



New South Wales

# Children (Care and Protection) Amendment Act 1995 No 78

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New South Wales

## **Children (Care and Protection) Amendment Act 1995 No 78**

Act No 78, 1995

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An Act to amend the *Children (Care and Protection) Act 1987* to provide for the review of child deaths in the State; to provide for detailed analysis of the causes of child death in certain circumstances; to establish the Child Death Review Team and to define its functions; to amend the *Freedom of Information Act 1989* consequentially; and for other purposes. [Assented to 12 December 1995]

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Children (Care and Protection) Amendment Act 1995*.

**2 Commencement**

This Act commences on a day or days to be appointed by proclamation.

**3 Amendment of Children (Care and Protection) Act 1987 No 54**

The *Children (Care and Protection) Act 1987* is amended as set out in Schedule 1.

**4 Consequential amendment of Freedom of Information Act 1989 No 5**

The *Freedom of Information Act 1989* is amended as set out in Schedule 2.

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## **Schedule 1    Amendment of Children (Care and Protection) Act 1987**

(Section 3)

### **[1]    Section 3 Definitions**

Insert in alphabetical order in section 3 (1):

*Child Death Review Team* or *Team* means the Child Death Review Team established under Part 7A.

### **[2]    Section 22 Notification of child abuse**

Insert after section 22 (10):

- (11) Members of the Child Death Review Team, and any persons engaged as staff assisting the Team, are not required to comply with subsection (4) in respect of any matter coming to their notice in the course of the exercise by them of their functions as such members or assistants.

### **[3]    Part 7A**

Insert after Part 7:

#### **Part 7A    Child Death Review Team**

##### **102 Constitution of Child Death Review Team**

- (1) There is established by this Act a body corporate to be known as the Child Death Review Team, consisting of persons appointed by the Minister.
- (2) The Team is to include representatives of each of the following:
- (a) the Child Protection Council,
  - (b) the Department of Community Services,
  - (c) the Department of Health,
  - (d) the Police Service,
  - (e) the Department of School Education,
  - (f) the Attorney General's Department,
  - (g) the Office of the Coroner.

- (3) Each representative referred to in subsection (2) is to be nominated by the Minister responsible for the organisation concerned.
- (4) In addition, the Team is to include persons who, in the opinion of the Minister, are experts in child care and protection aspects of paediatrics, law, social work or psychology.
- (5) For the purpose of any review, analysis or other work to be undertaken by the Team that involves consideration of the deaths of Aboriginal children, the Minister is to appoint 2 persons who are Aboriginal (within the meaning of the *Aboriginal Land Rights Act 1983*) as additional members of the Team. For the purpose of any other particular review, analysis or other work to be undertaken by the Team, the Minister may appoint other persons having qualifications or experience that the Minister considers valuable as additional members of the Team.
- (6) Schedule 2A applies to the Team.
- (7) The Team must not consist of more than 20 members at any one time.
- (8) A person who is a member of the Legislative Council or the Legislative Assembly is not eligible to be a member of the Team.

### **103 Functions of Child Death Review Team**

- (1) The Team has the following functions:
  - (a) to formulate recommendations as to policies and practices to be implemented by government and private agencies and by the community for the prevention or reduction of child deaths, and for that purpose:
    - (i) to identify, and undertake a detailed review of information concerning, deaths of children that are due to abuse or neglect or that occur in suspicious circumstances or in circumstances of a kind prescribed by the regulations, and

- (ii) to maintain a register of child deaths occurring in New South Wales after a date prescribed by the regulations, classifying such deaths according to cause, demographic criteria or other factors prescribed by the regulations, and
  - (iii) to analyse data accumulated with respect to the causes of child deaths reviewed or registered, and to identify patterns and trends relating to those deaths,
- (b) to identify areas requiring further research by the Team or other agencies,
- (c) to undertake such research or other projects as the Minister may require concerning the causes of child death.
- (2) The Team has and may exercise such other functions as may be given to it by or under this or any other Act.

