



Children

The use of alternative
dispute resolution
principles
in

Children Services Tribunal

Review Process

PACT conference-Day 3

Friday 27 march 2009

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Jenny Felton (member)

A free service helping young people
in care have their say

 Queensland Government
Department of Communities
Child Protection

About the CST

- ✓ Bound by the Children Services Tribunal Act 2000
- ✓ Is part of the Child Protection System supported by DJAG
- ✓ CST is not subject to the direction of the Minister of Justice in exercising its jurisdiction (s.9)
- ✓ Provides merit review of reviewable decisions (s.6(a))
(Child Protection Act 1999, Child Care Act 2002, Commission for Children & Young People and Child Guardian Act 2000, Adoption of Children Act 1964)
- ✓ Foster an atmosphere of review that enhances delivery of services to children (s.6(d))
- ✓ Multidisciplinary panel
(members with experience in administrative review, law, indigenous affairs, child health, child protection, child and family welfare, community services, youth advocacy and education)

WELFARE AND BEST INTERESTS OF THE CHILD ARE PARAMOUNT (s.7)

CST's place in the continuum of care for children

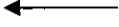
Prevention

Early Intervention

In care of the Chief
Executive D.C.S



QuickTime™ and a decompressor are needed to see this picture.



CST reviewable
decisions

Reviewable Decisions

Child Protection Act 1999

1. Restriction of contact and imposing conditions (s87(2))
Aggrieved party: person affected by the decision
2. Deciding in whose care to place a child (s86(2))
Aggrieved party: child's parent or the child
3. Removing a child from carer's care (s89)
Aggrieved party: carer as defined under section s.91 or the child given notice under s.90(4)
4. Not informing in whose care the child is and where living (s86(4))
Aggrieved party: parent given the notice or the child

Children Services Tribunal Act (2000)

5. Allows an application to be brought on behalf of the child (s.59)
eg. Foster carer, grandparent, family friend

Understanding the progressive legislation of the CST

1. United Nations Convention on the Rights of the Child
 - Article 3 a) the best interests of the child
 - Article 12 a) right of child to be heard in any matter including administrative and judicial proceedings
 - b) directly or indirectly
2. The Gillick Competent Child - the capacity of the Child
3. Balance between empowerment and protection
4. Spectrum of involvement of the Child (CST process)
5. Legislative capacity
6. Proceedings must be held in private (s.48)
7. Not bound by the rules of evidence (s.51.2(c))
8. Inquisitorial v adversarial
9. Can attempt dispute resolution throughout proceedings (s.79)
10. Culturally appropriate processes are enshrined in the Act

Principles of administering the CST Act 2000

- ✓ Welfare and best interests of child are paramount
- ✓ Child's views and wishes should be taken into account (age/ability to understand)
- ✓ Entitlement to protection from harm
- ✓ Respect of child's dignity and privacy
- ✓ Decisions made as quickly as possible
- ✓ Child entitled to start or participate in a review
- ✓ Aboriginal tradition and island custom taken into account
- ✓ Child Placement principle must be taken into account
- ✓ Relevant cultural practices taken into account
- ✓ Relationship between child and positive significant others preserved
- ✓ All relevant material should be before the Tribunal

Dispute Resolution in CST

- Phases of CST process
 - Preliminary conference
 - Stay/preliminary conference
 - Hearing
 - May be more than one PC to assist with resolving issues in dispute
 - Focus is to assist with enhancing relationships rather than increasing disputes

Preliminary conferences

- Presiding member will introduce panel, parties to application, outline process and seek understanding of application issues
- Identify and clarify issues in dispute
- Explore capacity for resolution at the PC
- Capacity to adjourn to allow parties to work further to resolve issues

The Tribunal is committed to ..

- ✓ Ongoing consultation with stakeholders and taking on board feedback from stakeholders
- ✓ Providing access to de-identified written reasons via Austlii website
- ✓ Engaging with statutory bodies in a way to enhance services to children
- ✓ Pro-actively providing accessible and applicable information to children and young people
- ✓ Actively seek feedback from all parties involved in the review process including children and young people (surveys)
- ✓ Conducting training and community education sessions to highlight rights of review (metropolitan and regional Qld)
- ✓ Comprehensive professional development of Tribunal members
- ✓ Actively participating in policy and legislative changes in Child Protection