

Queensland



**CHILDREN'S
COMMISSIONER AND
CHILDREN'S SERVICES
APPEALS TRIBUNALS ACT
1996**

**Reprinted as in force on 12 May 1999
(includes amendments up to Act No. 19 of 1999)**

Warning—see last endnote for uncommenced amendments

Reprint No. 1A

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Information about this reprint

This Act is reprinted as at 12 May 1999. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

This page is specific to this reprint. See previous reprint for information about earlier changes made under the Reprints Act 1992. A table of earlier reprints is included in the endnotes.

Also see endnotes for information about—

- **when provisions commenced**
- **provisions that have not commenced and are not incorporated in the reprint**
- **editorial changes made in earlier reprint.**

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TRIBUNALS ACT 1996**

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CHILDREN'S COMMISSIONER AND CHILDREN'S SERVICES APPEALS TRIBUNALS ACT 1996

[as amended by all amendments that commenced on or before 12 May 1999]

An Act to provide for the appointment of a Children's Commissioner and the establishment of the Children's Commission and children's services appeals tribunals, and for other purposes

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Children's Commissioner and Children's Services Appeals Tribunals Act 1996*.

Commencement

2. This Act commences on a day to be fixed by proclamation.

Dictionary

3.(1) The dictionary in schedule 2 defines particular words used in this Act.

(2) Definitions found elsewhere in the Act are signposted in the dictionary.

Crown bound

4. This Act binds the Crown.

PART 2—CHILDREN'S COMMISSIONER AND CHILDREN'S COMMISSION

Division 1—Preliminary

Children's Commissioner and Children's Commission

- 5.(1) There is to be a Children's Commissioner.
- (2) An office called the Children's Commission is established.
- (3) The commission consists of the commissioner and the staff of the commission.

Control of commission

- 6.(1) The commissioner controls the commission.
- (2) However, subsection (1) does not prevent the attachment of the commission to a department for ensuring the commission is given administrative support services for carrying out the commissioner's functions effectively and efficiently.

Independence of commissioner

7. Subject to sections 8(1) and 75,¹ the commissioner is not subject to the control or direction of a Minister or a department in carrying out the commissioner's functions.

¹ Sections 8(1) (Commissioner's functions) and 75 (Reports)

Division 2—Commissioner's functions

Commissioner's functions

8. The commissioner's functions are—

- (a) monitoring and reviewing, in collaboration with entities that deliver children's services, the provision of the services and suggesting ways of improving the services' quality, adequacy and effectiveness; and
- (b) promoting practices and procedures that uphold the principle that parents or legal guardians of children have the primary responsibility for the upbringing and development of their children; and
- (c) advising the Minister about developing and reviewing standards for child care and foster homes; and
- (d) receiving, and as appropriate, assessing and investigating complaints about the delivery of children's services and alleged offences involving children; and
- (e) monitoring, in cooperation with other entities, the procedures developed and implemented by the entities for handling complaints about the delivery of children's services and alleged offences involving children; and
- (f) cooperating with the Queensland Police Service and the Australian Bureau of Criminal Intelligence in the investigation of allegations about offences involving children, including, for example, sexual abuse of children, child pornography and child sex tourism; and
- (g) cooperating with the Queensland Police Service, the Australian Bureau of Criminal Intelligence and other relevant entities in their endeavours to eradicate sexual abuse of children, child pornography and child sex tourism; and
- (h) implementing and maintaining a program of official visitors to residential facilities; and
- (i) conferring and cooperating with other relevant entities including,

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for example, the Queensland Police Service, the Criminal Justice Commission and the ombudsman about a matter relating to any of the commissioner's other functions; and

- (j) liaising with the ombudsman about the exercise by the commissioner and the ombudsman of their respective functions in relation to complaints about the delivery of children's services; and
- (k) establishing tribunals to hear appeals of reviewable decisions; and
- (l) at the Minister's request, inquiring into any matter relating to children's services; and
- (m) conducting research and inquiring into matters relating to any of the commissioner's other functions; and
- (n) doing anything else—
 - (i) incidental, complementary or helpful to the commissioner's other functions; or
 - (ii) likely to enhance the effective and efficient performance of the commissioner's other functions.

Expert help

9. In performing the commissioner's functions, the commissioner may obtain help from anyone (an "**expert adviser**") who, in the commissioner's opinion, is appropriately qualified or experienced to give expert advice.

Division 3—Children's commissioner and staff of commission

Appointment of commissioner

10.(1) The commissioner is to be appointed by the Governor in Council.

(2) A person is qualified for appointment as the commissioner if the person—

- (a) has knowledge of, and experience in, child protection, community services, child welfare, education, law, medicine, psychology or

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social work; or

- (b) has other qualifications and experience the Minister considers appropriate.