#### **104 Duty of government agencies to assist the Team**

- (1) It is the duty of each of the following persons, namely:
  - (a) the Director-General,
  - (b) the Department Head, Chief Executive Officer or senior member of any Department of the Government, statutory body or local authority,
  - (c) the Commissioner of Police,
  - (d) the State Coroner,
  - (e) the holder of any office prescribed by the regulations,

to provide the Team with full and unrestricted access to records that are under the person's control, or whose production the person may, in an official capacity, reasonably require, being records to which the Team reasonably requires access for the purpose of exercising its functions.

- (2) Access to which the Team is entitled under subsection (1) includes the right to inspect and, on request, to be provided with copies of, any record referred to in that subsection and to inspect any non-documentary evidence associated with any such record.
- (3) A provision of any Act or law that restricts or denies access to records does not prevent a person to whom subsection (1) applies from complying, or affect the person's duty to comply, with that subsection.
- (4) The Minister is to enter into arrangements with Ministers responsible for other government agencies so as to settle procedures for the furnishing of information as required by this section.

#### **105 Reports of findings and recommendations of the Team**

- (1) On or before 30 September in each year, the Team is to prepare a draft report containing recommendations for the purposes of section 103 (1) (a) and submit the draft report to the Minister for comment.
- (2) The Minister may provide the Team with any comment the Minister wishes to make in relation to the draft report, and may require the Team to consult the Minister further in relation to it.
- (3) The Team is not bound to amend its report in light of any comment made by the Minister, but must, before finalising its report, consider any comment that was furnished to it by the Minister on or before 15 October next following the preparation of the draft report. The Team is to finalise its report in the same month, and submit it to the Minister on or before 31 October.
- (4) The Minister is to deal with the report in accordance with section 11 of the *Annual Reports (Statutory Bodies) Act 1984*, as though it were the annual report of a statutory body to which that section applies.

- (5) The Team is to publish at least once each year, for the information of the public, a report consisting of data collected and information relating to child deaths that occurred in the State during the period covered by the report.
- (6) In each of the reports prepared under this section, the Team is to provide details of the extent to which its previous recommendations have been accepted and may comment on the extent to which those recommendations have been implemented in practice.

#### **106 Confidentiality of information**

- (1) A person who is a member of the Team or of its staff must not, except for the purpose of the exercise of the functions of the Team or in such other circumstances as the regulations may prescribe, make a record of, or directly or indirectly reveal to any person, any information (including the contents of any document) that was acquired by the person by reason of being a member of the Team or of its staff.

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

- (2) A person who is a member of the Team or of its staff is not required:
  - (a) to produce to any court any document or other thing that has come into the person's possession, custody or control, or
  - (b) to reveal to any court any information that has come to the person's notice,by reason of being a member of the Team or of its staff.
- (3) Any authority or person to whom any information referred to in subsection (1) is revealed, and any person or employee under the control of that authority or person:
  - (a) is subject to the same obligations and liabilities under subsection (1), and
  - (b) enjoys the same rights and privileges under subsection (2),



in respect of that information as if he or she were a member of the Team or its staff who had acquired the information for the purpose of the exercise of the functions of the Team. Failure to comply with obligations and liabilities referred to in this subsection is taken to be a contravention of subsection (1).

- (4) In this section:
- (a) *court* includes any tribunal or person having power to require the production of documents or the answering of questions,
  - (b) *produce* includes permit access to,
  - (c) a reference to a member of staff of the Team is a reference to any officer or person engaged to assist the Team in the exercise of its functions.

#### **107 Guidelines for Operations of the Team**

- (1) The Minister is to draw up guidelines for the operations of the Team.
- (2) The guidelines must include provisions designed to secure:
  - (a) confidentiality of medical and other information obtained by the Team, and
  - (b) protection of the privacy of individuals in reports or information published by the Team (including any report prepared under section 105) and in other aspects of the Team's activities, and
  - (c) any other matters prescribed by the regulations.
- (3) Provisions to which subsection (2) (b) applies are to be drawn up in consultation with the Privacy Committee.

#### **108 Review of Part**

- (1) The Minister is to review this Part to determine whether the policy objectives of this Part remain valid and whether the terms of this Part remain appropriate for securing those objectives.

- (2) The review is to be undertaken as soon as possible after the period of 5 years from the commencement of this Part.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

**[4] Schedule 2A**

Insert after Schedule 2:

**Schedule 2A Child Death Review Team**

(Section 102)

**1 Definitions**

In this Schedule:

*Convener* means the Convener of the Team.

