



Queensland Public Interest Law Clearing House Incorporated

Queensland Child Protection Commission of Inquiry Discussion Paper

Feedback

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INTRODUCTION

The Queensland Public Interest Law Clearing House Incorporated (**QPILCH**) coordinates pro bono resources to provide legal services to people experiencing disadvantage in civil law matters.

Two QPILCH services made a combined submission¹ to the Queensland Child Protection Commission of Inquiry (**the Commission**):

- The **Self Representation Service**² offers assistance to people representing themselves in the Queensland Civil and Administrative Tribunal (**QCAT**) in a variety of areas within QCAT's jurisdiction, including child protection; and
- The **Homeless Persons' Legal Clinic (HPLC)**³ is a partnership between QPILCH and private law firms to deliver the only targeted civil legal services to Queenslanders experiencing homelessness.

QPILCH will respond to questions in the Queensland Child Protection Commission of Inquiry Discussion Paper,⁴ which echo the ambit of our submission to the Commission.

We support the Commissioner's assessment that there is a "yawning gap" between what the child protection system should be doing and what it actually does. We also share the Commissioner's concern at the failure of the current system to give preference to early intervention, to support and provide assistance for the family before and after a notification, and to adequately prepare children in care for the transition to independence.⁵

We note the Commission's general acknowledgment that more services to prevent families and children requiring a tertiary response are required.⁶

¹ Submission of the Queensland Public Interest Law Clearing House Incorporated to the Queensland Child Protection Commission of Inquiry (**QPILCH Submission**) (September 2012) available from: http://www.qpilch.org.au/dbase_upl/QPILCH_submission_to_Child_Protection_Inquiry_2012.pdf.

² The Self Representation Service provides discrete task assistance to people during 1 hour appointments staffed by pro bono lawyers. Assistance is provided to people throughout the progress of their proceeding, to help them understand the law, the rights and perspectives of the other party, observe tribunal rules and procedures, and to present their case in the best possible manner.

³ By coordinating over 300 pro bono lawyers from 23 law firms, the HPLC currently operates outreach legal clinics at 14 community organisations. HPLC pro bono lawyers substantively assist people experiencing homelessness with their legal issues, such as unlawful debts, unlawful evictions and support in the criminal justice system. Left unaddressed, these issues make it difficult for clients to attain sustainable housing and exit homelessness. See www.qpilch.org.au for further details.

⁴ Discussion Paper of the Queensland Child Protection Commission of Inquiry (**Discussion Paper**) (February 2013) available from: http://www.childprotectioninquiry.qld.gov.au/data/assets/pdf_file/0009/175248/QCPCI_Discussion_paper.pdf (accessed 4 March 2013).

⁵ Discussion Paper at xiii.

⁶ Discussion Paper at 102.

RESPONSE TO DISCUSSION PAPER

Question 6: How could we improve the system's response to frequently encountered families?

AND

Question 7: Is there any scope for uncooperative or repeat service users of tertiary services to be compelled to attend a support program as a precondition to keeping their child at home?

The Discussion Paper notes the evidence that high-level service users are more likely to have mental health problems, a history of child abuse and neglect, a criminal history, substance abuse problems and family violence.⁷

The HPLC confirms our evidence of the equivalent demographics of repeat service-user groups and of families with complex needs that access homelessness services,⁸ and of the need to look to best-practice in homelessness services as being relevant in the child protection domain.

The child protection system's response to repeat service users could be improved by adopting our recommendation that family support which reflects the characteristics of disadvantage be given a priority. We note that our submission also described the characteristics of this support. Our submission offered evidence of successful outcomes where family services are able to address underlying trauma, work intensively and non-institutionally across a number of issues.⁹

Questions of compelling repeat service users to attend support programs can only be addressed when appropriate services of the kind described in our submission are in fact available; that is, accessible, persistent, integrated and intensive services. A family's non-compliance, non-engagement and capacity to change must be seen in context.

Question 19: In an environment of competing fiscal demand on all government agencies, how can support to young people leaving care be improved?

The HPLC is an example of providing services to disadvantaged clients by effectively harnessing the resources of the private sector. Operating since 2002, the HPLC currently coordinates over 300 pro bono lawyers from 23 law firms to provide outreach legal clinics at 14 community organisations throughout Queensland. HPLC pro bono lawyers assist and represent over 550 new homeless clients each year with matters such as debts, evictions and support in the criminal justice system.

An annual government investment of less than \$300,000 releases over \$2.6 million of legal services and support through the HPLC into the community sector. The key to the success of the HPLC is the independent coordination of the pro bono contribution of the firms. Even though QPILCH considers that providing legal services to those experiencing disadvantage is the responsibility of government, the decrease in resources of Legal Aid and the Community Legal sector has prompted the heightened need for the HPLC.

⁷ Discussion Paper at para 4.2.2.

⁸ QPILCH Submission at 7.

⁹ QPILCH Submission at 9.

HPLC pro bono lawyers have recently shared their involvement in child protection matters, as follows:

I did some work for a homeless woman who was very stressed and a recovering addict. The state was applying for a guardianship order for her son, and she couldn't get a legal aid grant for representation. We attended a long advice appointment at Legal Aid Queensland with her and then supported her at the Children's Court to consent to the order, which she now fully understood. Over a year later, I was playing with colleagues in a touch team and she was in the opposition team. She recognised me and thanked me. She saw our support as crucial to her recovery, and had gone a long way to putting her life back on track.

