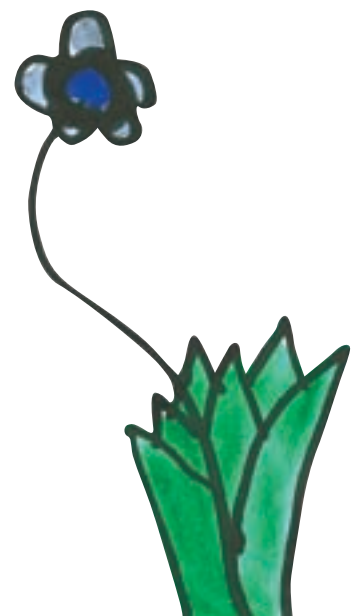




**Children Services Tribunal  
Annual Report**

2007 – 2008



## Communication objective

The Children Services Tribunal (the Tribunal) considers this annual report to be an important tool in communicating with our clients, stakeholders and the wider community.

This report aims to outline:

- the Tribunal's objectives
- the principles that guide the Tribunal
- the Tribunal's role within the community
- how the Tribunal operates and makes decisions
- how the Tribunal has performed and what it has achieved in the past year
- the Tribunal's future initiatives.

## Feedback

The Tribunal values the views and thoughts of clients, stakeholders and other readers and we welcome feedback on our report. Comments can be emailed to [cst@justice.qld.gov.au](mailto:cst@justice.qld.gov.au) or posted to:

Children Services Tribunal – annual report  
GPO Box 1639  
Brisbane Qld 4001.

Front cover: The Children Services Tribunal wishes to acknowledge the contribution by Hannah, aged six, for the artwork on the front cover of this report.

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# Letter of transmittal

21 October 2008

The Honourable Kerry Shine MP  
Attorney-General, Minister for Justice  
and Minister Assisting the Premier in Western Queensland  
18th Floor  
State Law Building  
50 Ann Street  
Brisbane Qld 4000

Dear Attorney,

In accordance with the requirements of section 146 of the *Children Services Tribunal Act 2000*, it is with much pleasure that I present to you the annual report of the Children Services Tribunal for the year ending 30 June 2008.

I commend this annual report for 2007–08 to you.

Julie Ford  
President

# Overview of the Tribunal

The Children Services Tribunal (the tribunal) provides merit-based reviews of certain decisions made by the Department of Communities, the Department of Child Safety and the Commissioner for Children and Young People and Child Guardian.

The tribunal was established in response to recommendations contained in the Inquiry into Abuse of Children in Queensland Institutions (the Forde Inquiry) and in the independent review of the *Children's Commissioner and Children's Services Appeals Tribunals Act 1996*.

The tribunal operates in accordance with the *Children Services Tribunal Act 2000* under the principle that the welfare and best interests of a child are paramount.

The tribunal provides an accessible and inexpensive review process that ensures fairness and transparency in government administrative decision-making in relation to children.

The tribunal reviews out-of-home placement decisions made by the Department of Child Safety, ensuring that the views and best interests of the child are considered in the child protection system.

The tribunal is also the review body for employment screening (Blue Card) decisions made by the Commissioner for Children and Young People and Child Guardian; child-care-centre licensing decisions made by the Department of Communities; and decisions made by the Department of Child Safety about people who want to adopt a child.

The tribunal ensures accountability for the child protection system by promoting and protecting the rights and interests of vulnerable children and young people.

## Our highlights

Highlights of the tribunal's achievements during 2007–08 include:

- achieving an application clearance rate of 93%
- promoting greater public awareness by undertaking community education sessions throughout the state, including presenting at child protection and indigenous conferences
- projects undertaken by different tribunal members allowing their specific skills and experience to enhance the work of the tribunal
- developing information sheets for participants in the tribunal hearing process
- promoting greater awareness and transparency of tribunal processes by continuing to publish de-identified decisions on the AustLii legal website
- conducting quarterly stakeholder meetings and providing training about the tribunal for various stakeholders
- providing extensive training and professional development for tribunal members on various issues including recent amendments to child protection legislation, complex trauma, expert evidence, and recognised entities
- continuing to engage positively with government and non-government entities while remaining an independent tribunal
- refining practices to manage a 36% increase in applications for review to the tribunal.



## President's report



*Julie Ford, President*

It has been another significant year in the continuing development of legislation and strategies to address the protection of children in Queensland. Of import is the proposed development of a National Child Protection Strategy. The challenges for families have increased with the surge in housing costs and varying negative impacts within the economy. The Children Services Tribunal sees a microcosm of those issues impacting on families in Queensland through its review process of decisions, in particular those decisions made by the Department of Child Safety .


The tribunal is fundamentally a review body of reviewable decisions across child protection, adoptions, the eligibility for blue cards to work with children and

certain child care decisions. It is the only stand alone tribunal of its kind in Australia. The tribunal is also a relevant and important part of a system for the protection of children within Queensland and it is consulted about a range of issues and new initiatives being considered across government bodies and within the community sector. As such the tribunal is well placed to use its review processes as a means to enhance the provision of services to children. The tribunal continues to utilise this legislative function in ongoing efforts to support robust and dynamic ways of addressing the reasons why children become vulnerable to abuse and what is required to minimise these vulnerabilities.

Furthering the whole of government initiatives in Queensland is commendable and important to redressing the impacts on vulnerable children. Our society as a whole needs to be well placed and resourced to support high risk families. Continuing work on focusing on supporting vulnerable families; reducing parental alcohol and drug abuse; reducing violence in the home; improving mental health services and affordable housing; resourcing communities and advancing employment opportunities are also needed to reduce vulnerability.

There has been a 36% increase in review applications to the tribunal in the last year. While we do not have comprehensive research into the reasons for this increase, it is reasonable to make some observations. The increase may be attributable to the following issues: there has been a marked increase in children coming into care and thus more decisions being made that are disputed; the original decision maker's access to all the information and the case management processes undertaken; more people are being informed of and are enacting their right of review of certain decisions; the comprehensive regional training about CST has reached people who have a right of review; non-government organisations such as advocacy groups are assisting people to place an application with the tribunal; in blue card matters people who receive negative notices due to criminal charges or offences have often lost their primary source of income and often come to a review considering they have turned their lives around. Whatever the reasons for the increase in applications, it has meant concerted efforts by the tribunal to ensure matters are heard in a timely manner to reduce further negative impacts on children.

Two significant additions to the tribunal cohort occurred in the second half of 2007. Louise Logan started in September as the Principal Registrar across the tribunal and the Guardianship and Administration Tribunal (GAAT). CST has a history of co-operative resources sharing both financially and administratively. Louise has been warmly welcomed by both



the tribunal and GAAT and she acts as the interface between the Department of Justice and Attorney General (DJAG) and the tribunals, managing the human resources and financial components of our work. Louise has brought to the tribunal an added range of skills to enhance and improve our registry activities. Of import with this new position was the creation of a memorandum of understanding between the tribunal, GAAT and DJAG regarding the functions of the Principal Registrar, while ensuring both tribunals remained independent and conducted their casework independently.

Of great delight for me personally, we also welcomed Patricia Hanly as the Deputy President of the tribunal at the end of October 2007. After some 14 months working without a Deputy, Trish's appointment was both timely and extremely beneficial to the tribunal membership and to me. Trish has quickly become experienced in the jurisdictional nuances of our work and works closely with me in member specific developmental and organisational activities. Trish's vast experience in tribunal work, her legal knowledge and her warm personality are great assets to the team.

Each of the tribunal members continues to engage in their hearing commitments and in training and professional development in a committed, collegial and professional manner. I continue to be very honoured to work with people of such great experience and insight into the issues confronted by our client groups, particularly their focus on the best interests of children and young people. The mix of legal members, professional members with child protection expertise and indigenous members who bring the cultural contexts remains a great strength of this tribunal.

The registry staff maintain a close working relationship with all of the tribunal members and, as the workload has increased, their commitment to sensitive and high quality casework has not faltered. While it is a small staffing cohort, the registry provides excellent support to the members, which is very much appreciated by them and never taken for granted. As the frontline face of the tribunal, registry staff maintain responsive and timely dialogue with our client groups and the various government and non-government bodies who may have involvement in our work. I thank them all in particular for their commitment to maintaining a great team environment and insightful approaches to often difficult and stressful situations.

While an independent body, the tribunal engages in a range of external activities to enhance the best interests of children across its review jurisdictions. Sincere thanks go to the various stakeholders who consult and negotiate with and inform the tribunal, including people within the Department of Justice and Attorney-General, Government departments and bodies who are under review and the non-government sector. The children and young people who have come to the tribunal or who have expressed their views through other means, we particularly thank for their honesty and insights. We continue to be humbled by their stories.

Finally, the tribunal will be merged into the new Queensland Civil and Administrative Tribunal (QCAT) which will be commencing operation in December 2009. CST welcomes the consultative processes in place to ensure the specialist features of our work are preserved for inclusion in this new tribunal.

# Deputy President's report



*Trish Hanly, Deputy President*

## Reflections on the Children Services Tribunal

In October 2007 I was privileged to be appointed as Deputy President of the Children Services Tribunal. Shortly after, I attended the Australasian Conference on Child Abuse and Neglect held at the Gold Coast where I observed large numbers of dedicated child protection workers from both government and non-government sectors defining and refining ways of better delivering services to children and young people under the mantle of their care. For me, it was an important introduction to the significant issues surrounding child protection and a sobering reminder that there is always more work to be done.

I have worked closely with our President, Julie Ford, over the past several months, as the tribunal continues to play an integral role in the child protection system in Queensland. Julie's professional, expert guidance and collaborative leadership have allowed me very quickly to assimilate into my role and to understand the particular challenges we face as the tribunal strives to provide optimum services to those who avail themselves of the review processes which it provides.

I have been a member of various tribunals at both State and Federal levels over the past 23 years. From my perspective, the Children Services Tribunal is not only unique because of its very existence as a stand alone review body. It is also unique in its operation which takes concepts of flexibility, informality and responsiveness to the needs of vulnerable people and children to the highest levels, without sacrificing essential elements of natural justice, timeliness and sound decision making.

I am looking forward to continuing the tribunal's work with an experienced and empathetic group of highly qualified tribunal members, supported by committed and professional registry staff, as we move towards the tribunal's merger into the Queensland Civil and Administrative Tribunal in 2009.

