

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CHANGES FOR THE CHILDREN SERVICES TRIBUNAL

What did the Children Services Tribunal do?

The functions of the CST included:

- reviewing decisions under the *Child Protection Act 1999* about children in care and the licensing and approval of carers, including decisions refusing to allow, restricting, or imposing conditions on, contact between a child and the child's parents, removing a child from a carer's care and decisions about who should be a carer for the child;
- reviewing decisions about Blue Cards (the 'working with children' card) under the *Commission for Children and Young People and Child Guardian Act 2000* (the CCYPCG Act);
- reviewing decisions by the Department of Child Safety which the Commission wishes to have reviewed under Part 7A of the CCYPCG Act;
- reviewing decisions under the *Adoption of Children Act 1964* about the eligibility and suitability of prospective adoptive parents. This included reviewing decisions to remove a person's name from the adoption list and reviewing an unfavourable assessment of a person whose name is in the adoption list or expression of interest register; and
- reviewing decisions under the *Child Care Act 2002* about the licensing of child care centres including decisions refusing to issue a licence, or renew a licence to conduct a child care service.

Do the Children Services Tribunal and the *Children Services Tribunal Act 2000* continue to exist?

The *Children Services Tribunal Act 2000* is repealed and the Queensland Civil and Administrative Tribunal (QCAT) will hear the matters previously heard by the Children Services Tribunal. The Children Services Tribunal ceased to exist on 1 December 2009 when QCAT commenced operation.

Amendments contained in the *Queensland Civil and Administrative Tribunal (Jurisdiction Provisions) Amendment Act 2009* have been made to the following Acts to provide for this (these Acts are referred to as "enabling Acts"):

Child Protection Act 1999

Adoption of Children Act 1964 (and the *Adoption Act 2009* which commences operation on 1 February 2010)

Child Care Act 2002

Commission for Children and Young People and Child Guardian Act 2000

The amendments to these Acts should be considered together with the *Queensland Civil and Administrative Tribunal Act 2009*.

Who hears these matters in QCAT?

The members who hear the matters in the Children Services Tribunal are appointed under the *Queensland Civil and Administrative Tribunal Act 2009* membership provisions.

Generally, the *Queensland Civil and Administrative Tribunal Act 2009* requires that members appointed to QCAT are either lawyers, or other people who have special knowledge, expertise or experience about particular matters dealt with by QCAT. The administrative arrangements supporting the *Queensland Civil and Administrative Tribunal Act 2009* require detailed specific expertise for the various jurisdictions, including for the child protection jurisdiction.

There are senior and ordinary members appointed to QCAT on a full time and sessional basis. Senior legal members and ordinary legal members are Australian lawyers.

For reviewable decisions under the *Child Protection Act 1999* (where it is most likely that children will be the subject of the matter under review by the tribunal) the tribunal must be constituted by three members with at least one legally qualified member with at least five years experience. These members must:

- be committed to the principles mentioned in new section 99D of the *Child Protection Act 1999*;
- have extensive professional knowledge and experience of children; and
- have demonstrated knowledge of and experience in one or more of the fields of administrative review, child care, child protection, child welfare, community services, education, health, indigenous affairs, law, psychology or social work.

Also, where the child to which a proceeding relates is Aboriginal or Torres Strait Islander, the tribunal hearing the proceeding should include a member who is Aboriginal or Torres Strait Islander.

There are similar requirements for the constitution of the tribunal when it hears reviewable decisions under the *Adoption Act 1964* (which from 1 February 2009 will be replaced by the *Adoption Act 2009*).

Stakeholders should consider the constitution of the tribunal provisions in the new section 99H of the *Child Protection Act 1999* and new section 36E of the *Adoption of Children Act 1964* (from 1 February 2009, section 307F of the *Adoption of Children Act 2009*) that provide these additional requirements to those constitution requirements in the *Queensland Civil and Administrative Tribunal Act 2009*.

What happened to the former members of the Children Services Tribunal?

All current sessional members of the Children Services Tribunal were automatically appointed as sessional members of QCAT for a period of two years if they agreed to this.

What happened to the Children Services Tribunal registry?

The Children Services Tribunal is now part of the QCAT registry which is located at Bank of Queensland building, 259 Queen Street, Brisbane. QCAT also has regional offices which operate through Magistrates Courts.