(3) However, a person is not qualified for appointment as the commissioner if the person has been convicted of an indictable offence.²

(4) The *Criminal Law (Rehabilitation of Offenders) Act 1986*, sections 6, 8 and 9, do not apply in relation to the appointment of the commissioner.

(5) The commissioner is to be appointed under this Act, and not under the *Public Service Act 1996*.

Duration of appointment

11. The commissioner holds office for the term, not longer than 5 years, stated in the instrument of appointment.

Terms of appointment

12.(1) The commissioner is to be paid the remuneration and allowances decided by the Governor in Council.

(2) The commissioner holds office on the terms not provided for in this Act decided by the Governor in Council.

Preservation of rights

13.(1) This section applies if a public service officer is appointed as the commissioner.

(2) The person retains and is entitled to all rights that have accrued to the person because of the person's employment as a public service officer, or that would accrue in future to the person because of that employment, as if service as the commissioner were a continuation of service as a public

² Under the *Acts Interpretation Act 1954*, section 36, "indictable offence" is defined as follows—

‘ “**indictable offence**” includes an act or omission committed outside Queensland that would be an indictable offence if it were committed in Queensland.’.

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service officer.

(3) At the end of the person's term of office or on resignation—

- (a) the person is entitled to be appointed to an office in the public service at a salary level not less than the current salary level of an office equivalent to the office the person held before being appointed as commissioner; and
- (b) the person's service as commissioner is to be regarded as service of a like nature in the public service for deciding the person's rights as a public service officer.

Leave of absence

14. The Minister may grant leave of absence to the commissioner on the terms the Minister considers appropriate.

Resignation

15. The commissioner may resign by signed notice given to the Minister.

Termination of appointment

16.(1) The Governor in Council may terminate the appointment of the commissioner if the commissioner—

- (a) becomes incapable of satisfactorily performing the commissioner's duties; or
- (b) is guilty of misconduct that could warrant dismissal from the public service if the commissioner were an officer of the public service; or
- (c) is absent without the Minister's leave and without reasonable excuse, for 14 consecutive days or 28 days in a year.

(2) The Governor in Council must terminate the commissioner's appointment if the commissioner—

- (a) is convicted of an indictable offence; or

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- (b) engages in paid employment outside the duties of office without the Minister's approval.

Acting commissioner

17. The Governor in Council may appoint a person, who is qualified for appointment as the commissioner, to act as commissioner—

- (a) during a vacancy in the office; or
- (b) during any period, or all periods, when the commissioner is absent from duty or from the State or, for another reason, cannot perform the duties of the office.

Staff of commission

18.(1) The staff of the commission are to be employed under the *Public Service Act 1996*.

(2) The commission may arrange with the chief executive of a department, or with an authority of the State, for the services of officers or employees of the department or authority to be made available to it.

PART 3—COMPLAINTS AND INVESTIGATIONS

Making of complaints

19. A person (the “**complainant**”) may make a complaint to the commissioner about—

- (a) an alleged offence involving a child; or
- (b) the delivery of children's services.

Assessment of complaint

20.(1) On receipt of a complaint about a matter, the commissioner must—

- (a) if the complaint is about an alleged offence involving a child—immediately refer the complaint to the commissioner of the police service and, if the commissioner believes the complaint raises issues that are appropriate for investigation by another entity, refer the complaint to the other entity; or
- (b) if the complaint is about the delivery of children's services—assess the complaint to decide whether the complaint warrants further investigation by the commissioner or another entity.

(2) After referring a complaint to the commissioner of the police service or another entity, the commissioner must, if asked by the commissioner of police or other entity, assess the complaint to decide whether the complaint warrants further investigation.

Commissioner may require further information

21. The commissioner may, by written notice to the complainant, require further particulars of the complaint within the reasonable time stated in the notice.

Time for completion of assessment

22.(1) The commissioner must complete the assessment of the complaint—

- (a) if the commissioner is assessing the complaint at the request of the commissioner of police or another entity—within 28 days after receiving the request; or
- (b) if the complaint is about the delivery of children's services—within 28 days after the complaint is received.

(2) However, if the commissioner has asked the complainant to give further particulars of the complaint, the commissioner must assess the

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complaint within 28 days after the day the particulars are required to be provided.

Commissioner's obligation after assessment

23.(1) After the commissioner has completed the assessment of a complaint, the commissioner must—

- (a) if the complaint is about an alleged offence involving a child—give details of the commissioner's assessment to the commissioner of the police service or other entity that requested the assessment; or
- (b) if the complaint is about the delivery of children's services—
 - (i) decide to investigate the complaint further or, if the commissioner believes the complaint raises issues that are appropriate for investigation by another entity, refer the complaint to the other entity; or
 - (ii) decide the matter does not warrant further investigation.