Trish Hanly  
**Deputy President**





## Who we are



*Paul McGrath, Anne Demack and Ron Joachim, Tribunal Members*

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### Tribunal's Role

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The tribunal's role is to provide independent merit based reviews of certain reviewable decisions concerning children in Queensland. The tribunal is also legislatively supported to conduct these review processes in a way which will enhance services to children.

The tribunal has been operating since 2000 and it is considered to be an important part of the child protection strategy in Queensland. The tribunal is guided by the *Children Services Tribunal Act 2000* and the main principle underpinning its work is that the welfare and best interests of a child are paramount. See Appendix 2 for the object and principles of the Act.

The tribunal is the only stand alone independent review body of certain decisions affecting children in Australia. As such the specialist provisions for children are located in the Act.

Minimising further harm to children is a key imperative of the tribunal's decision making.

# Who we are



*Children Services Tribunal Registry staff:  
Kaye Whiteman, Louise Logan, Mychelle Naylor,  
Luke Tilley, Elisa Robbins, Lisajane Messenger and  
Sally Harper (absent Dean Williamson).*

## The Registry

The provision of a tribunal registry to support the tribunal and its members is authorised under the *Children Services Tribunal Act 2000*. The registry and staff are provided by the Department of Justice and Attorney-General, with the principal registrar, registrar and staff employed under the *Public Service Act 2008*.

The registry of the Children Services Tribunal provides essential administration, case management and hearing support to the tribunal. The registry comprises: the principal registrar; the registrar; one senior case manager; one senior tribunal support officer; two tribunal support officers; and two administration support officers.

The registrar is responsible for the overall leadership and management of the registry and has other specific responsibilities under the legislation and as delegated by the President of the tribunal.

This year the temporary senior case manager position which was created in 2006-07 to undertake a review of case management procedures and assist in the implementation of a new case management system was made permanent. In view of the significant increase in applications being lodged with the tribunal, the creation of the permanent position will allow the registry to continue to provide effective case management to ensure the efficient operation of the tribunal's processes.

The tribunal registry is co-located with several other government agencies at BOQ Centre, Level 9, 259 Queen Street, Brisbane. See back inside page for contact details.

Registry staff perform many integral functions for the tribunal, including:

- administrative services (budget management, human resource management, preparation of statistics and reports, corporate governance)
- case management (conducting review enquiries, providing information on the role of the tribunal and the review process, advising parties about tribunal procedures, obtaining relevant information and material for the tribunal)
- hearing support (co-ordination and scheduling of hearings throughout the state, preparing material and orders for tribunal members, providing administrative support on hearing days)
- management of the tribunal's files, records and statistics.



## Who we are

An important role for registry staff is to help often anxious or distressed applicants with the lodgement of review applications, explaining the role and processes of the tribunal, and managing tribunal proceedings which, at times, can be highly emotional. These tasks require high-level skills in communication and conflict resolution.

The work undertaken by the registry can be complex and demanding. The tribunal is fortunate to have a committed registry team that works well together to efficiently and effectively manage its important workload. The tribunal wishes to acknowledge the important work performed by the registry staff in 2007-08. The registry would also like to acknowledge the assistance provided by the Guardianship and Administration Tribunal administrative team, in particular Terry McDonald, Leila Scott and Elizabeth Avery.

### Meet the Principal Registrar

I commenced in the position of Principal Registrar, Tribunals in September 2007. This was a new position established to provide leadership, strategic direction and management of the operations of both the Children Services Tribunal (CST) and the Guardianship and Administration Tribunal (GAAT) and to provide executive level support to the Presidents of both tribunals. In my time in this position I have certainly been able to observe, as the President noted in last year's annual report, the positive collegial relationship between the two tribunals. I can also say that both tribunals share the same strong commitment to their clients.

In my role I meet regularly with the President, Deputy President and Registrar on a range of issues including budget and resources, strategic and operational considerations, emerging policy initiatives and significant organisational change such as the establishment of an amalgamated civil and administrative tribunal. I also meet on a monthly basis with the combined presidential groups of both CST and GAAT in relation to cross-tribunal administrative issues.

Throughout the year I have also had a number of opportunities to meet the members of the tribunal and to meet representatives of the tribunal's stakeholders. This year has certainly been a busy and productive one for the tribunal as both members and the registry have responded to a significant 36% increase in the number of applications made to the tribunal.

I came into this role with much to learn about the work of the tribunal and I thank the President, the Deputy President, members and all of the staff in the registry for their patience and goodwill in assisting me in this process. All have impressed me with their commitment to our clients and their commitment to the role the tribunal plays in child protection.



*Louise Logan, Principal Registrar Tribunals*

# Who we are

## The Tribunal

The tribunal is made up of a group of members who are appointed by Governor in Council to undertake the review process. The registry of the tribunal supports the work of these members.

Members are appointed to reflect the social and cultural diversity of the general community, with a specific legislative focus on appointing members who are Aboriginal people and Torres Strait Islanders. Of paramount importance is that constituted panels of members have a base of understanding of children's issues within the child protection framework as well as the legal expertise to interpret the legislation.

The membership of the tribunal is as follows: the President and Deputy President are appointed to work part time and the remaining 30 members are sessional appointments. There are three indigenous members based respectively in Cairns, Hervey Bay and Ipswich; 11 lawyers, including the Deputy President (two legal members also hold social work degrees); six social workers, including the President; four psychologists (including one of the indigenous members); one criminologist; one educationalist; one speech pathologist; two child psychiatrists. Please see appendix 1 for the breakdown of the membership and the regions in which they live.



*The Honourable Robert Bulley, Tribunal member*

### Meet a member –the Honourable Robert Bulley

Bob is one of our senior experienced members. He appreciates that many of the cases the tribunal is called upon to review depend on grandparents for the ongoing stability of the children who are involved. He feels he is able to relate to those grandparents.

Bob is a lawyer who has had considerable experience in children's matters. He specialised in family law during his 16 years as a barrister in private practice. He then added to this history during his 18 years as a Family Court Judge. Following his retirement from the Bench in 1995 Bob became a Chair member of the predecessor to the Mental Health Review Tribunal as it is now called. He has remained a valued member of MHRT ever since.

Bob joined the tribunal in 2004. He developed special expertise in blue card cases. He has made important contributions to the interpretation of the legislation relevant to these cases. Bob also enjoys passing on his not inconsiderable knowledge and expertise in practice, procedure, natural justice, and the law of evidence to newer members of the tribunal. He says that he derives great pleasure out of this mentoring role.

Bob is a devoted family man. He spends as much time as he can with his 3 children, their partners, and with his 6 grandchildren. He also enjoys a regular game of tennis.



## Who we are

### Meet a member – Jennifer Wiltshire

Jennifer has been a tribunal member since October 2004. She first qualified as an Occupational Therapist in New Zealand and subsequently worked in New Zealand, Britain and Canada. After taking time out to have children, she completed a Social Work degree at the University of Queensland in 1979.

As a social worker Jennifer has worked primarily with children and families with a focus on child protection. This has involved work with both government and non-government agencies. In addition to direct work with families she has extensive experience in case consultation, assessment, policy development and training and supervision. She was a member of Queensland's inaugural Child Protection Council and more recently completed a term as a member of Queensland's first Child Death Case Review Committee. She was a recipient of a Child Protection Week Award in 1995.

Jennifer has a particular interest in the complex dilemma of how we as a society respond to the issue of harm to children. She is committed to the importance of developing healthy communities as a starting point, as well as the importance of supporting vulnerable children and families. She values the experience of working in the multi-disciplinary context of the tribunal and the opportunity to utilise her experience in this context.



*Jennifer Wiltshire,  
Tribunal member*



*Acknowledge : Caitlin, 6 years*



# Case study 1

## Grandmother seeks review of decision to be approved as a Kinship Carer

### *Background*

The applicant in this matter was a grandmother who wished to be approved as a kinship carer so she could care for her 2 young grandchildren.

The grandchildren had come to the attention of Child Protection agencies in 3 states and were subject to 12 month custody orders in Queensland. The children's mother had a history of mental illness and drug abuse and was in prison at the time of the hearing.

Notwithstanding the grandmother's significant involvement in the children's young lives the Department made a decision not to approve her as a kinship carer. The Department cited her health problems; her posing a risk to the children's safety; her not been able to protect the children; and her inability to work as part of a team, including with the Department.

### *Evidence before the tribunal*

At the hearing the tribunal heard evidence from a Departmental team leader and an independent report writer on the grandmother's suitability.

Evidence was given that the grandmother's medical condition may impact on her ability to care for the children in that she has poor eyesight, high blood pressure, diabetes and coronary heart disease. The Department also advised the tribunal that the applicant had been sexually abused as a child, had minimised the impact of a sexual assault on the children's mother when she was 8, was unable to prevent the children's mother from removing the children and the applicant had not informed ACT authorities when she returned to Queensland with the children.

Evidence from the independent report writer included factors which weighed against the applicant and factors in support of the applicant. Weighing against her were factors in her childhood, her limited support networks, her minimizing the effects of her daughter's mental health problems and her daughter's possible objection to the children being raised in a household of the Jehovah Witness faith.

Positive factors noted by the report writer included the grandmother's loving and caring nature, her faith, and her notification

to the police when her daughter took the children from her.

The applicant grandmother gave evidence to the tribunal rejecting Departmental claims about both the impact of her own sexual assault and playing down the assault on her daughter. She also gave evidence of her understanding of her daughter's mental health and the reasons why she considered her daughter unsuitable to have the children in her care. The applicant advised the tribunal about her health, her religion and how she would provide for the children.

### *Decision*

The tribunal noted that the Department had taken no action since October 2006 to have any health assessment done in relation to the applicant. The tribunal considered the Department's arguments were flawed regarding her inability to work with the Department as these were based on inaccurate information from interstate authorities.

The tribunal accepted that the applicant had some appreciation of the mental health of her daughter although this could be improved. The tribunal found there was no evidence that the grandmother had limited capacity to protect the children against sexual abuse.

The tribunal was satisfied that the applicant would not hand over the children to their mother, and accepted the strong attachments the children had with her.

Considering Section 133 of the *Child Protection Act 1999*, the tribunal found nothing that would cause the grandmother's application to be rejected. The tribunal also took into account Section 135(b) of the Act and considered the applicant a suitable person to be an approved kinship carer, who was able to meet the standards of care and who was able to help in appropriate ways towards achieving plans for the children's protection.

