11th January 2013

Review of the Queensland Civil and Administrative Tribunal Act (2009)

Question one
Are the Act's objects and functions of the tribunal relating to the objects still valid

It is FCQ's view that whilst the Act's objectives are valid, not all are being adhered to in Children's matters before QCAT. Our concern centres on the timeliness of decisions and the impact of delayed proceedings on children and foster families.

The objects of the QCAT act states:

(b) to have the tribunal deal with matters in a way that is accessible, fair, just, economical, informal and quick.

This object is contusive to the Principals of the enabling Child Protection Act (1999), specifically 5(b) (n) ' a delay in making a decision in relation to a child should be avoided, unless appropriate for the child'

Unfortunately it has been the experience of FCQ in supporting carers through QCAT processes that delays are common and this leaves carers feeling frustrated and disempowered. Given that delays in proceedings has a direct impact on children, it is FCQ's view that more emphasis needs to be placed on the timeliness of matters being heard from point of application through to point of hearing.

Some examples are as follows:

Case example A
Application lodged in November 'In who's care' application and Contact Review application. Advice only received in January that matter has been set down for Compulsory Conference in relation to Contact decision for February, this will be three months from point of application. The 'In who's Care' application is yet to be accepted. The application involves a grandmother trying to have her grandchildren placed in her care. If no resolution is reached at Compulsory Conference, it would be at least a 6 month timeframe from time of application to time of hearing and final decision, this is a long time in the eyes of small children.

Case Example B
Application lodged in August 'In who's care decision'. Compulsory Conference held in October, final hearing not set down until June the following year, therefore from time of application to time of hearing 10 months would have passed. This application related to a four year old child, this is a significant period of time for a pre-school child.

Case Example C
Application lodged in respect to a removal, Stay hearing held 3 weeks later, this time frame is sufficient. However the hearing has been set down for 6 months later, which is a significant time frame, particularly given the Stay was not granted and the child in this instance has been with the carers since birth and is now nine years old.

Whilst these time frames may not seem long when considering other QCAT matters and timeframes, we absolutely must remember that applications that relate to children must be heard within a timeframe that is suitable to a child. A 6 month period for a child or young person is an extensive period of time.

It is FCQ's view that in matters where a carer cannot request a Stay, that QCAT must take into consideration the Principals of the Child Protection Act (1999), specifically 5(b) (n) ' a delay in making a decision in relation to a child should be avoided, unless appropriate for the child' and set down a Compulsory Conference within a 6 weeks of the application being lodged.

FCQ would also like to comment on Section 4, Object (b) encourage the early and economical resolution of disputes before the tribunal, including, if appropriate, through alternative dispute resolution processes.

Prior to the commencement of QCAT in 2009, FCQ was a key stakeholder in the Children Services Tribunal. FCQ was a strong advocate for the need for alternative dispute resolution processes, therefore we were pleased with the QCAT model as it related to Compulsory Conferences.

As a whole, FCQ has found the use of Compulsory Conferences extremely beneficial for carers. They allow for a mutual grounding where parties can put their views forward and in many cases FCQ has seen successful resolution bought about by the use of Compulsory Conferences. The CST model did not have a lot of focus on mediation and therefore it seemed to promote a 'win/lose' scenario which often bought about a very adversarial process where carers and departmental workers would almost be set up against one another. The results from this would often be relationship breakdowns which were sometimes unrepairable because of the very nature of hearings. It is great therefore to see the shift in thinking that Compulsory Conferences has bought. Where more and more so both parities seem to be thinking about compromising before the Compulsory Conference even begins.

However there will always be the cases where the views are so far apart that a Compulsory Conference will not achieve a mediated outcome. It has been the experience of FCQ that often when resolution is not achieved in the first Compulsory Conference that parties will be sent off to complete actions of some sought and further Compulsory Conference will be set down. There has been cases where we have seen four Compulsory Conferences, and whilst we absolutely support mediated outcomes, there also needs to be a line drawn as to how many times parties are sent down the track of Compulsory Conference, where it seems clear that neither party are prepared to negotiate. In these instances, a full hearing needs to be set down to prevent any further delays in proceedings.

FCQ would like to comment on Section 4 (f) and (g)
FCQ was extremely concerned when we found out CST would no longer exist and QCAT would take its place. One of our main areas of concern was that the incredible expertise that sat within the CST would be lost and there would be people making decisions in relation to children that had no practice knowledge or expertise. FCQ was extremely happy when the objects of the QCAT act included the need to maintain specialist knowledge, expertise and experience of members and adjudicators. Without a doubt, the experience of FCQ in QCAT has been that all the Panel members on children's matters do have the knowledge, expertise and experience to be making the decisions relating to children. We have found Panel members to be extremely respectful, compassionate and yet objective and knowledgeable.

Question three
What if any amendments could be made to the QCAT Act, the QCAT regulations or the QCAT rules to promote accessibility.

FCQ believes that carers should not feel discouraged to attend Compulsory Conferences or Direction hearings via telelink. Whilst we appreciate that outcomes can be best achieved when parties are present in person, we also must take into account the cost and practical implications of carers outside of the Brisbane and South East Regions attending. Given the very nature and importance placed on Compulsory Conferences within QCAT, we would ask why as with hearings, Compulsory Conferences can not be heard in the area where the application originates from. We understand that the cost to QCAT could be excessive and would submit that not all Compulsory Conferences would need to be, however in cases where parties identify that it is important to be there in person and where it is not possible for all parties to travel to Brisbane, consideration should be given to the Compulsory Conference taking place in the applicants area.