(2) However, the commissioner may make a decision that a complaint does not warrant further investigation only if—

- (a) the commissioner reasonably believes the complaint is frivolous, vexatious or is not made in good faith; or
- (b) the subject matter of the complaint, or part of the complaint, is under investigation by another entity or has been or is the subject of a legal proceeding; or
- (c) the complaint can be dealt with in another way that is satisfactory to the complainant; or
- (d) the complainant has failed, without reasonable excuse, to provide further particulars of the complaint within the time stated in a notice given by the commissioner.

Investigation of complaint about the delivery of children's services

24.(1) This section applies if the commissioner has completed an assessment of a complaint about the delivery of children's services and decides to investigate the complaint further.

(2) The commissioner must, as soon as practicable, conduct an investigation to obtain further information about the complaint and decide what further action should be taken about the complaint.

(3) In conducting the investigation, the commissioner may, by written notice—

- (a) inform the entity that provides the service (the “**service provider**”) of the nature of the complaint and that an investigation is being carried out; and
- (b) invite the service provider to make a written submission about the complaint within the reasonable time stated in the notice.

(4) The service provider must cooperate with the commissioner in conducting the investigation.

Report on completion of investigation

25.(1) After completing the investigation, the commissioner must prepare a report about it.

(2) The report may recommend that the service provider or another entity take stated action.

(3) The commissioner must give a copy of the report to the Minister and the service provider or other entity.

Report may be tabled

26.(1) If the commissioner is satisfied no action is taken by the service provider or entity within a reasonable time, the commissioner may recommend to the Minister that a further report prepared by the commissioner about the matter be tabled in the Legislative Assembly.

(2) A copy of any submission made by the service provider or other

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entity in relation to the report under section 25 must be tabled with the further report prepared by the commissioner.

Complainant to be notified

27. As soon as practicable after referring a complaint to the commissioner of the police service or another entity or completing an assessment or investigation of the complaint, the commissioner must give written notice to the complainant of the action taken or recommended by the commissioner.

Relationship with ombudsman

28. This part does not prevent the ombudsman performing the ombudsman's principal function under the *Parliamentary Commissioner Act 1974*.³

PART 4—OFFICIAL VISITORS

Division 1—Appointment of official visitors

Appointment

29. The commissioner may appoint a general employee under the *Public Service Act 1996* as an official visitor if the commissioner considers the employee has the necessary expertise, experience or training to be an official visitor.

³ Under the *Parliamentary Commissioner Act 1974*, section 13(1), the ombudsman's principal function is investigating administrative action taken by, in or on behalf of an agency.

Limitation of official visitor's powers

30.(1) An official visitor is subject to the commissioner's directions in exercising the official visitor's powers.

(2) The powers of an official visitor may be limited—

- (a) under a regulation; or
- (b) under a condition of appointment; or
- (c) by written notice given by the commissioner to the official visitor.

Official visitor's appointment conditions

31.(1) An official visitor holds office on the conditions stated in the instrument of appointment.

(2) An official visitor ceases to hold office at the end of the term stated in the instrument of appointment.

(3) An official visitor may resign by signed notice of resignation given to the commissioner.

Official visitor's identity card

32.(1) The commissioner must give each official visitor an identity card.

(2) The identity card must—

- (a) contain a recent photograph of the official visitor; and
- (b) be signed by the official visitor; and
- (c) identify the person as an official visitor for this Act.

(3) A person who ceases to be an official visitor must return the person's identity card to the commissioner as soon as possible (but within 21 days) after the person ceases to be an official visitor, unless the person has a reasonable excuse.

Maximum penalty—10 penalty units.

(4) This section does not prevent the giving of a single identity card to a person for this and other Acts or for other purposes.

Production or display of official visitor's identity card

33.(1) An official visitor may exercise a power in relation to another person only if—

- (a) the official visitor first produces his or her identity card for the person's inspection; or
- (b) the official visitor has the official visitor's identity card displayed so it is clearly visible to the other person.

(2) However, if for any reason it is not practicable to comply with subsection (1) before exercising the power, the official visitor must produce the identity card for inspection by the person at the first reasonable opportunity.

Training of official visitors

34. It is the commissioner's duty to ensure official visitors are adequately and appropriately trained to carry out their functions effectively and efficiently.

Division 2—Functions and powers of official visitors

Functions

35. An official visitor's functions are—

- (a) inspecting residential facilities to find out whether the facilities provide an appropriate standard of care for residents; and
- (b) suggesting to the commissioner ways of improving the effectiveness and quality of care provided in residential facilities.