The tribunal set aside the Department's decision and approved her application subject to conditions relating to health assessments, counselling, respite care, expansion of her support networks, and the children's case plans.

## What we do



*Johanna Bakermans, Mark Johnston and Dr. Jennifer Promnitz, Tribunal members*

Last year we considered three specific areas of what the tribunal does in relation to Aboriginal and Torres Strait Islander applicants, parties to review and subject children; the role of recognised entities in child protection; and when children and young people in care are unhappy with decisions made about them.

This year we highlight the fundamental principle that guides the tribunal in what we do (considering the best interests of the child). Rob Grant has produced a piece on the role of the separate representative who is appointed by the tribunal to represent the subject child/children in a review. We will also cover briefly our submissions, particularly regarding the establishment of a Queensland Civil and Administrative Tribunal into which CST will be merged in December 2009. Additionally, there is an overview of the conferences and forums where we have presented to articulate our work and the issues that arise from our hearings.

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### Considering the best interests of *this* child in a child protection review matter

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The challenge for original decision makers, and for the tribunal, is to remain focused on the concept of best interests of the child. In the busyness of a child safety officer's role of managing numerous cases, and with limited resources, the need to know each child in care (and thus what is in that child's best interests) in that officer's caseload may be very challenging. Similarly, the tribunal must use its legislative capacity to inform itself about the child, and to get to know this child who is the subject of the review application. The tribunal does not visit children in their homes (whether with kin or foster carers). The tribunal may not have the opportunity to directly hear the child's views about the issue in dispute, whether it be contact with parents, with whom they live or whether their carers have failed to meet the standards of care required.

## What we do

The tribunal relies on the numerous people in this child's life to help it understand the situation to the best of its ability. The tribunal often has significant information about the parents, family members, or carers of the child, particularly if there is extensive involvement of the Department due to child protection concerns within the family context or a history of conflict with the Department of Child Safety. However, in the early stages, the tribunal often does not have a clear picture of the child who is the subject of the review. The child must always remain central to the tribunal's deliberations. The tribunal is mindful that it is not in the best interests of the child for the hearing process to further damage the communication and ongoing involvement between parents/carers and the department while that child remains in care.

The tribunal is guided by the principles within the Acts in its jurisdiction including the division specifically about children as witnesses. As well the tribunal considers the statements of standards for foster and kinship carers; the 'child placement principle' that applies to indigenous children; the United Nations Convention on the Rights of the Child and the Gillick Test of this child's competence to decide for itself.

Developmental frameworks integrate well with a social justice framework for understanding the best interests of this child. The jurisdictions under review acknowledge the right to participation, access and giving a voice to children. Such rights need to correlate to the age and developmental stages of children as well as including physical, emotional, cognitive, social, cultural and spiritual development. Many of the tribunal members have the professional expertise to guide the tribunal panel in considering these developmental phases.

The tribunal must consider whether it would be in the child's best interests for the child to be separately represented by a lawyer. (The role of the separate representative is covered below in an article by Rob Grant). When children and young people are able to speak directly to the tribunal about their views and wishes relevant to the review matter, the tribunal has ensured that this process is safe, accessible and as informal as is possible. The tribunal has found that those children who have exercised their rights to be heard personally are articulate, clear in their expression and have given great thought to the issues confronting them. Where indigenous children give evidence it is essential that there is an indigenous tribunal member on the review panel to guide the questioning and cultural protocols.

Focusing on the best interests of this child extends to the recommendations often made within the written reasons for a decision provided by the tribunal after a hearing. The tribunal acknowledges those practices that have worked positively for the subject child, but also highlights areas needing redress. Such areas may include the communication between departmental workers and families, regional office practices or adherence to the legislative principles, for example the child placement principle for indigenous children.

In review matters about employment screening for blue cards to work with children, the tribunal considers the best interests of children generally, using the same principles as above.



# What we do

## The role of separate representatives in the review process

by Rob Grant

In recent years there has been an increase in the separate representation of children in proceedings before the tribunal.

It may be timely to provide a brief overview of the nature of the role of the separate representative and the distinguishing features of that role from that of an advocate acting upon the direct instructions of a child client.

The role of the separate representative has been examined at some length, over the years, by the Family Court of Australia. The combined effect of *Bennett and Bennett* (1991) FLC 91-191, *Re: K* (1994) FLC 92-461 and *P and P* (1995) FLC 92-615 establishes that the nature and role of the separate representative in the conduct of the representation of a child is as follows: -

- To test by cross-examination where appropriate, the evidence of the parties and their witnesses
- To ensure that all evidence relevant to the welfare of the child is available to the Court
- To adduce appropriate expert evidence
- To act as a case co-ordinator, liaising with relevant government departments, child contact centres and agencies on behalf of the child
- To act as an honest broker on behalf of the child with the child's parents
- Where relevant, to call evidence from an impartial source as to the nature of cultural differences within families
- To provide support and assistance for the child through the process of litigation, whether directly or by way of appropriate referral
- To prevent systems abuse of the child
- To facilitate an agreed resolution to the proceedings

The main distinctions between the role of separate representation and that of direct representation of a child in proceedings before a court or the tribunal can be summarised as follows: -

- The separate representative is not bound by the instructions received from the child whilst a direct representative is so bound (subject to the overriding duty to the court)
- The separate representative cannot offer a confidential relationship with the child as would normally exist in the solicitor/client relationship found in direct representation
- The separate representative is bound to put all relevant evidence before the court and as such, needs to act in an independent and unfettered way



Rob Grant  
Tribunal Member



## What we do

- The paramount consideration of the separate representative is to advocate what decision would promote the best interests of the child even in circumstances where that decision may not be in accordance with the child's clear wishes. In those circumstances, however, it is still incumbent upon the separate representative to clearly indicate the wishes of the child and then to provide clear and cogent reasons why an order in accordance with those wishes would not be in the child's best interests.
- The direct representative must act on instructions, must present his/her client's case as best he/she can and to that extent (subject to the overriding duty to the court), can be selective about the evidence produced by him/her. Consequently, the direct representative, in making submissions to a court/tribunal as to what orders should be made, does not necessarily do so from a "best interests" perspective.

The tribunal has the same expectations of the separate representative as those of the court. In proceedings before the tribunal, the separate representative is required to adopt the same forensic role in establishing and advocating the child's best interests.

Further, an important aspect of the role of the separate representative includes adopting the role of an honest broker and, in doing so, attempting to assist the resolution of the dispute before the tribunal. It is significant that in proceedings before the tribunal relating to a review of a decision by the Department of Child Safety, the applicant may, at the conclusion of the hearing, need to continue to have a working relationship with the Department. The honest broker role of the separate representative is an important one in promoting the continuation of that relationship subsequent to the hearing by assisting the parties to resolve the dispute where appropriate.

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### The additional work undertaken by the tribunal

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The core work of the tribunal members, including the President and the Deputy President, relates to preparing for and undertaking a review preliminary conference, followed by a hearing. However, the business of managing the organisation for the Presidential group, and in ensuring relevant decisions are made within the legislative context, requires engagement in other activities outside of this core focus. The President and Deputy President work closely with the registry in reviewing regularly case management practices and means to improve the response rate to review applications. Many individual members continue to engage in addressing the issues that emerge through our hearings. For example, researching complex case law to inform the rest of the tribunal or using their profession specific knowledge to improve tribunal practice and procedures and understanding of culture, latest theories and appellate court decisions in other states. While remaining independent, being up-to-date on the big picture in child protection also involves contact with various stakeholders (articulated later in this report). Maintaining membership and involvement with the Queensland chapter of the Council of Australasian Tribunals (COAT) and the national COAT body enhances our tribunal practices. Both the President and the Deputy President of the tribunal are on the executive committee of COAT (Queensland).





# What we do

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## Tribunal Submissions

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A number of oral and written submissions were made in 2007-08, including responses to amendments to the *Child Protection Act 1999* and the *Commission for Children and Young People and Child Guardian Act 2000*; review of the Adoption practice manual; the review of Queensland tribunals; and review of the Department of Child Safety's 'matters of concern' procedures.

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## Queensland Civil and Administrative Tribunal (QCAT)

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Both oral and written submissions were made in this reporting year with regards to the establishment of the Queensland Civil and Administrative Tribunal (QCAT), which will commence operation in December 2009. The tribunal was engaged in all aspects of the process taking a proactive approach to put forward robust, well considered views regarding whether CST was in scope for the new tribunal. In its written submission of 10 April 2008 the tribunal took the position that "in any determination of CST's place within the newly formed tribunal (the Queensland Civil and Administrative Tribunal), it is respectfully submitted that CST's place within the Queensland Child Protection Strategy remains a focal consideration." It was further submitted that it is essential that "the legislative capacity for CST to conduct proceedings in a manner which enhances delivery of services to children is not lost in the new tribunal; recognition of the particular vulnerabilities of children and young people and CST's present progressive legislation to include them in review processes is not lost; continuing opportunities remain for CST (in whatever new guise) to engage beyond merely reviewing decisions as part of the broader child protection strategy in Queensland".

The tribunal considered whether the current attributes possessed by CST would be able to be maintained if CST were amalgamated into the new QCAT. The tribunal took the view that this is achievable for CST's client groups:

- (a) "if the focus and commitment remains on the best interests of children and on the objects and principles of the current Act;
- (b) if quality decision making is informed by responsive case management at the registry level;
- (c) if multi-disciplinary panels have the specialist expertise required;
- (d) if there is no restriction on both professional and legal members presiding on matters;
- (e) if comprehensive and relevant training is maintained for registry and for members;
- (f) if the tribunal leadership and members are cognisant of the issues relevant to the child protection sector and to community values;
- (g) if the membership is cognisant of cultural differences and is experienced in engaging indigenous and culturally diverse parties and witnesses;
- (h) if the bigger picture role of CST is not lost in its legislative mandate to enhance delivery of services to vulnerable children".

