

## GUIDE TO CLAIMS UNDER QCAT & THE QUEENSLAND MAGISTRATES COURT

QCAT was introduced in December 2009 to assist consumers and businesses in resolving monetary (and other) disputes with other consumers and traders in a less formal fashion to the full Magistrates Court. QCAT favours each party representing themselves in a mediation style process when a debt disputes arises.

From our clients perspective there are a number of areas that you should consider before deciding the course of action you should take, Magistrates Court or QCAT.

### **Things you should know about QCAT:**

- The person making the claim is known as the “Applicant” and the person who owes you the money is the “Respondent” in QCAT.
- QCAT claims cannot exceed \$25,000.00 in value (Debts over \$25,000 must be dealt with in the Magistrates Court or a higher court where appropriate)
- Filing a claim in QCAT is relatively low cost and Nexus can take care of the process on your behalf. Some, but not all of the costs of filing a QCAT claim can be recovered from the Respondent. Nexus’s fee (generally \$150.00 cannot be recovered).
- In some cases we must serve the claim on the Respondent in person. If the Respondent cannot be located or cannot be served within 28 days of the claim being issued by QCAT, we must apply to QCAT for an extension of time for service. This can delay the process by several weeks and sometimes months depending on QCAT’s work load at the time.
- The Respondent has 28 days from the date on which they are served with the QCAT Minor Debts Claim to either pay you the money they owe or to file an a Response (Form 7). If a response is filed QCAT will set down a date for a mediation hearing to attempt to resolve whatever the dispute might be or to attempt to come to an arrangement for settlement of the debt.
- You will be expected to attend the hearing yourself to explain your claim and answer any defence that the other party might say exists. You generally can’t take legal representation with you, and neither can the person that you are making your claim against.
- If you cannot reach a decision at the mediation, a further date will be set down for hearing of the matter where QCAT will decide whether or not your claim is valid and at that point an order will be made either for payment of the debt, payment of part of the debt or the debt may be dismissed if the tribunal believes you have no valid claim. You must attend this hearing yourself as must the other party. This is a little like a trial in a court but you argue your case rather than having a lawyer do it for you.
- If however, the Respondent does NOT file a Response (Form 7) within 28 days of being served with the claim and the debt remains owing, Nexus will file on your behalf an application for a decision from QCAT. This decision is generally considered final (although it can be opposed under certain circumstances).
- **A QCAT “Decision” is however NOT a Judgment as such.** If you wish to enforce the debt against the Respondent by taking further action such as an Enforcement Hearing, Writ of Execution, Bankruptcy etc, you must apply to the Magistrates Court to have the QCAT decision registered as a Judgment. Nexus can also take care of this on your behalf. Once registered as a Judgment by the court, the matter will also be listed on the credit file of the respondent resulting in a serious “black mark” against their name for five years or more. The Respondent may find it difficult to obtain credit, finance or other services in the future as a result of this action. Be aware however that the process of converting the QCAT “Decision” into a full Magistrates Court Judgment can take up to 4 weeks as there are several steps involved and the time frame depends on the courts case load at the time.
- QCAT offers a relatively cheap and easy method of allowing the Respondent to file a response and application for adjudication resulting in further delays in recovering your money. Respondents might “manufacture” a reason to dispute the claim and this can draw out the process for several months whether or not their allegations are valid and true.
- The main thing to keep in mind when using the QCAT process is that you will have to take an active role in attending hearings and fighting for your right to recover the debt. It can be time consuming and sometimes frustrating but it is a relatively low cost alternative to the courts and according to legislation, it is generally the “proper” place to deal with disputes under \$25,000.00.
- **IMPORTANT NOTE** – Recently the QCAT process has been experiencing significant delays in dealing with matters and processing applications for decisions by default. We have been advised that it may take upwards of 10 – 12 weeks for QCAT to issue a ruling regardless of whether or not a defence or mediation application is filed. The delays in QCAT hinder our efforts to keep the file moving forward but there is nothing at all that we can do to expedite the process. You should be aware of these delays and factor them into your decision about which court you file your claim in.

### **Things you should know about filing a claim in the Magistrates Court of Queensland**

- In Queensland the Magistrates Court can deal with debt disputes up to a value of \$150,000.00
- Filing a claim in the Magistrates Court is more expensive than QCAT, it works on a sliding scale depending on the value of your debt. If you elect to have your debt claim dealt with in the Magistrates Court we can supply you with very competitive fixed price for the filing of the matter. Provided the matter is not defended this will be all you pay to have the matter filed in court.

