



commission for
children and young people
and child guardian

No 8

T&G Building, 141 Queen Street, Brisbane Qld 4000
PO Box 12671, Brisbane, George Street Qld 4003
Ph: 07 3247 5525 Fax: 07 3247 5507
www.ccyprg.qld.gov.au

Telephone: 07 3247 5525
Reference: SPRP/DN9808

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LEGAL, CONSTITUTIONAL AND
ADMINISTRATIVE REVIEW
COMMITTEE

- 1 OCT 2007

Mrs Dianne Reilly MP
Chair
Legal, Constitutional and Administrative Review Committee
Parliament House
George Street
BRISBANE QLD 4000

Via facsimile: (07) 3406 7070

Dear Mrs Reilly

Thank you for your letter of 17 August 2007 inviting the Commission to make a submission on the Accessibility of Administrative Justice – Supplementary Issues Paper.

The Commission supports initiatives to improve the accessibility of administrative review processes for children and young people and supports reforms to foster continuous improvement to decision making affecting children and young people. In this context, the Commission makes the following submissions on the four issues raised in the Supplementary Issues Paper:

Issue 1: The committee invites submissions about possible reform regarding administrative appeals

Queensland's current approach of conferring appeal rights under individual statutes and creating a large number of specialist tribunals makes it difficult for children and young people to readily access review processes. Children and young people usually lack the specialist legislative knowledge required to determine if they have a right to have a particular decision reviewed. Additionally, each individual tribunal has its own processes and procedures, some of which may encourage children and young people to apply and some of which may not. For example, proceedings in the Children Services Tribunal are less formal and adversarial than proceedings in the Magistrates Court.

A consolidated tribunal could potentially make review processes more accessible for children and young people. However, specific strategies would need to be implemented to ensure that a consolidated tribunal was accessible to children and young people. Such strategies should include: a service charter and/or service delivery standards that include engagement with children and young people; appropriate performance measures to assess access by children and young people over time; providing that applications from children and young people do not have to

be made in a prescribed form; and providing tele-links through local Magistrates Courts so that children and young people in rural and remote areas can access the tribunal.

Further, members of any consolidated tribunal would need specialist knowledge and skills to effectively and expeditiously deal with cases in which they must determine the best interests of a child or young person. This expertise could be provided by specialist decision makers dealing with proceedings relating to children and young people within a specialist division of the tribunal, similar to the Discrimination and Guardianship Division of the Victorian Civil and Administrative Tribunal. Currently the 28 members of the Children Services Tribunal include lawyers with experience in mediation and children's matters, indigenous representatives, child psychiatrists, a paediatrician and other professional members with extensive experience of the child protection system, as well as a young person. Panels are constituted for each case having regard to the issues in the case.

Issue 2: The committee invites submissions about possible initiatives regarding the availability of information about administrative justice

If children and young people are to utilise administrative review processes, it is essential that they are provided with appropriate information by the original decision maker. This information must inform the child or young person that a decision has been made, explain why the decision has been made, explain the likely effect of the decision on the child or young person, notify them of their right to an appeal/review, provide information on how to commence the appeal/review process and advise them of where they can get further advice and assistance. This information should be provided in a way that is understandable to the child or young person, having regard to their age and level of understanding. This will usually require the decision maker to meet with the child or young person rather than providing written information only.

In addition to receiving this information, a child or young person will need specialist legal advice and assistance to enable them to access administrative tribunals. While the Citizens Advisory Board in the UK is an excellent model for the delivery of advice and information services, significant resources would be required to develop and implement a similar service delivery model in Queensland. It may be more cost effective for government to provide additional funding for existing youth services to provide preliminary advice and assistance to children and young people. This funding would need to be accompanied by additional funding for Legal Aid Queensland to allow it to represent children and young people before administrative tribunals under a grant of legal aid.

Issue 3: The committee invites submissions about the scope, if any, for reforms to provide for proportional dispute resolution in Queensland

In addition to the statutory processes and mechanisms outlined in the Issue Paper, the Commission's statutory functions include:

- resolving and investigating complaints about services provided to children in the child safety and juvenile justice systems
- administering a Community Visitor Program to promote and protect the rights, interests and wellbeing of children in out-of-home care, and
- seeking to resolve with the chief executive of the Department of Child Safety, disputes about reviewable decisions under part 7A of the *Commission for Children and Young People and Child Guardian Act 2000*.

These functions enable vulnerable children and young people to make complaints and provide a Community Visitor to advocate on their behalf with carers, service providers and the Department of Child Safety. The Commission has the power to investigate individual complaints or matters that raise a significant issue about a law, policy or practice relating to the delivery of services to a child in the child safety system. The Commission prepares reports on the outcomes of investigations which can recommend that service providers take stated actions within a reasonable time. Copies of these reports are provided to the relevant Minister, Director-General or service provider and can be tabled in Parliament. These functions aim to foster continuous improvement in the delivery of services to children and young people in the child safety and juvenile justice systems.

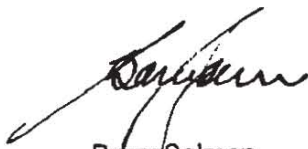
As was noted in the Commission's original submission to the Committee dated 28 March 2006, there are significant barriers to children and young people bringing proceedings under the *Judicial Review Act 1991*. Reform is required to remove the barriers of cost and complexity and to foster continuous improvement in decision making affecting children and young people. As the Commission previously proposed, this would be achieved by providing that administrative decisions made in relation to children and young people that are presently reviewed under the *Judicial Review Act 1991*, are instead reviewed on their merits by the Children Services Tribunal (CST). Alternatively, such reviews could be conducted by a specialist division of a consolidated tribunal. A consolidated tribunal should have the same power as the CST to make recommendations to government entities about relevant policies, practices and procedures following the review of a decision.

Issue 4: The committee invites submissions about the publication of details regarding contracts entered into by public sector agencies.

The Commission has no comment to make on this issue.

I would be happy to discuss these above issues further with you at any time. Alternatively, if your staff have any queries, they should contact Matthew Simpson, A/Manager Policy, Strategic Policy and Research Program on telephone number 3247 5509.

Yours sincerely



Barry Salmon
A/Commissioner for Children and Young People
and Child Guardian