# What we do

The tribunal wishes to thank the Tribunals' Review independent panel of experts, the Hon. Glen Williams AO QC, Mr Peter Applegarth SC and Ms Julie-Anne Schafer and the project team supporting them for the opportunities for CST to make submissions in a comprehensive and consultative manner. The stage one report on scope and initial implementation arrangements produced by the panel captured many of the salient points raised by CST. The panel recommended that CST be included in the new QCAT along with 27 other bodies presently operating independently. CST will continue to work proactively on behalf of our client groups through the ongoing establishment phases of QCAT.

## Presenting at Conferences and Forums

The 2007-2008 year saw an increase in the tribunal presenting at various conferences and forums. Having a presence at significant events that address the protection of children or that focus on tribunal specific development allows the tribunal to showcase its decision making processes and expertise and give expression to systemic issues that emerge in undertaking our core work. These presentations are undertaken by the President, Deputy President, members, and the registrar. Presentations about the tribunal and how we operate occurred at the following events:

<b>August 2007</b>	Foster Care Queensland Annual Conference (Gold Coast) Commission for Children Young People and Child Guardian Zonal Co-ordinators training (Brisbane)
<b>November 2007</b>	ACCAN 'Voices Calling for Action' Conference (Gold Coast) Australian First Nation Cultural Family Therapists and Counsellors' Association 'Healing Our Way Conference' (Cairns) Recognised Entity Partnership training (Brisbane)
<b>February 2008</b>	Legal Aid Queensland Separate Representative Training (Brisbane)
<b>March 2008</b>	Seminar on CST to Indigenous organisations and other NGOs (Atherton Tablelands)
<b>May 2008</b>	Queensland Public Interest Law Clearing House Inc and Bar Association of Queensland – A Seminar on CST (Brisbane)
<b>June 2008</b>	DCS sponsored training for Recognized Entity organisations (Beenleigh Zonal office DCS) Australasian Council of Administrative Tribunals Annual Conference (Gold Coast)
<b>Throughout year</b>	Department of Child Safety Team Leader training (Brisbane)

# What we do

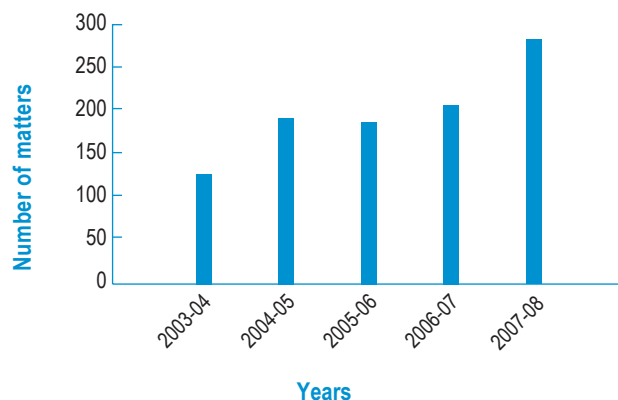
## Applications received

In 2007–08, the tribunal received 289 applications and completed 269 matters, representing a finalisation rate of 93% percent. There was a significant increase in matters before the tribunal this year with a 36% increase in applications received from the 2006-07 figures.

Number of Cases	2003-2004	2004-2005	2005-2006	2006-2007	2007-2008
At start of year	18	38	66	76	94
Commenced during year	125	189	182	212	289
Finalised during year	105*	161	172	194	269
Non-finalised at end of year	38*	66	76	94	114

\*These figure have been revised

**Table 1: Applications received**

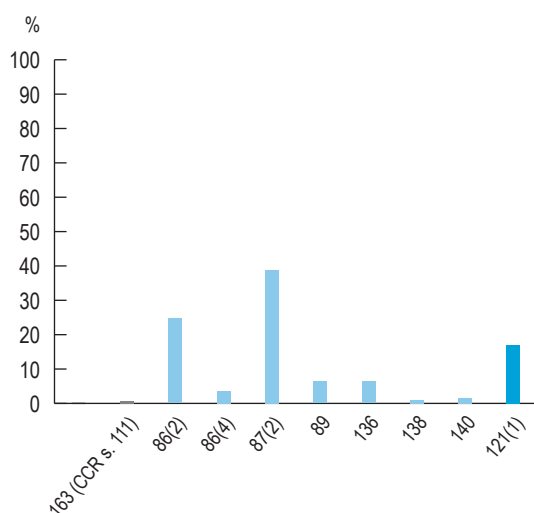


The greater majority of applications are seeking a review of a decision made by the Department of Child Safety under the *Child Protection Act 1999*, with the most frequent applications seeking a review of a decision to refuse, restrict or place conditions on contact between a child and members of the child's family (s87(2) CPA) or a decision regarding in whose care a child is placed (section 86(2) CPA). The tribunal also has received a large number of applications seeking a review of decisions made under the *Commission for Children and Young People and Child Guardian Act 2000* regarding persons who had been issued with a negative notice in relation to Blue Card applications.

Act under which matters are received		
ACA	0	0.00%
CCA	2	0.69%
CPA	231	79.93%
CCYPCGA	56	19.38%
<b>Total</b>	<b>289</b>	<b>100.00%</b>

# What we do

**Table 2: Sections of Act under which applications are received**



**Key:**

ACA	Adoption of Children Act 1964
CCA	Child Care Act 2002
CCR	Child Care Regulation 2003
CCYPCGA	Commission for Children and Young People and Child Guardian Act 2000
CPA	Child Protection Act 1999

## Guide to sections:

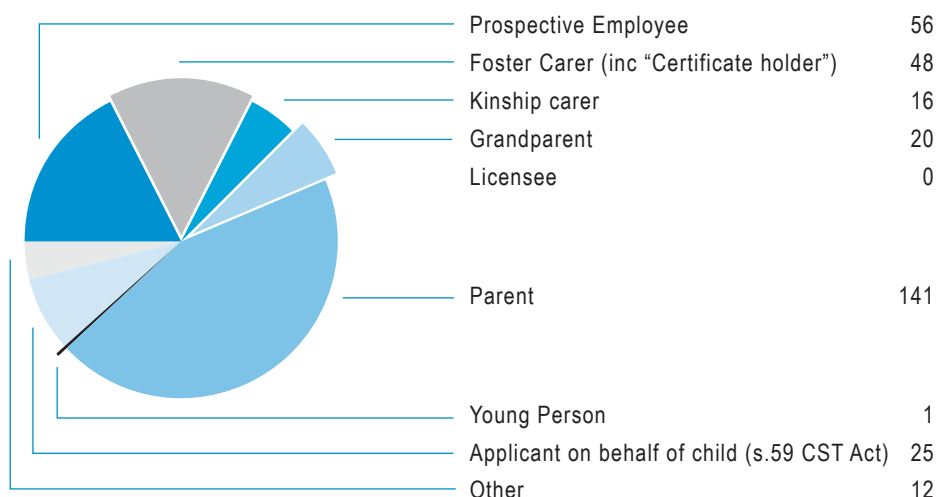
s.111 CCR	refusing application for an approval of qualifications
s.121(1) CCYPCGA	Commissioner's decision to issue a negative notice regarding applicant's suitability to work with children (Blue Card)
s.86(2) CPA	deciding in whose care to place a child under a child protection order granting the chief executive custody or guardianship
s.86(4) CPA	not informing a child's parents of person in whose care the child is and where the child is living
s.87(2) CPA	refusing to allow, restricting, or imposing conditions on, contact between a child and the child's parents or a members of the child's family
s.89 CPA	removing child from carer's care
s.136 CPA	refusing application for, or renewal of, a certificate of approval
s.138 CPA	amending a carer's authority
s.140 CPA	suspending or cancelling an authority other than a provisional certificate

*\*This figure does not correspond to the figure for applications received as an application can seek a review of more than one decision.*

## Applicant type

As in previous years, most applications received in 2007–08 were from parents seeking a review of a decision made regarding their contact with their children under the custody or guardianship of the Department of Child Safety. Parents were the applicants in 44% of applications before the tribunal. There was a significant increase in applications received from foster carers from last year to this year, and a small increase in the number of applications received from persons who were issued with a negative notice by the Commissioner for Children and Young People and Child Guardian. Of the applications received 24% of applicants identified as being either Aboriginal or Torres Strait Islander.

**Figure 1: Applicant type**



# Case study 2

## Mother seeks review of contact decision

The application for review was made by a mother of four young girls, the youngest of whom had died whilst in her care. The three other children were removed from her care and she was charged with manslaughter and other criminal charges.

Although a decision was made for contact to occur fortnightly, the girls had indicated consistently that they did not wish to have contact with their mother despite ongoing therapeutic intervention and departmental attempts to promote positive contact. Telephone contact was initiated but the behaviour of the children and the general tenor of contact led to a decision by the Department of Child Safety that it was in the best interests of the children that contact cease. Additionally, the Office of the Director of Public Prosecutions had advised that the girls were likely to be called as witnesses in the trial of their mother and concerns were raised that if contact occurred it might influence the girls' evidence.

At the time the applicant sought review of the decision to cease contact, she was on bail and had been committed to trial in the Supreme Court of Queensland. The children had given evidence in the committal proceedings which eradicated the concern that contact with their mother might influence their testimony.

At the preliminary conferences and at hearing, the applicant consistently indicated that she would only accept that the children did not wish to see her if they expressed that view to her personally. It was contended that departmental officers, health professionals, media publicity about their mother's appearance in court and possibly the foster carer for the children had negatively influenced the children about their mother.

At the hearing, a child therapist, who had been briefed to assist the children in coming to grips with their grief over the loss of their sister, provided evidence of her interactions with the children. Over a number of sessions, she formed the view that because of the children's strong views about not seeing their mother, contact would not be in their best interests at that point of time, including telephone contact. The child therapist considered that all those who have had contact with the children endeavoured to foster a positive attitude towards their mother.

As the applicant was facing significant criminal charges and the transcript of evidence from the tribunal could be used in future criminal proceedings, she elected not to give evidence. This prevented the applicant from putting her case to the tribunal, other than the submission that the presumption of innocence should prevail and if the applicant was ultimately acquitted of the charges she had been denied contact with her children over a considerable period.

### Decision

The tribunal was required to consider whether no contact was in the children's best interests. The tribunal accepted the evidence that, over a considerable period and on a number of occasions, the children had adamantly indicated they had no desire to see their mother. During that time, some of the children had made a number of angry and accusatory statements about their mother.

It was never contemplated that the children should be compelled to have contact with their mother as this would most likely produce extremely traumatic repercussions and result in a deterioration of the children's emotional well being which had only recently shown signs of improvement after 12 months of therapy.