Powers

36.(1) An official visitor may—

- (a) at any reasonable time, enter and inspect a residential facility; and
- (b) confer alone with a resident or member of the staff of the facility;

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and

- (c) inspect any of the facility's documents relating to its operation;
and
- (d) provide the commissioner with advice and reports on any matter relating to the conduct of the facility.

(2) In exercising a power, an official visitor must act in a way that preserves, as far as practicable, the privacy of residents of the facility.

PART 5—CHILDREN'S SERVICES APPEALS TRIBUNAL

Division 1—Tribunal panel and members

Appointment of tribunal panel members

37.(1) The Minister may appoint qualified individuals as members of a panel of children's services appeals tribunal members (the "**tribunal panel**").

(2) The tribunal panel is to consist of the number of tribunal panel members the Minister considers necessary.

(3) A person is qualified for appointment as a tribunal panel member if the person—

- (a) has knowledge of, and experience in, child protection, community services, child welfare, education, law, medicine, psychology or social work; or
- (b) has other qualifications and experience the Minister considers appropriate.

(4) However, the following persons are not qualified for appointment as tribunal panel members—

- (a) an officer or employee of the department;

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- (b) a person convicted of an indictable offence;
- (c) a person refused a certificate of approval as a care provider or licensee under the *Child Care Act 1991*.

(5) The *Criminal Law (Rehabilitation of Offenders) Act 1986*, sections 6, 8 and 9, do not apply in relation to the appointment of a tribunal panel member.

Duration of appointment

38.(1) A tribunal panel member may be appointed for a term not longer than 3 years.

(2) A tribunal panel member may resign by signed notice of resignation given to the Minister.

Conditions of appointment

39.(1) A tribunal panel member is to be paid the remuneration and allowances decided by the Governor in Council.

(2) A tribunal panel member holds office on the conditions not provided in this Act as are decided by the Governor in Council.

Removal from office

40. The Minister may, by written notice given to a tribunal panel member, remove the member from office if the member—

- (a) is incapable of properly discharging the functions of a tribunal member; or
- (b) is unfit to hold the office.

Division 2—Jurisdiction, establishment and composition of tribunals

Tribunal's jurisdiction

41. A tribunal has jurisdiction to hear an appeal against a reviewable decision.

Commissioner to establish tribunal

42.(1) The commissioner is to establish a children's services appeals tribunal to hear an appeal against a reviewable decision.

(2) The commissioner must, within 3 days of its establishment, give notice of the tribunal panel members constituting a tribunal to—

- (a) the parties to the appeal; and
- (b) the members.

Composition of tribunals

43.(1) A tribunal is to consist of—

- (a) the commissioner and 2 tribunal panel members chosen by the commissioner; or
- (b) 3 tribunal panel members chosen by the commissioner.

(2) The commissioner must not be a member of a tribunal to hear an appeal against a reviewable decision if the commissioner has, under part 3, assessed or investigated a complaint by the appellant in relation to the decision.

Chairperson

44. The chairperson of a tribunal is—

- (a) the commissioner; or
- (b) if the commissioner is not a member of the tribunal—the tribunal panel member nominated by the commissioner.

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Division 3—Appeals to tribunal

Commencing appeals

45.(1) An appeal must be made within 28 days after receipt of written notice of the reviewable decision or within the further period the commissioner allows.

(2) An appeal must be—

- (a) made to the commissioner in the approved form; and
- (b) accompanied by the fee prescribed under a regulation.

Parties to appeal

46.(1) The parties to an appeal are—

- (a) the appellant; and
- (b) the person who made the reviewable decision; and
- (c) another person granted leave to become a party.

(2) A tribunal may, on application, grant a person leave to become a party to an appeal if the person has a genuine concern in the subject matter of the appeal.

(3) A person found by a tribunal to be unjustifiably interfering in a matter is not entitled to become a party in relation to the matter.

(4) If directed by a tribunal before or during the hearing of an appeal, the appellant must give notice of the appeal to a stated person.

(5) A tribunal may, before or during the hearing of an appeal, join a person as a party to the appeal and require the appellant to give the person notice of the joinder.

(6) If 2 or more appeals are considered by a tribunal to arise from the same circumstance, it may deal with all of the appeals at the same hearing.

Representative appeals

47.(1) A tribunal may, on application, give leave for an appeal to be dealt with as a representative appeal if it is satisfied—

- (a) 2 or more persons are entitled to make an appeal arising from the same, similar or related circumstances as those to which the application relates but their joinder as appellants is impracticable; and
- (b) the applicant is 1 of the persons entitled to appeal and the others consent to a representative appeal; and
- (c) the application is made in good faith; and
- (d) the applicant is capable of adequately representing the interests of all persons entitled to appeal; and
- (e) a representative appeal would be to the advantage of the persons entitled to appeal; and
- (f) a representative appeal would be an efficient and effective way to deal with the claims of the persons entitled to appeal.

