

Queensland



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

**Act No. 51 of 1996**



Queensland



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

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**DICTIONARY**

Queensland



## **Children's Commissioner and Children's Services Appeals Tribunals Act 1996**

**Act No. 51 of 1996**

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**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**

*[Assented to 20 November 1996]*

**The Parliament of Queensland enacts—**

## **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<sup>1</sup> in schedule 2 defines particular words used in this Act.

**(2)** Definitions found elsewhere in the Act are signposted in the dictionary.<sup>2</sup>

### **Crown bound**

**4.** This Act binds the Crown.

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<sup>1</sup> In some Acts, definitions are contained in a dictionary that appears as the last schedule and forms part of the Act—see *Acts Interpretation Act 1954*, section 14(4).

<sup>2</sup> The signpost definitions in the dictionary alert the reader to the terms defined elsewhere in the Act and tell the reader where these definitions can be found. For example, the definition ‘“attendance notice” see section 58’, tells the reader there is a definition of the term “attendance notice” in section 58.



## **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,<sup>3</sup> the commissioner is not subject to the control or direction of a Minister or a department in carrying out the commissioner's functions.

### *Division 2—Commissioner's functions*

#### **Commissioner's functions**

- 8.** The commissioner's functions are—
- (a)** monitoring and reviewing, in collaboration with entities that

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<sup>3</sup> Sections 8(1) (Commissioner's functions) and 75 (Reports)

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, 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 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.<sup>4</sup>

(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 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

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<sup>4</sup> 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.'

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
- (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 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 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*.<sup>5</sup>

**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.

**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

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<sup>5</sup> 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.

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; 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.

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## 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;
- (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.

***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 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 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.

### **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.<sup>6</sup>

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<sup>6</sup> Section 75 (Reports)

**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.

**(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
- (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 a 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 the registry of a District Court within 28 days after the party is given notice of the decision.

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

### **Powers of District Court**

66. On the hearing of an appeal, a 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) A District Court may make an order granting a stay of a decision appealed against to secure the effectiveness of the appeal.

(2) A 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
- (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.

**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—CONSEQUENTIAL AMENDMENTS AND  
TRANSITIONAL PROVISIONS****Consequential amendments**

**84.** Schedule 1 amends the Acts mentioned in it.

**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 1****CONSEQUENTIAL AMENDMENTS**

section 84

**ADOPTION OF CHILDREN ACT 1964****1. Section 6, definition “the tribunal” —***omit.***2. Section 6 —***insert —*

‘**“tribunal”** means a children’s services appeals tribunal established under the *Children’s Commissioner and Children’s Services Appeals Tribunals Act 1996*.’.

**3. Sections 8 to 9 —***omit.***4. Section 13A(4) —***renumber* as section 13A(5).**5. Section 13A —***insert —*

‘(4) Within 14 days after the removal of a person’s name from the adoption list, the director must give written notice of the removal and the reasons for it to the person.’.

## SCHEDULE 1 (continued)

**6. Section 13D(1)(b), 'the tribunal'—***omit, insert—*

'a tribunal'.

**7. After section 14C—***insert—***'Appeals to tribunal about adoption lists and assessments****'14D.(1)** This section applies if the director—

- (a) makes a decision to remove a person's name from the adoption list; or
- (b) makes an assessment that—
  - (i) a person is not of good repute or a fit and proper person to become an adoptive parent; or
  - (ii) the interests and welfare of a child to be adopted will not be promoted by making an adoption order in favour of a person.

**'(2)** The person may appeal to a tribunal against the decision or assessment.'**8. Schedule 2—***omit.***CHILD CARE ACT 1991****1. Section 3, definition "Tribunal"—***omit.*

## SCHEDULE 1 (continued)

**2. Section 3—***insert—*

‘**“tribunal”** means a children’s services appeals tribunal established under the *Children’s Commissioner and Children’s Services Appeals Tribunals Act 1996*.’.

**3. Section 41(1), from ‘apply’—***omit, insert—*

‘appeal to a tribunal against the decision.’.

**4. Section 41(2) to (7)—***omit, insert—*

‘(2) If the chief executive fails to make a decision about an application mentioned in subsection (1)(a) or (d) within the prescribed period—

- (a) the failure is taken to be a decision by the chief executive to refuse the application; and
- (b) the applicant is taken to have received notice of the refusal on the last day of the prescribed period.

