

QCAT Practice Direction No 6 of 2015

Process for administrative reviews in child protection matters

Effective: 24 November 2015

Updated: 26 May 2017

1. The purpose of this practice direction is to set out how the tribunal includes children and young people in reviews of decisions the Department of Communities, Child Safety and Disability Services (the department) makes about them.

Proceedings under the *Child Protection Act 1999*

2. The tribunal will focus on the welfare, safety and best interests of children in review matters. Proceedings will be conducted with the additional aims of improving decision making, decreasing conflict between parties and ensuring appropriate support services for children.
3. Specific protections in chapter 2A of the Child Protection Act 1999 (the Act) guide tribunal proceedings:
 - a. The child has a right to express their views to the tribunal.
 - b. All review proceedings are conducted in private.
 - c. Only the parties can access the tribunal's file material in the review matter.
 - d. The child cannot be compelled to give evidence, nor be cross-examined, and only specific support persons are to be present when children speak to the tribunal panel.
 - e. Tribunal members on each panel will have extensive professional knowledge of children and of the child protection system.
 - f. Aboriginal or Torres Strait Islander tribunal members will sit in review matters involving children who are Aboriginal or Torres Strait Islander, where possible.
 - g. All tribunal members must be committed to the principles underlying the Act.

Procedures to manage the review process

4. An experienced case manager in the human rights division of the registry will administratively manage the file throughout the course of the review. All parties will be assisted in understanding tribunal processes.
5. Applicants will be informed of additional assistance available to them by entities such as LawRight, the Youth Advocacy Centre and community legal centres.
6. Where a child is able, and wishes, to participate in the review, the department will be encouraged to inform the tribunal on how this can be achieved.
7. The involvement of the Public Guardian's child advocates, to represent the children's views, is also encouraged.
8. The tribunal may appoint a separate representative if the Public Guardian is not involved¹. Direct legal representation of a child or young person will always be approved.
9. Whether a child subject to the review will participate or not, and to what extent, is preferably determined through early case management.

The compulsory conference process

10. The tribunal panel will include a lawyer and a member with child protection expertise. Where the child is Aboriginal or Torres Strait Islander, the tribunal will endeavour to have an Aboriginal or Torres Strait Islander member sit on the review.
11. The panel will know beforehand if the child, where age appropriate, has expressed their views regarding Public Guardian representation or if they wish to speak directly to the panel about the review matters.
12. The panel will ensure the views of the child are heard at the beginning of the compulsory conference to reduce any distress and to aid in the dispute resolution focus of the proceeding. If the child is on the telephone or in person, the panel will meet them in private session with a support person present. Feedback to the parties will only include what the child seeks to have divulged.

¹ The tribunal may of its own initiative appoint a separate representative for a child (see section 99Q of the *Child Protection Act 1999*).

13. The focus of the compulsory conference is to help the parties find an agreement where possible, with the primary focus being on the safety, welfare and best interests of the child.
14. The parties will put in writing and sign any agreement between them. A further compulsory conference may occur if the applicant does not withdraw their application, for example, if they are not entirely satisfied the department will meet the agreement. The child's views will be included again at the further proceeding.

The hearing

15. If the review matter is not resolved, the hearing will be listed within a three to four month timeframe, where possible. The tribunal may appoint a separate representative for the child if the Public Guardian is not involved in the proceeding. The date of the hearing is established to allow for the separate representative to undertake the necessary actions to effectively represent the child, for example a social assessment report.
16. The child, where age appropriate, can express their views in writing or in drawings, attending by telephone or online video service, through representation, and in person. The tribunal panel will take the child's evidence in private with a support person present. The child will not be cross-examined.
17. The physical environment will be planned to ensure the child, if giving oral evidence, can participate with the minimum of distress, for example accessing the hearing room via an alternative route.



Justice David Thomas

President

26 May 2017