(2) A tribunal may make orders about the making, notification, conduct and deciding of a representative appeal.

(3) The decision of a tribunal on a representative appeal is binding on all persons entitled to appeal.

Appeals to decide matter afresh

48. A proceeding on an appeal is to be by way of deciding the matter afresh, unaffected by the reviewable decision.

Powers of tribunal on appeal

49. On the hearing of an appeal, a tribunal may—

- (a) affirm, vary or set aside the reviewable decision; or
- (b) set aside the reviewable decision and substitute its own decision; or
- (c) set aside the reviewable decision and return the issue to the

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decision maker for reconsideration in accordance with matters stated by the tribunal.

Operation and implementation of decisions pending appeal

50.(1) The tribunal may grant a stay of a decision appealed against to secure the effectiveness of the appeal.

(2) A stay may be granted on conditions the tribunal considers appropriate and has effect for the period stated by the tribunal.

(3) The period of a stay must not extend past the time when the tribunal decides the appeal.

(4) An appeal against a reviewable decision does not affect the operation of the decision or carrying out of the decision unless the decision is stayed.

Division 4—Proceedings before a tribunal

Procedure

51.(1) When conducting a hearing of an appeal, the tribunal must—

- (a) observe natural justice; and
- (b) act as quickly, and with as little formality and technicality, as is consistent with a fair and proper consideration of the issues before it.

(2) In conducting the hearing, the tribunal—

- (a) is not bound by the rules of evidence; and
- (b) may inform itself of any thing in the way it considers appropriate; and
- (c) may decide the procedures to be followed for the hearing.

(3) However, the tribunal must comply with this division and any procedural rules.

(4) The tribunal must take the measures that are reasonably practicable—

- (a) to ensure the parties to the hearing understand the nature of the

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assertions made and their legal implications; and

- (b) if asked to do so—to explain to the parties any aspect of the tribunal procedures, or any tribunal decision or ruling, relating to the proceeding; and
- (c) to ensure the parties have the fullest opportunity practicable to be heard.

Preliminary conferences

52.(1) Before starting to hear an appeal, a tribunal may convene a preliminary conference between the parties to the proceeding.

(2) The conference must be presided over by a tribunal member.

(3) The tribunal member may make a decision about the proceeding only if—

- (a) the parties agree to the decision; and
- (b) the tribunal member is satisfied the decision is in the best interests of the person whose interests are considered by the member to be paramount.

(4) The tribunal member's decision has effect as if it were a tribunal's decision.

Venues

53. A tribunal is to sit at the times and places the chairperson decides.

Hearing to be held in private

54. The proceeding before a tribunal is not open to the public unless the chairperson decides, in the special circumstances of the particular proceeding, it is in the public interest for the proceeding to be open to the public.

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Publication of names etc.

55.(1) A person must not publish, in a public way, information that identifies, or is likely to identify, a person—

- (a) who appears as a witness before the tribunal in the proceeding; or
- (b) to whom the proceeding relates; or
- (c) who is mentioned or otherwise involved in the proceeding.

Maximum penalty—100 penalty units or 1 year's imprisonment.

(2) However, a person does not commit an offence against subsection (1) if—

- (a) the tribunal consents to the publication of the information; or
- (b) the person includes the name in a report given to the Minister under section 75.⁴

Right of appearance

56. The parties to the proceeding may appear at the hearing in person or, by leave of the tribunal, be represented by a lawyer or agent.

Questions to be decided by majority of tribunal

57. A question before the tribunal must be decided by a majority of the tribunal members.

Procedural powers of tribunal

58.(1) The tribunal may, by written notice (an “**attendance notice**”), require a person to attend the hearing at a stated time and place—

- (a) to give evidence; or
- (b) to produce a stated document or thing.

⁴ Section 75 (Reports)

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- (2) At the hearing, the tribunal may proceed in the absence of a party.
- (3) The tribunal may adjourn the hearing from time to time.

Inspection of documents

59.(1) If a document or thing is produced to the tribunal at the hearing, the tribunal may—

- (a) inspect the document or thing; and
- (b) make copies of, photograph, or take extracts from, the document or thing if it is relevant to the hearing.

(2) The tribunal may also take possession of the document or thing, and keep it while it is necessary for the hearing.

(3) While it keeps a document or thing, the tribunal must permit a person otherwise entitled to possession of the document or thing to inspect, make copies of, photograph, or take extracts from, the document or thing, at the reasonable time and place the tribunal decides.

Offences—hearings

60.(1) A person served with an attendance notice must not—

- (a) fail, without reasonable excuse, to attend as required by the notice; or
- (b) fail, without reasonable excuse, to continue to attend as required by the chairperson until excused from further attendance.

