

Human Rights division

The Human Rights division (HuRD) manages:

- guardianship and administration for adults
- anti-discrimination
- children and young people matters
- education matters.

Our year

Outcomes



The division has faced a range of challenges this year, primarily focussed on an increase in lodgements, particularly in anti-discrimination (44 per cent), clinical research (88 per cent) and guardianship (nine per cent).

Despite these challenges, the team has delivered an overall clearance rate of 91 per cent, including a 6 per cent increase in the clearance rate of guardianship and administration for adults matters despite a 9 per cent increase in lodgements.

A challenge of a different nature requiring attention in 2011-12 is a 5 per cent decrease in lodgements for children and young people matters.

Across all lists within the HURD division, regional sittings have increased, providing greater accessibility for regional and remote clients.

In keeping with the requirements of *Guardianship and Administration Act 2000* and the *Disability Services Act 2006*, the division heard all applications for those matters identified as requiring to be concluded prior to the conclusion of the transitional phase of guardianship matters involving Positive Behaviour Support Plans that contain the use of Restrictive Practice.

Making connections

HuRD has continued to deliver case management and support services to a range of vulnerable and disadvantaged people including children, adults with impaired capacity and people alleging discrimination, harassment, vilification and victimisation. This support includes active liaison with families, carers and support people.

HuRD successfully participated in the Department of Justice and Attorney-General's Planning for Life forums throughout the state, which provide an opportunity for the community to learn about organising their affairs so that family members or other trusted people can make decisions on their behalf, should the need arise in the future.

The division consulted with the Department of Communities about the *Positively Ageless – Queensland Seniors Strategy 2010-20* which is a long-term vision for valuing and empowering Queensland seniors.

In December 2010, tribunal members initiated a group for child-related stakeholders which includes representatives from government departments such as the Department of Communities (Child Safety), the Commission for Children and Young People and Child Guardian, the Department of Education, Training and the Arts, peak bodies including Foster Care Queensland and legal advocacy organisations such as Legal Aid Queensland. The group meets quarterly to share information about key developments and issues in the child protection sector.

Looking forward

A key challenge for the coming year is the growing number of applications in the guardianship and administration for adults and anti-discrimination jurisdictions. As both of these areas can involve complex matters, any increase can have a significant impact on division resources.

The increase in guardianship and administration for adults matters is an ongoing trend which reflects an ageing population and an increased awareness in the community of how guardianship and administration can be used to protect a loved one. We will continue to monitor this trend and explore innovative ways of maintaining service standards and efficiency within this growing jurisdiction.

We will also continue to participate in consultation including the *Positively Ageless* strategy and the Queensland Law Reform Commission recommendations as a result of the review of the legislation relating to substitute decision-making.

An exciting initiative in 2011-12 is the pilot program to hear guardianship and administration adults matters on-site in Queensland Health facilities. The program

promises to deliver a range of benefits, most significantly greater accessibility for clients in both a physical and service sense.

We are also committed to engaging with the child protection sector and identifying factors influencing a decrease in child related applications. This commitment includes engagement with key stakeholders and a communication action plan to ensure direct clients (via stakeholder and referral organisations) are aware of the tribunal and how to access our services. In 2011-12 this will be evaluated and addressed via research and stakeholder and client engagement strategies.

QCAT in action: Helping children be heard

Lee, a foster carer, lodged an application with QCAT asking for a review of a decision by the Department of Communities (Child Safety Services) that five children in the care of the Department (and currently cared for by Lee) would be placed with alternate foster carers. Lee's application was supported by the parents of the children involved, who also lodged their own application regarding the same matter.

QCAT determined that the applications by Lee and the parents would be heard together and stayed the department's decision (put it in hold) until the applications were heard.

QCAT appointed a separate representative for the children to ensure the views, wishes and interests of the children were actively promoted.

A series of directions were issued to enable all parties to present their views and make submissions to QCAT about matters such as witnesses, documentation required and reports to be prepared. The matter was complicated by the fact that the foster carer's authority was at the same time under review.

QCAT systematically worked through the issues and facilitated dialogue between the parties using a dispute resolution methodology. QCAT assisted the parties to reach an agreement which enabled the foster care's authority to be renewed, the children to remain living with the foster carer and the concerns of the department to be addressed.