*member* means a member of the Team, including the Convener and the Deputy Convener.

**2 Convener and Deputy Convener**

- (1) One of the members of the Team is to be appointed by the Minister as the Convener of the Team.
- (2) The Team is to elect one of its members as the Deputy Convener of the Team. The member so elected may be removed from that office by the Team at any time.
- (3) A person holding the office of Convener or Deputy Convener vacates that office if the person:
  - (a) (in the case of the Deputy Convener) is removed from that office, or
  - (b) resigns that office by instrument in writing addressed to the Minister, or
  - (c) ceases to be a member.

### **3 Term of office of members**

- (1) A member referred to in section 102 (2) or (4) holds office for such period (not exceeding 2 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.
- (2) A member referred to in section 102 (5) holds office for the duration of such projects or undertakings as are specified in the member's instrument of appointment, and may be re-appointed at any time in accordance with that subsection.

### **4 Remuneration**

A member, other than a representative of a Department of the Government, the Police Service or a statutory body, is entitled to be paid such remuneration and allowances (including travelling or subsistence allowances) as may be agreed by and between the Minister and the member or, in default of such agreement, as may be determined by the Minister.

### **5 Vacancies in office of member**

- (1) The office of a member becomes vacant if the member:
  - (a) dies, or
  - (b) completes a term of office and is not re-appointed, or
  - (c) resigns the office in writing addressed to the Minister, or
  - (d) is absent from 4 consecutive meetings of the Team of which reasonable notice has been given to the member personally or in the ordinary course of the post, except on leave granted by the Team or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Minister for having been absent from those meetings, or

- (e) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes any assignment of his or her remuneration for their benefit, or
  - (f) becomes a mentally incapacitated person, or
  - (g) is convicted in New South Wales or elsewhere of an offence punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or
  - (h) is removed from office by the Minister, or
  - (i) is the subject of a communication in writing to the Minister by the Minister that nominated the member, stating that he or she no longer represents that organisation.
- (2) If the office of any member becomes vacant, another person is, subject to this Act, to be appointed to fill the vacancy.

## **6 Removal from office**

The Minister may remove a member from office for incapacity, incompetence or misbehaviour.

## **7 Effect of certain other Acts**

- (1) Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of the appointment of a member.
- (2) If by or under any Act provision is made:
  - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or

- (b) prohibiting the person from engaging in employment outside the duties of that office,

that provision does not operate to disqualify that person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member.

- (3) The office of a member is not, for the purposes of any Act, an office or place of profit under the Crown.

#### **8 General procedure**

- (1) The procedure for the calling of meetings of the Team and for the conduct of business at those meetings is to be as determined by the Team.
- (2) The Team is to meet as often as the demands of its business require, but must in any case meet not less frequently than once every 2 months.

#### **9 Quorum for meetings**

A majority of persons for the time being holding office as members of the Team constitutes a quorum for any meeting of the Team.

#### **10 Presiding member**

- (1) The Convener, or in the absence of the Convener, the Deputy Convener, is to preside at any meeting of the Team.
- (2) If both the Convener and the Deputy Convener are absent from any meeting, a member elected by the members present at the meeting is to preside at that meeting.
- (3) The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

### **11 Voting**

A decision supported by a majority of the votes cast at a meeting of the Team at which a quorum is present is the decision of the Team.

### **12 Protection from personal liability**

No act or thing done or omitted by the Team, a member of the Team or a person acting under the direction of the Team subjects a member or a person so acting to any personal liability if the act or thing was done or omitted in good faith and with reasonable care, and in the exercise or purported exercise of the functions of the Team.

### **13 Execution of documents**

A document required to be executed by the Team in the exercise of its functions is sufficiently executed if it is signed by the Convener or another member authorised by the Team.

Children (Care and Protection) Amendment Act 1995 No 78

Schedule 2 Consequential amendment of Freedom of Information Act 1989

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## **Schedule 2 Consequential amendment of Freedom of Information Act 1989**

(Section 4)

### **Schedule 2 Exempt bodies and offices**

Insert at the end of the Schedule:

The Child Death Review Team—all functions.

[Minister's second reading speech made in—  
Legislative Council on 23 November 1995  
Legislative Assembly on 7 December 1995]