption Act 2009*, section 307N(1)'.

Subclause (8) renumbers the definition of *non-publication order*, paragraphs (ba) to (e) as paragraphs (c) to (f).

Subclause (9) inserts new paragraph (ba) to the definition of *official* to provide that an *official* includes a conciliator.

Subclause (10) renumbers the definition of *official*, paragraphs (ba) to (g) to paragraphs (c) to (h) as a consequence of the amendment under subclause (8).

Part 5 Amendment of Residential Tenancies and Rooming Accommodation Act 2008

Clause 45 provides that this part amends the *Residential Tenancies and Rooming Accommodation Act 2008*.

Clause 46 replaces section 516 (Applications for more than the prescribed amount) as a consequence of removing section 13(4)(a) of the QCAT Act to clarify QCAT's jurisdiction in relation to tenancy matters.

It provides that if a provision of this Act provides that an application may be made to the tribunal about a matter, and a person seeks payment of an amount or other relief greater than the prescribed amount under the QCAT Act, then the provisions of this Act apply as if the reference to a tribunal were a reference to a court with jurisdiction for the amount or value of relief sought, with any necessary changes to give effect to paragraph (a).