Maximum penalty—10 penalty units.

(2) A person appearing as a witness at the hearing must not—

- (a) fail to take an oath or make an affirmation when required by the chairperson; or
- (b) fail, without reasonable excuse, to answer a question the person is required to answer by a tribunal member; or

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- (c) fail, without reasonable excuse, to produce a document or thing the person is required to produce by an attendance notice.

Maximum penalty—10 penalty units.

Self-incrimination

61. It is a reasonable excuse for a person to fail to answer a question or to produce a document if answering the question or producing the document might tend to incriminate the person.

False or misleading information

62.(1) A person must not state anything to the tribunal that the person knows is false or misleading in a material particular.

Maximum penalty—10 penalty units.

(2) It is enough for a complaint for an offence against subsection (1) to state the statement made was false or misleading to the person's knowledge.

False or misleading documents

63.(1) A person must not give to the tribunal a document containing information the person knows is false, misleading or incomplete in a material particular.

Maximum penalty—10 penalty units.

(2) Subsection (1) does not apply to a person who, when giving the document—

- (a) informs the tribunal, to the best of the person's ability, how it is false, misleading or incomplete; and
- (b) gives the correct information to the tribunal if the person has, or can reasonably obtain, the correct information.

(3) A complaint against a person for an offence against subsection (1) is sufficient if it states the document was false, misleading or incomplete to the person's knowledge.

Contempt of tribunal

64. A person must not—

- (a) insult the tribunal or a tribunal member; or
- (b) deliberately interrupt the tribunal's hearing; or
- (c) create or continue or join in creating or continuing, a disturbance in or near a place where the tribunal is conducting the hearing; or
- (d) do anything that would be contempt of court if the tribunal were a judge acting judicially.

Maximum penalty—10 penalty units.

Division 5—Appeals to the District Court

Effect of tribunal's decision and rights of appeal

65.(1) A tribunal's decision is final and binding on the parties.

(2) However, a party may appeal against a tribunal's decision on a question of law by filing an appeal in a registry of the District Court within 28 days after the party is given notice of the decision.

(3) The District Court may at any time extend the period for filing an appeal.

Powers of District Court

66. On the hearing of an appeal, the District Court may—

- (a) affirm, vary or set aside the tribunal's decision; or
- (b) substitute, or make, in addition, a decision that should have been made in the first instance; or
- (c) remit the matter to a tribunal for rehearing; or
- (d) make any order about costs or any other matter the court considers appropriate.

Operation and implementation of decisions pending appeal

67.(1) The District Court may make an order granting a stay of a decision appealed against to secure the effectiveness of the appeal.

(2) An order may be made on conditions the court considers appropriate and has effect for the period stated by the court.

(3) The period of a stay under an order must not extend past the time when the court decides the appeal.

(4) An appeal against a decision does not affect the operation of the decision or carrying out of the decision unless the decision is stayed.

Division 6—Miscellaneous

Protection of members, legal representatives and witnesses

68.(1) Tribunal members have, in the performance of their duties for the tribunal, the same protection and immunity as a judge of the Supreme Court.

(2) A lawyer or other person appearing before a tribunal for someone else has the same protection and immunity as a barrister appearing for a party in a proceeding in the Supreme Court.

(3) A person required to attend, or appearing before a tribunal as a witness, has the same protection as a witness in a proceeding in the Supreme Court.

Allowance to witnesses

69. A witness who appears at a tribunal hearing is entitled to be paid the allowance prescribed under a tribunal rule for attendance at the hearing or, if no allowance is prescribed, the reasonable allowance decided by the chairperson.

Costs

70.(1) Each party to a hearing must bear the party's own costs of the hearing.

(2) However, a tribunal may make an order about the payment of a party's costs if in particular circumstances it is satisfied it is appropriate to do so.

Tribunals to keep records of proceedings

71.(1) A tribunal must keep a record of its proceeding.

(2) The record may be kept in the way the tribunal considers appropriate.

Authentication of documents

72. A document requiring authentication by a tribunal is sufficiently authenticated if it is signed by a tribunal member.

Judicial notice of certain signatures

73. Judicial notice must be taken of the signature of a tribunal member if it appears on a document issued by the tribunal.

Rule-making power

74.(1) The commissioner may make rules, not inconsistent with this Act, about the practice and procedure of tribunals.

(2) A rule has no effect unless approved by the Governor in Council.

Reports

75.(1) At the request of the Minister, the commissioner must give to the Minister a report on the operations of tribunals for the period stated in the request.

(2) The report must deal with the matters the Minister states in the request.