How does QCAT deal with matters that were heard by the Children Services Tribunal?

There will not be any significant changes to the way that a matter heard in the Children Services Tribunal is dealt with. QCAT has the same jurisdiction to make decisions that the Children Services Tribunal had before the amalgamation to QCAT.

Matters previously heard under the repealed *Children Services Tribunal Act 2000* are heard in the human rights division of QCAT. The *Queensland Civil and Administrative Tribunal Act 2009* only has limited procedural provisions. Specific procedures that will apply to these matters are set out in the *Queensland Civil and Administrative Tribunal Rules 2009* and the President's practice directions.

As vulnerable children are more likely to be the subject of the decision under review from the *Child Protection Act 1999*, a new part in the *Child Protection Act 1999* "Tribunal Proceedings" has been included that overrides the general procedural matters in the *Queensland Civil and Administrative Tribunal Act 2009* to provide for these proceedings. This new part provides specific provisions for:

- guiding principles to which the tribunal must have regard;
- making applications, and sending notices of applications to the tribunal;
- constitution of the tribunal;
- privacy of hearings;
- children in proceedings including for example cross examination and representation;
- confidentiality; and
- ensuring the tribunals decisions and recommendations are given effect.

Provisions in addition to those that will apply in the *Queensland Civil and Administrative Tribunal Act 2009* were also inserted in the other Acts conferring jurisdiction on the tribunal to hear matters formerly heard by the Children Services Tribunal.

To the extent of any inconsistency with the *Queensland Civil and Administrative Tribunal Act 2009*, these specific provisions will override the *Queensland Civil and Administrative Tribunal Act 2009* provisions.

Are Children Services Tribunal matters heard in the original or review jurisdiction of QCAT?

The Children Services Tribunal matters are heard in the review jurisdiction of QCAT. The review jurisdiction means that QCAT reviews a decision made by another body, for example reviewing decisions of the Department of Child Safety about children in care.

How are matters appealed?

Once QCAT hears the matter, a person can appeal that decision.

The way in which a person can appeal depends on whether or not it was a judicial member who heard the decision in QCAT.

If the decision was made by a non-judicial member, the appeal can be made to the appeal tribunal within QCAT. The appeal tribunal can be made up of the President, the Deputy President, another judicial member, or in some cases a suitably qualified member or members.

If the decision to be appealed was made by a judicial member the appeal can be made to the Court of Appeal. The person must ask the permission of the Court of Appeal if the appeal is about a question of fact. The person does not have to ask the Court of Appeal for permission if the appeal is about a question of law.

Appeals to the Court of Appeal from a decision of the appeal tribunal may be made with the permission of the Court on a question of law only.

What happens to applications in the Children Services Tribunal when QCAT commences?

The *Queensland Civil and Administrative Tribunal Act 2009* sets out the standard approach regarding how matters are dealt with when QCAT commences on 1 December 2009.

If a person was able to apply to the Children Services Tribunal before 1 December 2009, and are still within time to apply but have not yet done so, the person may apply to QCAT. The functions, powers and procedures, including rights of appeal, are those set out in the QCAT Act and in the amended enabling Act.

If a person has already filed the application in the Children Services Tribunal on 1 December 2009 but the matter has not yet begun to be heard, the matter will be heard in QCAT. The procedure is that of QCAT under the *Queensland Civil and Administrative Tribunal Act 2009* and the amended enabling Act. However QCAT only has the functions and powers of the former tribunal. The

right of appeal from QCAT's decision are the rights set out under the *Queensland Civil and Administrative Tribunal Act 2009* and the enabling Act.

If the application has already started to be heard by the Children Services Tribunal on 1 December 2009, the proceeding continues but is taken to be a proceeding before QCAT. QCAT must be constituted by the person or persons who constituted the former tribunal immediately before commencement. The procedure is that of QCAT under the *Queensland Civil and Administrative Tribunal Act 2009* and the amended enabling Act. However QCAT only has the functions and powers the former tribunal had. The rights of appeal are also these rights of appeal that applied to the former Children Services Tribunal.

If the application has been finalised before 1 December 2009, the decision is deemed to be a decision of QCAT. Any appeal or any further dealing with the decision by QCAT can only occur in the same way it could have for the former Children Services Tribunal.