The decision to cease contact was confirmed. It was understood that if the children's attitude towards contact with their mother softened, then a resumption of contact would be considered.



## How we do it



*Dean Williamson, Tribunal Support Officer*

**T**he tribunal is guided by the *Children Services Tribunal Act 2000* with a clear commitment to making decisions which are in the best interests of children.

### Registry Case Management

The registry case management of applications that come before the tribunal requires skilled staff to manage often anxious or angry applicants. The flow of information and material is managed by the registry between the applicants and the respondents (in the majority of reviews being represented by the court services unit of the Department of Child Safety or the employment screening unit of the Commission for Children and Young People and Child Guardian (CCYPCG)).

The registry staff have respectful relationships with the staff of the respondent services, while remaining independent. Similarly, progressing an application through the various stages to the tribunal's preliminary conference and then to hearing requires courteous interactions with applicants, children and their families in often difficult and stressful periods.

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### Tribunal Decision Making

The tribunal preliminary conference and hearing processes are less formal than court proceedings even though in regional areas in particular we sit in local court houses. The tribunal is not bound by the rules of evidence and will use flexible but legislatively relevant means to provide it with the information necessary to make decisions on review. This includes most importantly how we take evidence of children and young people. Throughout the review process the focus is on ensuring the parties and witnesses, particularly children, understand the process and that tensions are minimised by careful inquisitorial inquiry. While the tribunal can utilise adversarial procedures, this is not the preferred way of engaging the parties in review.

Tribunal decision making is enhanced by the support given to members to continually improve skills. The comprehensive development of a new CST Members' Guide by tribunal member,

## How we do it

Glenda Alexander, has proven to be an excellent reference tool. This Guide complements such further reference material as the Council of Australasian Tribunals (COAT) Practice Manual for Tribunals.

Louise McDonald, tribunal member, did an analysis of the 2007 Survey of CST Practices and Procedures that had been sent to parties upon resolution of review matters. While the survey sample was small, thus making it difficult to generalise the responses, the tribunal considered the qualitative information seriously and has built into its training and practices some of the suggestions arising from the analysis, including attention to maintaining the balance between focusing on the applicant's review issues and ensuring that they feel heard.

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### Focus on dispute resolution in child protection decisions

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As our statistics show, a significant number of review matters involving decisions of the Department of Child Safety do not go to a hearing. After the case management of the matter by registry staff leads to a preliminary conference, the constituted tribunal panel of two or three members will conduct the conference.

The President will have given consideration to the make up of the panel, depending on whether there are additional issues such as: the need for an indigenous member on the panel if there are indigenous children involved; whether psychiatric child development expertise is needed; whether parties or children have mental health issues; whether there have been domestic violence issues; whether any parties have disabilities. There will also be a focus on having members with dispute resolution skills on each panel.

The preliminary conference may sometimes be the first opportunity for the team leader and the manager of the Child Safety Service centre to meet with the aggrieved applicant, whether a parent, grandparent or foster carer. The panel will use the time to make clear what it can review and what is not within its role. For example, some applicants may think the tribunal can overturn the Child Protection Order made by the Childrens Court removing their children and placing them into care. Some applicants may see the tribunal as a complaints body in which to register complaints about the Department and workers. Often, the applicants can feel that their voices have been heard simply by having an independent panel facilitating the process.

Once the decision to be reviewed is clarified, the panel will then give an opportunity to the parties to consider whether some resolution of the disputed decision is possible. This approach is encouraged, however placing a child in a vulnerable situation is not in that child's best interest and no resolution to the issue may be possible at the preliminary conference. One good example is where the Department has made the decision to cease contact between a child and the parents due to serious child protection concerns and the expressed views and wishes of the child not to see the parents at this point in time. In this situation the views of the child are crucial. Going to a hearing in order for the tribunal to hear all of the relevant evidence is the likely outcome, if the parents challenge the veracity of the Department's information about the child's views and are unable or unwilling to accept that the child wants no contact at this point in time. In this case, the tribunal will appoint a separate representative, a lawyer, to represent the subject child in the hearing process.

Often the tribunal will adjourn to a second preliminary conference to allow for the applicants and the Department to continue a case management process that may resolve the disputed

## How we do it

decision. For example in a decision to restrict contact, a family group meeting may be held between the two preliminary conferences to identify what parents must do to demonstrate their preparedness to reduce the identified concerns of the Department. This may include having drug tests, re-engaging in counselling sessions and reducing abusive behaviour towards departmental staff. In ongoing case management, the parents may successfully demonstrate to the Department that they are addressing the concerns and contact may be returned to what it had been previously. In this situation the parent, as applicant, will withdraw the application before the tribunal.

There have been matters in which a separate representative for the child/children has been involved at the early stage of a preliminary conference, particularly if it is the same person who represented the children in Childrens Court proceedings. Skilled separate representatives have also played dynamic roles in the dispute resolution processes, articulately explaining to parents the children's views and interests that can assist parents in gaining insight into what is important for their children at that point of time.

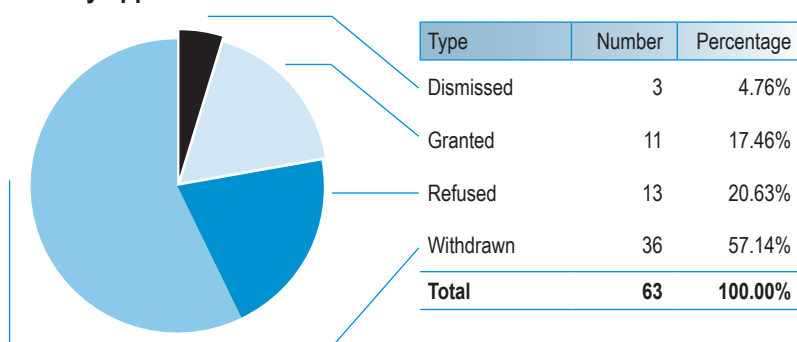
Resolution of disputed decisions through negotiation and ongoing case management and proactive communication between parties is preferred to a full hearing before the tribunal which can be stressful and highly emotive for many of the participants, including witnesses called to give evidence.

### Stay of decisions

If the applicant has requested a stay of a departmental decision, the tribunal must hear the stay application as quickly as possible, usually within 14 days of the request being lodged. This occurs as part of the preliminary conference, with the tribunal generally relying on the material provided as well as oral evidence given by the parties. All applicants, except those lodging an application for a review of a decision made under the *Commission for Children and Young People and Child Guardian Act 2000*, are entitled to apply for a stay hearing.

In 2007-08 there were 63 applications for a temporary stay by the tribunal of the decision under review. Of these applications 57% were subsequently withdrawn by the applicants, with approximately 17% of stay applications granted and 25% either refused or dismissed by the tribunal pursuant to section 70 of the *Children Services Tribunal Act 2000*, which states the tribunal must consider certain factors, the most important of which is the best interests of the subject child or children.

Figure 2: Stay application outcomes



# How we do it

## Hearings

Of those child protection matters that go to a hearing, the tribunal determines at the preliminary conference whether there is a need for a separate representative for the child or children involved. The tribunal can also grant leave for an applicant to be legally represented. The panel will hear the evidence of both parties' witnesses, including any expert witnesses identified at the preliminary conference and witnesses called by the child's representative.

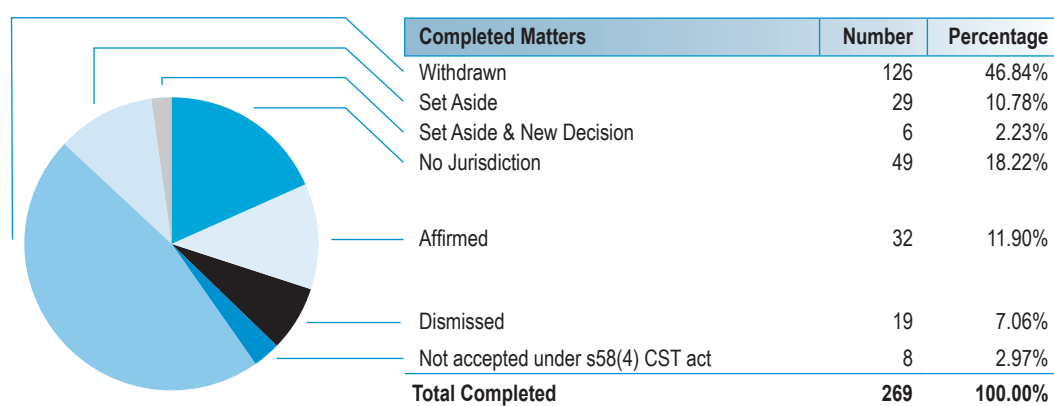
The tribunal must decide the matters afresh and can confirm, set aside or vary a decision. Even during the course of a hearing of a matter under the *Child Protection Act 1999*, the tribunal panel may continue to encourage opportunities for resolution by the parties. Many parties at this stage, however, want the decision to be independent.

The tribunal generally makes its decisions and provides written reasons for all decisions within four weeks of a hearing finishing and final submissions being received.

## Outcomes

The tribunal aims to complete the review process in a quick and efficient manner. In 2007–08, the tribunal finalised 45% of applications within three months and 72% of applications within six months. Many factors outside the control of the tribunal affect finalisation rates. For example, if some or all of the matters to which the reviewable decision relates are also before a court and the court's decision would effectively decide the same issues, the tribunal's review must be suspended.

Figure 3: Outcomes

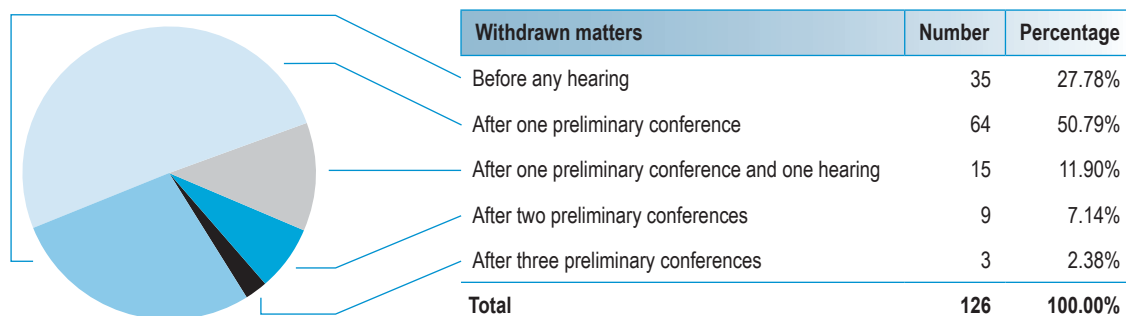


Approximately 47% of matters are withdrawn. A party may withdraw an application at any time, pursuant to section 71 of the *Children Services Tribunal Act 2000*. It is noted that most applications are withdrawn after at least one preliminary conference. The tribunal views these withdrawn matters as evidence of the success of the tribunal's collaborative-resolution approach.