‘(3) In this section—

**“prescribed period”** means the period prescribed under a regulation for this section.’.

**5. Sections 42 and 43—***omit.***6. Part 6—***omit.*

## SCHEDULE 1 (continued)

**CHILDREN'S SERVICES ACT 1965****1. Section 8—**

*insert—*

‘**“aggrieved person”**, for a reviewable decision, means a person stated opposite the decision in the schedule.

**“reviewable decision”** means a decision stated in the schedule.’.

**2. After section 131—**

*insert—*

**‘Information about whereabouts of a child in care**

**‘131A.(1)** A parent of a child in care may ask the director for information about the child’s whereabouts.

**‘(2)** The director must give the parent the information unless, in the director’s opinion, it is not in the best interests of the child to provide the information.’.

**3. After section 143A—**

*insert—*

**‘Director to give notice of reviewable decision**

**‘143B.(1)** Within 14 days after making a reviewable decision, the director must give written notice of the making of the decision and the reasons for it to the aggrieved person for the decision.

**‘(2)** If the director fails to make a decision about a relevant application within the prescribed period—

- (a) the failure is taken to be a decision by the director to refuse the application; and
- (b) the applicant is taken to have received notice of the refusal on the



## SCHEDULE 1 (continued)

last day of the prescribed period.

‘(3) In this section—

“**prescribed period**” means the period prescribed under a regulation for this section.

“**relevant application**” means—

- (a) an application under section 104 for approval to act as a foster parent; or
- (b) a request under section 131A for information about the whereabouts of a child in care; or
- (c) an application under section 134 for approval for a child in care to leave the State.’

‘**Appeal against reviewable decision**

‘143C. An aggrieved person for a reviewable decision may appeal to a tribunal against the decision.’

**4. After section 153—**

*insert—*

‘**SCHEDULE**

‘**REVIEWABLE DECISIONS AND AGGRIEVED PERSONS**

section 8, definitions “**aggrieved person**” and “**reviewable decision**”

<b>Reviewable decisions</b>	<b>Aggrieved person</b>
Revocation of approval in relation to licensed institution (s 39)	The institution’s governing authority

SCHEDULE 1 (continued)

Ordering a person to do or refrain from doing any act or thing pertaining to a matter or object specified in a protective supervision order (s 56(1)(b))	The child, the child's parents or guardian or another person having custody of the child
Decision to make use of facilities and services to further the best interests of a child in care (s 58)	The child or a parent or relative of the child
Imposition of conditions on the use of facilities and services (s 58(1A))	The child or a parent or relative of the child
Placing a child in care in the charge of a foster parent (s 103(1))	The child or the child's parents
Removal of a child in care from charge of foster parent (s 103(1A)(b))	The child or the child's parents or foster parents
Refusal to approve person to act as foster parent (s 104(1))	The applicant
Revocation of approval of person to act as foster parent (s 104(4))	The former foster parent
Placing of child in care (s 105(2))	The child or the child's parents or foster parents
Refusal to give information to the parent of a child in care about the child's whereabouts (s 131A(2))	The parent
Issue of an order that a parent or parents of a child in care should not have access to the child (s 132(2)(a))	The child or the child's parents
Issue of an order about the access of a parent or parents of a child in care to the child subject to conditions (s 132(2)(b))	The child or the child's parents

## SCHEDULE 1 (continued)

Refusal to give approval for a person other than a parent of a child in care to visit or communicate with a child (s 132(4))	The child, the child's parents or the person refused approval
Refusal to give approval for a child in care to leave the State (s 134(1))	The child, the child's parents or another person having custody of the child
Imposition of conditions on an approval for a child in care to leave the State (s 134(1))	The child, the child's parents or another person having custody of the child
Variation of conditions on child in care leaving the State (s 134(1A))	The child, the child's parents or another person who has custody of the child
Refusal to declare a child from another State to be admitted to the director's care and protection (s 134(4))	The child, the child's parents or the applicant
Removal of a child in care under a declaration under section 134(4) (s 134(8))	The child, the child's parents or the person to whose charge the child will be returned '.

**PUBLIC SERVICE ACT 1996****1. Schedule 1—**

*renumber* items 3 to 11 as items 4 to 12.

**2. Schedule 1—**

*insert—*

'3 Children's Commission Children's commissioner'.

## SCHEDULE 2

### 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.

## SCHEDULE 2 (continued)

**“expert adviser”** see section 9.

**“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.<sup>7</sup>

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<sup>7</sup> Section 37 (Appointment of tribunal panel members)

## SCHEDULE 2 (continued)

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

**“tribunal rule”** means a rule made under section 74.<sup>8</sup>

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<sup>8</sup> Section 74 (Rule-making power)