In respect to Direction hearings, it would be FCQ's view that all direction hearings could be managed through telelinks. This would mean carers would not have to travel into the city which can be costly and time consuming.

Question four
What, if any amendments could be made to the QCAT legislation to further promote fairness

FCQ often experiences receiving Statement of Reasons the day before or even the morning of a Stay hearing. This provides very little time for a carer to properly read through the documentation and prepare a response. Initial responses to such documents can be very emotive to begin with and therefore require time to enable the applicant to read, process and then respond appropriately to the material.

FCQ would submit that all carers should receive the Statement of Reasons at least seven days prior to a Stay hearing and they should be able to then provide a written response that can also be lodged in QCAT so that Panel members have both views before them prior to coming into the Stay hearing.

Question seven
What impact, if any, do you think the establishment of QCAT has had on the quality and consistency of administrative decisions by government agencies and on the openness and accountability of public administration?

Whilst it has been FCQ's experience that the quality and consistency of decision making by the department of Communities, Child Safety and Disability Services has improved, it is not our view that this is because of the structure of QCAT. FCQ believes that it has been through our continued partnerships and communication with the Department that decisions are becoming more consistent and quality based. FCQ still experiences issues of carers not receiving appeal rights, however FCQ has a good relationship with the Department's Court Services and through communication with Court Services, these issues are almost always quickly resolved.

It is the view of FCQ that the Children Services Tribunal model actually allowed for better openness and accountability of public administration due to the intimate nature of it and the systems set up around it. For example under the CST model, FCQ use to attend quarterly Stakeholders meetings. In attendance at these meetings were the key players only. Agenda items were varied, however could include any systemic issues identified by stakeholders and it was FCQ's experience that the issues would be tabled, discussed and resolved. Although it is acknowledged that there have been some

stakeholders meetings for the Human Services branch of QCAT, these meetings in FCQ's experience have had a range of people from right across the Sector, some of whom have never experienced QCAT or where QCAT is not part of their core business or service delivery components. Therefore discussion is often very broad.

Question 10
Are provisions in enabling Acts requiring the tribunal to be constituted in a certain way necessary given the President's responsibilities and functions under the QCAT Act

It is FCQ's firm view that in respect to Children's Matters, the provisions in the enabling act (Child Protection Act 1999) which set out how a Panel deciding children's matters should be constituted should remain. Children's matters require specialist knowledge and expertise as life outcomes are being decided upon for children and young people. As stated earlier in this submission, one of FCQ's fears when QCAT was established was the loss of this expertise in the Panels; however this has not been our experience to date because of the provisions within the Child Protection Act. We would therefore strongly submit that no changes are made to this.

Question 12
Should legal representation as of right in QCAT proceedings be extended ? If yes, to what types of matters and in what circumstances
It has been the experience of FCQ that any carers who have requested leave to be represented by a lawyer have had this granted. This is pleasing given that the Department of Communities, Child Safety and Disability Services have expertise they can draw on during the proceedings from their Court Services. FCQ would not consider it to be fair or just if a carer were not granted the opportunity to be represented in Tribunal matters.

Question 13
How could free legal representation be extended to impecunious parties in QCAT proceedings
FCQ have directed carers to QPILCH on a number of occasions and whilst we appreciate the services provided, it must be noted that the level of expertise relating to Child Protection matters is minimal and therefore advice provided to carers on occasions has not been accurate. This has led to further delays in the process and very frustrated carers. FCQ would advocate that QPILCH have persons employed that have specialist knowledge in Children's Matters so carers can access accurate and timely advice. It must be noted that Child Safety are always represented in proceedings by staff within their Court Services who have exceptional knowledge in respect to the QCAT act, rules and regulations and the Child Protection Act (1999). Carers simply do not have this knowledge and therefore straight away parties are not on equal footings.

FCQ will only act as agent in cases where we believe that Child Safety have not made a decision that is in the best interests of a child or young person. So there are still many cases where carers present themselves to QCAT to appeal a decision on their own. Children's matters are emotive by their very nature as they involve relationships and children, therefore carers representing themselves in Tribunal are not always in the best position to fully put their views and case forward as they are too emotionally attached. There are many cases that FCQ has seen where even though we have not been in a position to act as agent, we absolutely believe in the right of the carer to be heard and the only way this could be done adequately is with the assistance of a third party.

We would therefore submit that QPILCH be funded to employ someone with expertise in respect to Children Matters so that carers can access accurate and timely advice.

Question 14

Taking into account the present restrictive fiscal environment in Queensland, what could be done to improve QCAT's regional and rural service delivery?

As stated earlier in this submission, it is FCQ's view that given the emphasis on Compulsory Conferences, that consideration be given by QCAT to holding some Compulsory Conferences in the area that the application has been lodged. It is accepted that this cannot be the case for all Compulsory Conferences, however in cases where both parties believe that holding a Compulsory Conference in person would be beneficial to the proceedings, submissions could be made to QCAT requesting this.

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