# How we do it

**Figure 4: Withdrawn matters**



## Regional hearings

The tribunal has a commitment to conducting hearings where applicants, children or families are located. Whilst the majority of applications were from Brisbane and surrounding regions, the tribunal went to Bundaberg, Cairns, Caloundra, Charleville, Gatton, Gladstone, Gympie, Hervey Bay, Innisfail, Mackay, Maryborough, Murgon, Rockhampton, Roma, Southport, Toowoomba and Townsville in the past year.

Where possible, the tribunal uses technology such as telephone hearings and video conferencing. However, the nature of the tribunal's work and the significantly high number of disadvantaged and marginalised parties before the tribunal requires most hearings to be in person. Access to justice is a very real issue for the tribunal. While hearings in south-east Queensland constituted the largest number of hearings again this year, the tribunal is also mindful of providing access to the tribunal to regional and rural Queensland.

In 2007-08 there was a 36% increase in the number of review applications. While there was an increase in applications from South East Queensland and Central Queensland regions, there was a decrease in the numbers of applications received by the tribunal from the North Queensland region.

### Locations of hearings held throughout the year

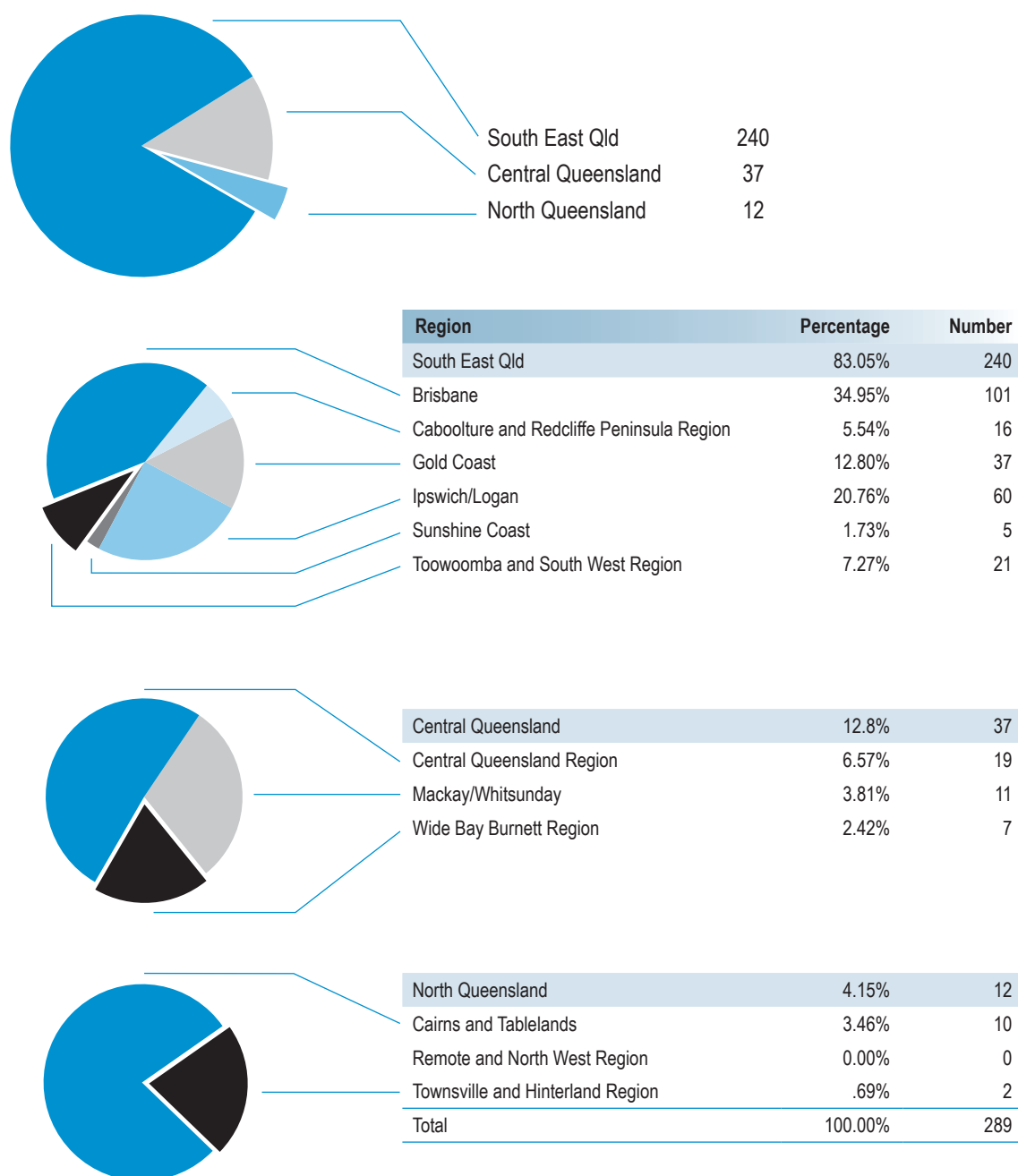




## How we do it

The following figures are determined from the regional centres from which the decision under review originated, which may not necessarily be the same location in which the applicant resides. For example all 'Blue Card' decisions made by the Commissioner for Children and Young People and Child Guardian originated from Brisbane whereas applicants seeking review of 'Blue Card' decisions are located throughout Queensland. Despite this determining factor in calculating the region to which the application relates, the tribunal may still travel to the region where the applicant resides to conduct the hearing.

**Figure 5: Number of applications according to regional centres**



# Case study 3

## A Blue Card decision

### Background

Mr K, a man in his late 60's, sought to obtain a blue card from the Commission for Children and Young People and Child Guardian (the Commission) to enable him to undertake volunteer work associated with a school. The Commissioner issued him with a negative notice on the basis of his criminal history which disclosed that he had been convicted of indecent assault of three boys in the early 1970's. These offences occurred over a period of four months. Mr K had come to know the boys through his involvement with a youth group. Mr K applied to the Children Services Tribunal for a review of the decision of the Commissioner. Because of the serious nature of the offences the law provides that to succeed Mr K must satisfy the tribunal that his was an exceptional case such that it would not harm the best interests of children for him to be granted a positive notice and a blue card. This is the paramount consideration for the tribunal.

### Evidence before the tribunal

The tribunal took into account that Mr K had undergone psychiatric counselling after being charged with the offences and that since his conviction for these offences he had not been charged with any further offences. The tribunal also noted that Mr K had demonstrated that he had been a dedicated community minded man who was highly regarded by those with whom he worked and that he had taken responsibility for various family members. The tribunal also heard evidence demonstrating that Mr K had limited insight into his offending behaviour and that he minimised the gravity of the offences and did not recognise them as serious offences. This evidence included Mr K's belief that he may have been able to have a long term relationship with the mother of two of the boys even while engaging in the offences and his belief that the offending behaviour developed from his naivety, loneliness and ill health at the time.

### Decision

The tribunal noted that the positive aspects of Mr K's work and community roles could be considered as protective factors regarding whether he should have a blue card or not. The tribunal considered this against the evidence about Mr K's limited insight into his offending behaviour.

*"The tribunal was troubled by Mr K's recollection and interpretation of the events over four months that amounted to a serious breach of trust and serious illegal activities with vulnerable young children."*

Taking into account all of the evidence the tribunal concluded that Mr K had not proven that his was an exceptional case and that he should be granted a blue card. The most significant issue for the tribunal was the lack of insight of Mr K into the gravity of his offending behaviour and his failure to accept full responsibility for the offences.

The tribunal confirmed the decision of the Commissioner to issue Mr K with a negative notice.

# How we do it

## Members' training



*Tribunal members (left to right) Back row: Kim Richards, Patricia Hanly, Dr Jennifer Promnitz, Paul McGrath, Gwenn Murray, Alexander Brands, Shirley Watters, Anne Demack, Julie Ford, Johanna Bakermans, Mark Johnston, Jennifer Wiltshire, Glenda Alexander, Alison Holm and Penny Feil; Seated Jenny Felton, Rosemary Kyburz, Hon. Robert Bulley, Michelle Dooley, Robert Grant, Julie Cowdroy, Gwen Schrieber, Susan Bothmann and Ronald Joachim.*

In this reporting year, three 'Presiding on the CST' sessions were conducted for members to reflect on their presiding skills and to enhance their practice in this role. The majority of members preside across the review jurisdictions and this is encouraged and nurtured within CST.

Three formal training events occurred in July 2007, November 2007 and February 2008. One of the days in November 2007 was a combined CST/GAAT training day focusing on generic tribunal issues that spanned both tribunals. Again the training is a mix of presentations by external speakers, discussion of notable cases and updates from various government and non-government departments relevant to our decision making.

Of note, we continued the indigenous members' training sessions focusing on specific aspects of responding appropriately to indigenous parties in this reporting year, as well as attention to notable cases presented by various tribunal members. The art of writing coherent and easily understood reasons remains a particular focus of tribunal training, as more members preside and the matters become more complex. External presenters included a comprehensive seminar by Lin Reilly and Sharon Muller on the impacts of complex trauma on children and adults. Both the Department of Child Safety and the Commission for Children and Young People and Child Guardian presented updates on amendments to legislation and the case management tools being utilised. Josephine Kelly of the Administrative Appeals Tribunal (Commonwealth) presented at the joint CST/GAAT training on the use of expert evidence in the tribunal context. The Partnership of Recognised Entities conducted a session about the establishment of the peak body and the role of recognised entities regarding indigenous children in care across the state.