HuRD facts and figures

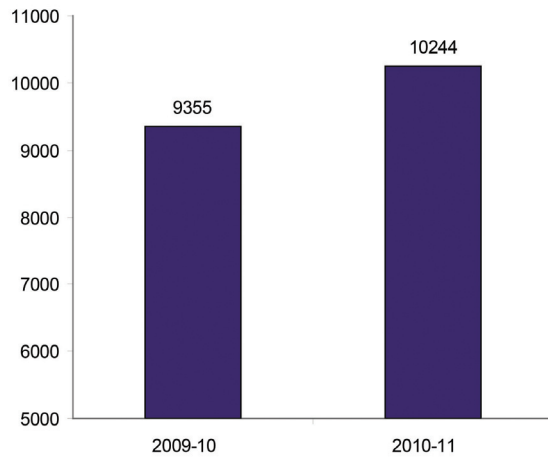


Figure 7: HuRD lodgements 2009-10 and 2010-11

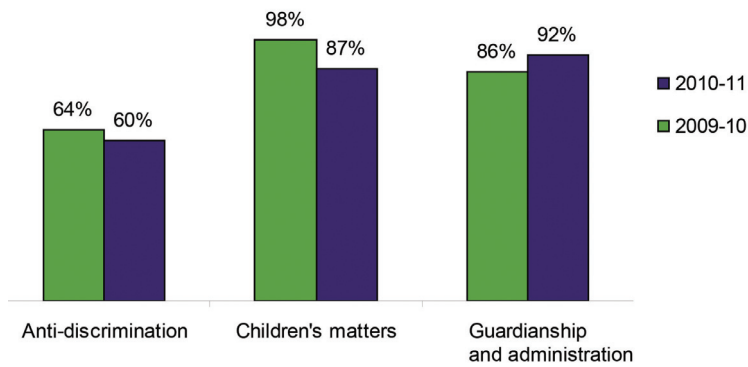


Figure 8: HuRD clearance rates 2009-10 and 2010-11

Limitation order type	Number made
Adult evidence order	1
Closure order	0
Non-publication order	3
Confidentiality order	14
Total applications received	30

Table 7: Type and number of limitation orders 2010-11

	Order made	Order renewed and varied	Dismissed / revoked	Deceased	Administrative closure	Withdrawn	Total
Guardianship for restrictive practice	129	0	27	1	7	19	183
Review of guardianship for restrictive practice	320	0	66	0	1	3	390

Table 8: Guardians for restrictive practices finalised applications 2010-11

	Approved	Dismissed	Deceased	Withdrawn / closure	Total
Containment	17	0	1	14	32
Review of containment	36	2	0	3	41
Seclusion	15	0	0	9	24
Review of seclusion	41	7	1	2	51
Application for another restrictive practice	21	0	1	11	33
Review of application for another restrictive practice	49	6	1	2	58

Table 9: Containment, seclusion and other restrictive practices approvals 2010 -11

Plans checked	Compliant	Not compliant
72	69	3

Table 10: Positive behaviour support plan compliance checks 2010-11

QCAT in action: Safeguarding adult decision-making

Peter is a 43 year old man who initiated a damages action in the Supreme Court for injuries sustained in a 1996 motor vehicle accident. Reservations were raised by Peter's counsel about his capacity to give instructions to his lawyers – the question of capacity was referred to QCAT for determination.

Peter attended an initial directions hearing but declined to co-operate with any medical assessment of capacity. Using disclosure provisions in the governing legislation, QCAT obtained information about Peter's medical history from his last treating doctor. This doctor had known Peter since 2005 and thought he had capacity to make complex decisions.

At a subsequent hearing, the tribunal member heard that Peter led an unconventional life. He viewed legal proceedings as a game, he was not driven by financial gain, and he was able to clearly articulate his plans for any damages he was to recover.

Lifestyle choices, eccentricity and poor decision-making are not in themselves evidence of impaired capacity – Peter was capable of understanding the nature and effect of decisions about the matter, freely and voluntarily making decisions about the matter; and communicating the decisions.

The member determined that Peter had capacity to instruct his lawyers in the damages action pending in the Supreme Court.