PART 6—MISCELLANEOUS

Confidentiality

76.(1) This section applies to a person who—

- (a) is or has been—
 - (i) the commissioner; or
 - (ii) a member of the staff of the commission; or
 - (iii) an expert adviser; or
 - (iv) an official visitor; or
 - (v) a tribunal member; and
- (b) in that capacity acquired information about another person's affairs or has access to, or custody of, a document about another person's affairs.

(2) A person to whom this section applies must not disclose the information, or give access to the document, to anyone else.

Maximum penalty—100 penalty units or 1 year's imprisonment.

(3) However, a person may disclose the information or give access to the document to someone else—

- (a) to the extent necessary to perform the person's functions under or in relation to this Act; or
- (b) if the disclosure or giving of access is otherwise required or permitted by law; or
- (c) if the person to whom the information or document relates agrees to the disclosure or giving of access and the person is an adult when the agreement is given.

Protection from civil liability for certain officials

77.(1) This section applies to a person who is or has been—

- (a) the commissioner (other than in the commissioner's capacity as a tribunal member); or

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- (b) a member of the staff of the commission; or
- (c) an official visitor; or
- (d) an expert adviser.

(2) The person does not incur civil liability for an act done, or omission made, honestly and without negligence under this Act.

(3) If subsection (2) prevents a civil liability attaching to the person, the liability attaches instead to the State.

Impersonation of commissioner or official visitor

78. A person must not pretend to be the commissioner or an official visitor.

Maximum penalty—50 penalty units.

Delegation by commissioner

79. The commissioner may delegate the commissioner's powers under this Act to an appropriately qualified officer of the commission.

Approval of forms

80. The commissioner may approve forms for use under this Act.

Annual report

81.(1) Within 4 months after the end of each financial year, the commissioner must give to the Minister a report on the administration of this Act during the year.

(2) The Minister must table a copy of the report in the Legislative Assembly within 14 sitting days after the Minister receives it.

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Review of Act

82.(1) The Minister must review this Act within 5 years after its commencement.

(2) To help the Minister review this Act, the commissioner must prepare a report about the operation of the commission and tribunals.

(3) In reviewing this Act, the Minister must have regard to the commissioner's report.

Regulation-making power

83. The Governor in Council may make regulations under this Act.

PART 7—TRANSITIONAL PROVISIONS

Continuation of tribunal proceedings

85.(1) This section applies if, before the commencement of this section, a person—

- (a) appealed to a tribunal under the *Adoption of Children Act 1964* against an assessment under that Act; or
- (b) applied to a tribunal under the *Child Care Act 1991* for a review of a decision of the chief executive under that Act.

(2) If the tribunal had not started to hear the matter, the matter is to be heard by a tribunal established under this Act.

(3) If the tribunal had started to hear the matter but had not finished the hearing, the tribunal is to finish the hearing as if this Act had not been enacted.

SCHEDULE

DICTIONARY

section 3

“appropriately qualified”, for an officer of the commission to whom a power under this Act may be delegated, includes having the qualifications, experience or standing appropriate to exercise the power.

Example of ‘standing’—

An officer's classification level in the public service.

“approved form” see section 80.

“attendance notice” see section 58.

“child” means an individual under 18.

“child sex tourism” means tourism organised to facilitate, whether directly or indirectly, a sexual relationship with a child.

“children's services” means a service provided under or in relation to children's services legislation.

“children's services legislation” means—

- (a) the *Adoption of Children Act 1964*; or
- (b) the *Child Care Act 1991*; or
- (c) the *Children's Services Act 1965*; or
- (d) the *Family Services Act 1987*.

“commission” means the Children's Commission established under this Act.

“commissioner” means the Children's Commissioner appointed under this Act.

“complainant” see section 19.

“expert adviser” see section 9.

SCHEDULE (continued)

“foster home” means a home where a foster parent has in his or her charge a child in care under the *Children's Services Act 1965*.

“offence involving a child” does not include an offence involving a child if the child is the alleged offender.

“official visitor” means person appointed as an official visitor under this Act.

“ombudsman” means the Parliamentary Commissioner for Administrative Investigations appointed under the *Parliamentary Commissioner Act 1974*.

“residential facility” means a place where residential accommodation is provided by the State, or an entity funded by the State, for children who are in the care of the chief executive or entity.

“reviewable decision” means—

- (a) a decision or assessment mentioned in the *Adoption of Children Act 1964*, section 14D(1); or
- (b) a decision mentioned in the *Child Care Act 1991*, section 41(1);
or
- (c) a reviewable decision under the *Children's Services Act 1965*.

“service provider” see section 24.

“tribunal” means a children's services appeals tribunal established under this Act.

“tribunal member” means a member of a tribunal, and includes the commissioner.