# How we do it



Gwenn Murray, Tribunal Member

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## Members' professional development

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In this reporting year we had the privilege of inducting Patricia Hanly to the work of the tribunal in her role as Deputy President. As with any new member, Trish went through a comprehensive induction involving theoretical and practical experiential learning with a number of senior members of the tribunal as well as the President.

We saw the re-appointment in October 2007 of ten of our members for a further three year period, which ensured that there was continuity of expertise and ongoing mentoring for members at the different stages of their development, experience and time on the tribunal.

Informal mentoring by tribunal members continues to be a source of great strength within the tribunal as well as a delightful way for members to get to know their colleagues better and to share the combined wisdom.

Tribunal member, Gwenn Murray, completed her review of the performance appraisal process within CST and subsequently a new process was adopted, the Performance Management Framework for CST. This framework focuses on principles and performance standards for performance review and the process has been undertaken with each individual member of the tribunal by the President. From this process a number of outcomes are achieved including a proactive overview of members' levels of acquired skill and experience; identifying particular expertise that can be further shared with all members in a training context; identifying areas of interest in which members may wish to develop further expertise; and identifying systemic issues or training issues requiring follow up by the President.

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## Appeals to the District Court

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In 2007-08 there were two appeals to the District Court of Queensland from tribunal decisions. In April 2008 the District Court delivered its decision in *Commissioner for Children and Young People and Child Guardian –v- Ross & Anor* [2008] QDC 082. The District Court allowed the appeal by the Commissioner for Children and Young People and Child Guardian against the decision of the tribunal that a positive notice issue to Mr Ross. The District Court reinstated the issue of a negative notice to Mr Ross. The second appeal lodged in the District Court in 2007-08 is yet to be heard.





# How we do it

## External conferences and forums

It is important for the tribunal to be up to date on the issues impacting on children in Queensland. Accessing Australia wide and international research and legislative responses also guide our understanding. The strength of our decision making is in the knowledge, expertise and skills utilised by our members and the case management of the registry. It is not assumed by the tribunal that there is never any scope for further development and learning to enhance our decision making role. As such, members and registry staff have attended a number of external opportunities to expand our knowledge base.

These opportunities have included the following:

- Department of Child Safety Child Protection Research Forums throughout the year (Brisbane)
- Regional events across Queensland relating to child protection issues attended by regional members
- Legal Aid Queensland Law Week Hypothetical 15 May 2007 (Brisbane)
- Foster Care Queensland Annual Conference 4 August 2007 (Gold Coast)
- Family Inclusion Network Roundtable 29 October 2007 (Brisbane)
- ACCAN Conference 30 October - 2 November 2007 (Gold Coast)
- Crown Law seminar - Natural Justice in Decision Making 7 November 2007 (Brisbane)
- First Nations' Conference 26 -28 November 2007 (Cairns)
- Department of Child Safety Australia Day Awards 22 January 2008 (Brisbane)
- National Judicial College of Australia/Queensland Magistrates Conference Seminar on Cross Cultural Communication 28 May 2008 (Sunshine Coast)
- Australian Institute of Judicial Administration Annual Conference 5-6 June 2008 (Gold Coast)
- Profession specific conferences and forums relevant to individual members and registry staff
- Council of Australasian Tribunals (COAT) Queensland Chapter forums throughout the year



*Gwen Schrieber, Tribunal Member and co-presenter at First Nations' Conference, Cairns*

# Our Stakeholders

Throughout 2007-08 the tribunal continued its proactive interface with its numerous stakeholders. The collegial working relationships with our stakeholders, while the tribunal remains independent, is most appreciated by us.

The tribunal strives to reach all communities in Queensland about our role and the rights of review for children and adults. With the registry based in Brisbane and a smattering of regional members, we may rely on our stakeholders to assist with informing our communities. In this reporting year we had a presence at the celebrations at Musgrave Park for NAIDOC Week in July 2007. We disseminated our brochures and guides for children and young people through the DJAG show bags across Queensland in this week.

A session specifically created about the tribunal was presented by Legal Aid Queensland in its travelling road show to rural and remote areas in the second half of 2007. A training package about the tribunal's role and procedures was developed by us specifically for the on-line training units for the Department of Child Safety officers. The tribunal has met with the Partnership of Recognised Entities of indigenous organizations and individuals who are consulted in Department of Child Safety decision making about indigenous children and families.

Due to the increase in review applications and subsequent case management requirements, the opportunity to undertake regional sessions on the tribunal was limited compared with the previous year. Two sessions about the tribunal were held in the Cairns and Atherton Tablelands areas in 2007-08. These sessions captured indigenous organisational representatives, Foster Care Queensland and non-government services to children in care. The President met with a Recognised Entity organisation and community and university representatives in Townsville regarding North Queensland child protection issues in November 2007.

The tribunal has established regular meetings with management representatives of the Department of Child Safety to discuss systemic issues that emerge through the course of tribunal preliminary conferences and hearings. With a cohort of members having vast previous experience in child protection roles, the tribunal is well placed to identify systemic case management and decision-making issues from the cases that come before us. This initiative is considered to be a further positive way to inform practitioners and policy makers, in addition to the written reasons provided after each matter goes to a hearing. The President and Deputy President welcome the meetings with the Minister for Child Safety, the Hon Margaret Keech, and the Director-General of the Department of Child Safety, Ms Norelle Deeth, regarding tribunal and departmental initiatives of import to both organisations.

In March 2008, the President and Deputy President attended the second Child Safety and Family Law Interface meeting in Brisbane. Chaired by the Children's Commissioner, Ms Elisabeth Fraser, this initiative is a dynamic approach to identifying opportunities to deliver better outcomes for children involved at the Child Safety and Family Court interface. It is anticipated that this meeting will continue as an annual event. The tribunal also meets regularly with the Commissioner and Commission staff on areas relevant to both organisations.

The tribunal continues to engage with the court systems to remain abreast of the child protection interfaces. The President met with Judge Pam Dowse of the Childrens Court to





## Our stakeholders

discuss cross jurisdictional issues. Chief Magistrate Marshall Irwin has graciously provided advice and support to the tribunal over the years. In February 2008, Magistrate Tina Previtera ran a compelling and insightful session for tribunal registry staff and the Presidential group regarding her experiences of working in regional and remote communities. This demonstrated interest in, and support of, the tribunal's work is most appreciated and valued by us.

Understanding the issues affecting vulnerable families and those families of children in care is enhanced by our inclusion in such opportunities as the Family Inclusion Network Roundtable in October 2007. We attended the launch of the Alliance of Child Protection Peak Bodies in September 2007. The Alliance brings together key peak organisations that represent children in care, carers and recognised entities.

The tribunal's President and Deputy President are on the executive committee of the Council of Australasian Tribunals (Queensland Chapter). This committee holds seminars around issues and training opportunities generic to Queensland tribunals within its membership. As a number of CST members are also on other protective jurisdiction tribunals this is an important way of sharing information and expertise across different jurisdictions.

Tribunal stakeholder meetings occur quarterly allowing for information sharing on legislative, policy and practice developments. Megan Giles, Director of Child Safety, Department of Justice and Attorney General, continues to provide comprehensive information and resources sharing and support to the tribunal, with monthly meetings enhancing our work.

## The tribunal's priorities for 2008-09

The tribunal's aim is to continue to promote and provide a responsive independent review process that meets the diverse needs of our stakeholders, in particular the vulnerable children of Queensland.

The tribunal's priorities are:

- To undertake strategic planning and to refine further our practices to address the increasing numbers of review applications before the tribunal
- To continue ongoing professional development and training to enhance decision making and case management
- To continue the surveying of participants to a review to strengthen our accessibility and accountability to the parties
- To work closely with the QCAT expert panel and project team to advance the tribunal's inclusion and maintenance of its protective jurisdiction in the established QCAT in December 2009
- To continue our communication strategies with stakeholders and communities across Queensland to increase awareness of the tribunal's role and people's rights of review, in particular children and young people.





## Financial information

The full financial details relating to the tribunal's operations are reported in the Department of Justice and Attorney-General's annual report for 2007–08.

The table below shows the tribunal's operating expenses for the financial year from 1 July 2007 to 30 June 2008. The actual funding received through the Department of Justice and Attorney-General for this period was \$1,176,173.

<b>Operating expenses</b>	<b>\$</b>
Employee-related expenses	557,707.00
Supplies and services	794,108.00
Depreciation and amortisation	13,905.00
<b>Total</b>	<b>1,365,720.00</b>
<b>Operating result</b>	<b>- 189,007.00</b>

\*The figure for supplies and services includes tribunal members' sittings fees of \$543,754.00

## Appendix 1: Tribunal members

### Current members 2006–07

Member	Category	Region
Julie Ford (President)	Professional	Brisbane
Patricia Hanly (Deputy President)	Legal	Brisbane
Glenda Alexander	Professional	Brisbane
Margaret Arthur	Legal	Brisbane
Johanna Bakermans	Professional	Brisbane
Elizabeth Benson-Stott	Indigenous/Professional	Hervey Bay
Susan Bothmann	Legal	Brisbane
Alexander Brands	Legal/Professional	Brisbane
Suzanne Brooks	Legal	Brisbane
Hon. Robert Bulley	Legal	Brisbane
Dr. Nigel Collings	Professional	Brisbane
Julie Cowdroy	Legal	Gold Coast
Anne Demack	Legal	Rockhampton
Michelle Dooley	Legal	Gold Coast
Penny Feil	Legal	Toowoomba
Jennifer Felton	Professional	Brisbane
Rob Grant	Legal	Brisbane
Dr Alison Holm	Professional	Brisbane
Ron Joachim	Professional	Brisbane
Lyn Johannessen	Indigenous	Ipswich
Mark Johnston	Legal	Cairns
Rosemary Kyburz	Professional	Brisbane
Louise McDonald	Legal/Professional	Noosa
Paul McGrath	Legal	Brisbane
Gwenn Murray	Professional	Brisbane
Maureen O'Regan	Professional	Brisbane
Carol Peltola	Professional	Brisbane
Dr. Jennifer Promnitz	Professional	Townsville
Kim Richards	Young Person/Professional	Brisbane
Gwen Schrieber	Indigenous/Professional	Cairns
Dr. Stephen Stathis	Professional	Brisbane
Shirley Watters	Professional	Brisbane
Jennifer Wiltshire	Professional	Brisbane



## Appendix 2: Object and principles of the Tribunal

### Extract from the Children Services Tribunal Act 2000

#### *Object*

##### **Section 6**

The object of this Act is to establish the Children Services Tribunal –

- (a) to provide merit reviews of reviewable decisions that are accessible, fair, informal, just and quick; and
- (b) to make decisions in a review that promote the interests, rights and well-being of the child about whom the reviewable decision was made; and
- (c) to conduct proceedings in a way that –
  - (i) promotes the interests, rights and well-being of the child involved in the proceedings; and
  - (ii) uses adversarial and inquisitorial procedures, as appropriate, to arrive at the best possible decision in the circumstances; and
- (d) to foster an atmosphere of review that enhances the delivery of services to children.