- Claims in the Magistrates Court are prepared and filed by solicitors who charge a scale of professional fees. Nexus will instruct our panel solicitors on your behalf, however all legal costs and outlays must be paid by you initially. The full costs of the action along with interest where applicable is added to the amount owing and is claimed against the Defendant when the Claim & Statement of Claim is prepared.
- Once a claim is filed we will arrange for service on the Defendant/s and that person has 28 days from date they are served to lodge a “Notice of Intention to Defend & Defence”, or pay the debt.
- If no Defence is filed after the 28 days has expired and the debt remains unpaid, Nexus can instruct the solicitors to apply for a default judgement in your favour (there is an additional cost of a maximum of \$265.00 for filing the application for judgment). Once we have the judgment from the court we can recommend the most appropriate course of action to enforce the judgment debt, bankruptcy, liquidation, enforcement hearing, writ of execution, garnishee, there are many options and each depends on the circumstances of the person owing you the money.
- As a general rule, if the Defendant denies that they owe you the money, the Defendants solicitor will prepare a defence, file it in court and serve a copy of it on the solicitors representing you in the matter (usually our solicitors). The Defence will detail the reasons why the person or company claims that they do not owe you the money (or that they owe you less than you claim).
- Once a Defence is filed the matter comes to a standstill, the court does not automatically set down a mediation hearing date as they would in QCAT.
- Your solicitor is required to file a “Reply” to the Defence in the court within 14 days of receiving a copy of the defence from the other party. You will usually be required to review their defence with us or the solicitor in order for a proper reply to be prepared and filed. You can also request “Further and Better Particulars” at this time requiring that the Defendant provide more information if their allegations are unclear.
- Once a defence is filed, you will incur further legal costs on a time cost basis as the process from this point forward almost always requires significant involvement from your solicitors. We do our utmost to keep those costs to a minimum by guiding you through the process to the best extent possible and eliminating where we can the need to involve the solicitors.
- Once the reply is filed it is customary to allow the Defendants solicitors an opportunity to respond and perhaps make some sort of proposal to settle the matter. Similarly we can make an offer to settle if it might result in you receiving some, or all of your claim sooner.
- If no settlement is offered and no reply received from the Defendant’s solicitor you may apply for a Directions Hearing or you may apply to the courts for a trial date to be set down. At a Directions Hearing, you will attend the court with your solicitor as will the Defendant and you should try to resolve the matter and reach a formal settlement arrangement. This arrangement is often documented by the court making a formal record of the settlement agreement.
- Directions Hearings are expensive, depending on the nature of the claim and defence you might spend several thousand dollars preparing for and having your solicitor attend the hearing with you . You may not reach an agreement and the court will generally not make a costs order in relation to a directions hearing.
- If the Direction Hearing fails you may elect to take the matter to a trial. The process again is very expensive and in very complex matters can run in to tens of thousands of dollars and sometimes more. Debt matters are rarely taken to trial unless the debt is significant.
- In short, the Magistrates Court can be an expensive place to have your claim dealt with however it is less likely to draw “frivolous” or “manufactured” Defences from the person owing you the money.
- It is worthwhile noting that Defendants who file a Defence can be self represented, they do not have to engage a lawyer. Self represented Defendants are particularly hard to deal with as they often don’t understand the process resulting in you incurring further costs as your solicitors work to extract the proper information and documentation from the Defendant. We call it “the curse of the self represented”. You too may choose to represent yourself, but we cannot offer you any assistance should you wish to take that approach and you will need to familiarise yourself with the proper legal process in order to succeed in the long run.
- **IMPORTANT NOTE:** Legislation allows a Defendant to apply to the court to transfer a matter away from the Magistrates Court back into QCAT if the debt is under \$25,000.00. In other words, even if you file the original matter in the Magistrates Court, as the process unfolds, you may find yourself being ordered to continue the matter in QCAT’s jurisdiction, in which case you will often not be awarded any of the costs that you have incurred in filing the proceedings in the matter. This doesn’t happen often, but as Defendants become savvier about the process we expect this to become a more regular occurrence.
- If the matter is transferred back to QCAT, you will not be able to be represented by your lawyers, although you can continue to take their advice at your own expense. You simply cannot have them appear at the hearings for you.

We have produced this summary only to assist our clients in understanding the “real” considerations required to form a proper view on where you should commence your legal action. The document is by no means designed to replace proper professional legal advice nor does it purport to represent legal advice.

We are happy to discuss the process with you in more detail any time, our ultimate aim is to secure payment of the money owed to you, and remember, we only get paid when you get paid.