“tribunal panel” means the panel of children's services appeals tribunal members mentioned in section 37.5

“tribunal panel member” means a member of the tribunal panel.

⁵ Section 37 (Appointment of tribunal panel members)

SCHEDULE (continued)

“tribunal rule” means a rule made under section 74.⁶

⁶ Section 74 (Rule-making power)

ENDNOTES

1 Index to endnotes

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2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 12 May 1999. Future amendments of the Children's Commissioner and Children's Services Appeals Tribunals Act 1996 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

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3 Key

Key to abbreviations in list of legislation and annotations

AIA	=	Acts Interpretation Act 1954	prev	=	previous
amd	=	amended	(prev)	=	previously
amdt	=	amendment	proc	=	proclamation
ch	=	chapter	prov	=	provision
def	=	definition	pt	=	part
div	=	division	pubd	=	published
exp	=	expires/expired	R[X]	=	Reprint No.[X]
gaz	=	gazette	RA	=	Reprints Act 1992
hdg	=	heading	reloc	=	relocated
ins	=	inserted	renum	=	renumbered
lap	=	lapsed	rep	=	repealed
notfd	=	notified	s	=	section
o in c	=	order in council	sch	=	schedule
om	=	omitted	sdiv	=	subdivision
p	=	page	SIA	=	Statutory Instruments Act 1992
para	=	paragraph	SL	=	subordinate legislation
prec	=	preceding	sub	=	substituted
pres	=	present	unnum	=	unnumbered

4 Table of earlier reprints

TABLE OF EARLIER REPRINTS

[If a reprint number includes a roman letter, the reprint was released in unauthorised, electronic form only.]

Reprint No.	Amendments included	Reprint date
1	none	6 February 1997

5 Tables in earlier reprints

TABLES IN EARLIER REPRINTS

Name of table	Reprint No.
Corrected minor errors	1

6 List of legislation

Children's Commissioner and Children's Services Appeals Tribunals Act 1996 No. 51

date of assent 20 November 1996

ss 1–2 commenced on date of assent

remaining provisions commenced 20 December 1996 (1996 SL No. 392)

as amended by—

Child Protection Act 1999 No. 10 ss 1, (2)(2), 205 sch 3

date of assent 30 March 1999

ss 1–2 commenced on date of assent

remaining provisions not yet proclaimed into force

Statute Law (Miscellaneous Provisions) Act 1999 No. 19 ss 1–3 sch

date of assent 30 April 1999

commenced on date of assent

7 List of annotations

PART 2—CHILDREN'S COMMISSIONER AND CHILDREN'S COMMISSION

Application of Financial Administration and Audit Act 1977

s 7A ins 1999 No. 10 s 205 sch 3

Commissioner's functions

s 8 amd 1999 No. 10 s 205 sch 3

PART 5—CHILDREN'S SERVICES APPEALS TRIBUNAL

Division 5—Appeals to the District Court

div hdg amd 1999 No. 19 s 3 sch

Effect of tribunal's decision and rights of appeal

s 65 amd 1999 No. 19 s 3 sch

Powers of District Court

s 66 amd 1999 No. 19 s 3 sch

Operation and implementation of decisions pending appeal

s 67 amd 1999 No. 19 s 3 sch

PART 7—TRANSITIONAL PROVISIONS

pt hdg amd R1 (see RA s 7(1)(k))

Consequential amendments

s 84 om R1 (see RA s 40)

SCHEDULE 1—CONSEQUENTIAL AMENDMENTS

om R1 (see RA s 40)

SCHEDULE—DICTIONARY

def “**children’s services legislation**” amd 1999 No. 10 s 205 sch 3

def “**foster home**” om 1999 No. 10 s 205 sch 3

def “**reviewable decision**” amd 1999 No. 10 s 205 sch 3

8 Provisions that have not commenced and are not incorporated in the reprint

The following provisions are not incorporated in this reprint because they had not commenced before the reprint date (see Reprints Act 1992, s 5(c)).

Child Protection Act 1999 No. 10 s 205 sch 3 reads as follows—

CHILDREN’S COMMISSIONER AND CHILDREN’S SERVICES APPEALS TRIBUNALS ACT 1996

1. Part 2, division 1—

insert—

‘Application of Financial Administration and Audit Act 1977

‘7A. The commission is a statutory body under the *Financial Administration and Audit Act 1977*.’.

2. Section 8(c), ‘foster homes’—

omit, insert—

‘care services’.

3. Schedule, definition “children’s services legislation”, paragraph c)—

omit, insert—

‘(c) the *Child Protection Act 1999*; or’.

4. Schedule, definition “foster home”—

omit.

5. Schedule, definition “reviewable decision”, paragraph (c)—

omit, insert—

‘(c) an appealable decision under the *Child Protection Act 1999*.’.