### **Principles for administering this Act**

##### **Section 7**

- (1) This Act is to be administered under the principle that the welfare and best interests of a child are paramount.
- (2) Subject to subsection (1), this Act is also to be administered under the following principles –
  - (a) in decisions involving a child, the child's view and wishes should be taken into account in a way that has regard to the child's age and ability to understand;
  - (b) every child is entitled to be protected from harm and cared for in a way that promotes the child's well-being;
  - (c) every child is entitled to be treated in a way that respects the child's dignity and privacy;
  - (d) it is generally in a child's best interests that decisions about the child's welfare are made as quickly as possible;
  - (e) a child entitled to start, or participate in, a review –
    - should be given the information and help necessary for the child to do so; and
    - should have access to appropriate representation;
  - (f) Aboriginal tradition and Island custom must be taken into account in matters involving Aboriginal people and Torres Strait Islanders;
  - (g) the cultural practices of persons involved in a review must be taken into account to the extent they are relevant to the review;
  - (h) the relationship between a child and each significant person in the child's life should be preserved unless to do so would not be in the child's best interests;
  - (i) the tribunal should have all relevant material before it for making a decision.

## Appendix 3: Decisions that can be reviewed by the Tribunal

Reviewable decisions – <i>Child Protection Act 1999</i> (right of review is conferred by s 247)		
<ul style="list-style-type: none"> <li>Directing a parent in relation to a supervision matter stated in a child protection order (s78 CPA) (<i>Aggrieved party must be parent given the direction</i>)</li> <li>Deciding in whose care to place a child under a child protection order granting the chief executive custody or guardianship (s86(2) CPA) (<i>Aggrieved party must be child's parent or the child</i>)</li> <li>Not informing a child's parents of person in whose care the child is and where the child is living (s86(4) CPA) (<i>Aggrieved party must be parent given the notice or the child</i>)</li> <li>Refusing to allow, restricting, or imposing conditions on, contact between a child and the child's parents or a member of the child's family (s87(2) CPA) (<i>Aggrieved party must be person affected by the decision</i>)</li> </ul>	<ul style="list-style-type: none"> <li>Removing child from carer's care (s89 CPA) (<i>Aggrieved party must be carer as defined in s 91 or the child given notice under s.90(4)</i>)</li> <li>Refusing application for, or renewal of, licence unless refused because person mentioned in s126(b)(i) or (ii) does not have current positive prescribed notice (Blue Card) (s129 CPA) (<i>Aggrieved party must be applicant or existing licensee</i>)</li> <li>Refusing application for, or renewal of, a certificate of approval as an approved foster carer or an approved kinship carer unless refused because a person mentioned in s 135(1)(a) (iii) or (b)(iv) does not have a current positive prescribed notice (Blue Card) (s136 CPA) (<i>Aggrieved party must be applicant or existing certificate holder</i>)</li> <li>Cancelling an authority (s 140AG(3) or (4) or 140AH) (<i>Aggrieved party must be authority holder</i>)</li> </ul>	<ul style="list-style-type: none"> <li>Refusing an application for an amendment of authority other than a provisional certificate (s137 CPA) (<i>Aggrieved person must be authority holder</i>)</li> <li>Amending an authority other than a provisional certificate (s138 CPA) (<i>Aggrieved person must be authority holder</i>)</li> <li>Suspending or cancelling an authority other than a provisional certificate (s140 CPA) (<i>Aggrieved person must be authority holder</i>)</li> <li>Arranging for an interstate welfare authority to assume custody of guardianship of a child (s245 CPA)</li> <li>(<i>Aggrieved party must be a person issued a notice under s245(6)</i>)</li> </ul>
Reviewable decisions – <i>Commission for Children and Young People and Child Guardian Act 2000</i> (right of review is conferred by ss121 and 140B)		Reviewable decisions – <i>Adoption of Children Act 1964</i> (right of review is conferred by s14D)
<ul style="list-style-type: none"> <li>The issue of a negative notice (s102(4) or (7) CCYPCGA)</li> <li>The cancellation of a positive notice and substitution of a negative notice (s119B(2) CCYPCGA)</li> <li>The cancellation of a positive notice which was suspended (s119D(3) CCYPCGA)</li> </ul> <p>For these applications:</p> <ul style="list-style-type: none"> <li>The applicant is the person issued with the negative notice or the cancellation of the positive notice.</li> <li>The decision under review is the decision by the Commissioner as to whether or not there is an exceptional case under one of sections mentioned above.</li> <li>s121 (2) prohibits the Tribunal from issuing a stay.</li> </ul> <ul style="list-style-type: none"> <li>The suspension of a positive notice under s119C(1) because the person had been charged with an excluding offence (s121 CCYPCGA)</li> <li>(The applicant must be claiming he or she has not been charged with the relevant excluding offence)</li> <li>Application made by the Commissioner for review of a reviewable decision specified in s140A CCYPAGA (<i>Applicant is the Commissioner</i>)</li> </ul>		<ul style="list-style-type: none"> <li>A decision to remove a person's name from an adoption list, expression of interest register or assessment register on the basis of eligibility or non compliance with a regulation (ss13AA, 13AC; 13E ACA) (<i>Applicant is a person/s whose name is removed</i>)</li> <li>An unfavourable assessment of a person whose name is in adoption list or expression of interest register (ss13AE 13AF &amp; 13B ACA) (<i>Applicant is a person unfavourably assessed</i>)</li> <li>An unfavourable assessment based on criminal history alone (s14B ACA) (<i>Applicant is a person/s unfavourably assessed</i>)</li> <li>An assessment of a prospective adopter whose name is in an assessment register or in whose favour and interim order is made (s14 ACA) (<i>Applicant is a person unfavourably assessed</i>)</li> </ul>
Reviewable decisions – <i>Child Care Act 2002</i> (right of review is conferred by s 163)		
<ul style="list-style-type: none"> <li>Refusing to issue the licence or to issue the licence on a condition (s 19) (<i>Applicant is an applicant for a licence</i>)</li> <li>Refusing to renew the licence (s 21) (<i>Applicant is a licensee</i>)</li> <li>Refusing to amend the licence in a way the licensee has applied for (s 40) (<i>Applicant is a licensee</i>)</li> <li>Amending the licence other than in a way the licensee has applied for or agreed to (s 42) (<i>Applicant is a licensee</i>)</li> <li>Amending the licence other than in a way the licensee has applied for or agreed to (s 43) (<i>Applicant is a licensee</i>)</li> <li>Suspending or revoking the licence (after issue of a show cause notice) (s 45) (<i>Applicant is a licensee</i>)</li> <li>Refusing to amend the licence in a way the licensee has applied for (s 51) (<i>Applicant is a licensee</i>)</li> <li>Suspending a licence immediately (s 46) (<i>Applicant is a licensee</i>)</li> </ul>		<ul style="list-style-type: none"> <li>Refusing to lift the suspension of the licence (s 50) (<i>Applicant is a licensee</i>)</li> <li>Refusing to extend the transitional licence period or to extend the transitional licence period other than for the further period the personal representative has applied for (s 54) (<i>Applicant is a personal representative of the estate of a licensee who has died</i>)</li> <li>Giving a prohibition notice to a person (s 107) (<i>Applicant is a person given notice</i>)</li> <li>Refusing to cancel a prohibition notice in force for the person (s 108) (<i>Applicant is a person given notice</i>)</li> <li>Refusing application for an approval of qualification mentioned in s 109 or s 110 of the Child Care Regulation 2003 (s111) (<i>Applicant is a person whose application is refused</i>)</li> </ul>





[illegible]

## Notes

[illegible]

## CST decisions

Publication of Children Services Tribunal decisions can be located at the following website: <http://www.austlii.edu.au/au/cases/qld/QCST/>

## Contact us

Level 9, 259 Queen Street Brisbane  
Queensland, Australia 4000  
GPO Box 1639  
Brisbane Qld 4001

Telephone: (07) 3225 8346

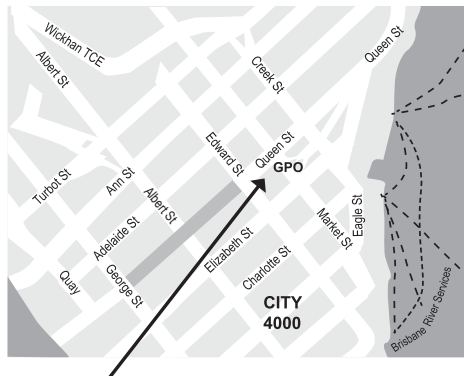
Facsimile: (07) 3225 8345

Email: [cst@justice.qld.gov.au](mailto:cst@justice.qld.gov.au)



## Where we are:

The Registry is located on level 9 of the BOQ Centre at 259 Queen Street, Brisbane, and the hearing rooms are located on level 10. This building is located next door to the GPO and MacArthur Central Shopping Centre on the corner of Queen and Edward Streets.



The building has complete access and facilities for people with disability. The lobby area of the building is on street level with no stairs or inclines to negotiate.

The nearest public parking stations are located under MacArthur Central Shopping Centre, Myer Centre or the Wintergarden.

If you are travelling by train, the closest train station is Central Station.

If you are travelling by bus, most buses drop off in Elizabeth Street, under the Myer Centre, in Adelaide Street or in Ann Street. All these roads run parallel to Queen Street. Some buses also drop off in Queen Street.



**Queensland**  
Government

Children Services Tribunal  
Level 9  
259 Queen Street  
Brisbane Qld 4000

GPO Box 1639  
Brisbane Qld 4001

Phone: 07 3225 8346  
Fax: 07 3225 8345  
Email: [cst@justice.qld.gov.au](mailto:cst@justice.qld.gov.au)