I helped a lady who needed housing. Her children were in state care because she couldn't get permanent housing due to significant debts and a poor rental history. There was no immediate remedy, but we developed a 5-step plan to get her back on the Department of Housing radar, and helped her to complete a number of the steps. Her ultimate goal was to be reunited with her children, and housing was the main part of that.

With adequate coordination funding, similar services may be available in other professional spheres, which could provide assistance to young people transitioning from care.

As a result of the research by the HPLC into the correlation between the child protection and homelessness systems, and our experience addressing the legal needs of disadvantaged populations, the HPLC has designed a legal service to meet the specific needs of young people leaving care.

Trained pro bono lawyers will discuss the "legal menu" with young people in a non-threatening environment, offer direct casework to address civil law issues which adversely impact this demographic, such as debt, accommodation disputes and adverse administrative and third party decisions, as well as facilitating supportive referrals for criminal matters and community support. The lawyers will proactively connect with the young person throughout their transition to independence, with the expectation that the "pod" of lawyers will be a consistent contact point for the client for 3-5 years.

The HPLC is currently seeking funding for the project, and confirms that services tailored to provide coverage for young people leaving care are a cost-effective response to the vulnerability of this group.¹⁰ We also confirm that our submission identified the proven effectiveness of ensuring access to appropriate housing for this cohort.¹¹

The Commission had already noted the long-term savings that can be expected from investing in adequate services to support young people leaving care,¹² and the fiscal demand on government must be assessed with this in mind.

We further submit that Community Legal Centres are a cost effective part of the infrastructure of justice. Community Legal Centres involved in assisting people before QCAT, including QPILCH's Self Representation Service, should be strengthened to assist people who cannot afford a lawyer. Services that specialise in this issue and this jurisdiction can be particularly effective.

¹⁰ QPILCH Submission at 16.

¹¹ QPILCH Submission at 15.

¹² Discussion Paper at para 6.1.2.

Question 32: Are the department's oversight mechanisms -...complaints handling – sufficient and robust to provide accountability and public confidence? If not, why not?

In our submission, the Self Representation Service at QCAT questioned the utility of internal review mechanisms, as, in its experience, these processes have not always provided opportunities for meaningful consultation.¹³

The Self Representation Service is concerned that the inadequacy of these processes causes people aggrieved by Department decisions to bypass the processes all together and commence proceedings in QCAT, involving significant and unnecessary resources for all stakeholders. In this regard, the Self Representation Service holds a related concern that the law must make it clear that pursuit of an internal review does not preclude the aggrieved person from later pursuing external review in QCAT.¹⁴

We confirm our recommendation that the internal review mechanisms of the Department be reviewed to increase their use and effectiveness, so that more concerns are resolved without recourse to QCAT.¹⁵

Question 41: What, if any, changes should be made to the family group meeting process to ensure that it is an effective mechanism for encouraging children, young people and families to participate in decision-making?

The HPLC confirms our recommendation that the essential elements of the family group meeting process should be implemented at all such meetings, according to the model still utilised by Logan Youth and Family Services. These essential elements are as follows:

1. Independent and impartial convenor;
2. Relevant family members involved in process; and
3. Adequate and resourced “family time”.¹⁶

Although these essential elements are more resource intensive, we submit that the outcomes of effectively implemented family group meetings ultimately represent cost-savings.

Question 43: What, if any, changes should be made to the compulsory conference process to ensure that it is an effective dispute resolution process in Queensland Civil and Administrative Tribunal proceedings?

We submit the compulsory conference process will be more effective when the QCAT process as a whole is more robust. The Self Representation Service is concerned that:

- Children do not appear to be aware of their right to seek review of Department decisions, or of what that process is and where they can obtain assistance;
- Separate representatives for children are not appointed, even where the need is clear; and

¹³ QPILCH Submission at 20.

¹⁴ QPILCH Submission at 20.

¹⁵ QPILCH Submission at 20.

¹⁶ QPILCH Submission at 18.

- People aggrieved by Department decisions are forced to use QCAT as a mechanism to compel the Department to make decisions it ought to have made in the first instance or on internal review. This typically occurs at the compulsory conference stage of proceedings, when the Department reverses or amends its decision, and then the aggrieved person is encouraged to withdraw their application as the subject decision no longer stands.

We recommend that potential mechanisms to remedy some of the above concerns are:

1. Evaluate the effectiveness of programs designed to enable access by children in care to complaint, internal and external review processes;
2. Provide more funding for the appointment of separate representatives for children; and
3. Adjust the QCAT compulsory conference process to enable publication of outcomes, costs orders or other mechanisms in cases that warrant it to allow for the development of precedents which can have a normative effect on decision makers.

Question 45: What other changes are needed to improve the effectiveness of the court or tribunal processes in child protection matters?

In 2008, QPILCH provided training, in collaboration with Legal Aid Queensland, to a group of private lawyers to provide pro bono representation in the then Children Services Tribunal. Kits were also produced to support applicants to adequately represent their interests. This project was one of the foundations for the commencement of the Self Representation Service at QCAT in 2010.

The Self Representation Service provides discrete task assistance to people during 1 hour appointments staffed by pro bono lawyers. Assistance is provided to people throughout the progress of their proceeding, to help them understand the law, the rights and perspectives of the other party, observe tribunal rules and procedures, and to present their case in the best possible manner.

We submit that supporting and adequately funding cost-effective services such as the Self Representation Service and the HPLC, which harness private sector resources, should be a government priority. While the private sector makes a significant pro bono contribution, this can only be coordinated and supervised through adequate government funding and resourcing of Community Legal Centres throughout Queensland.