

Passed by both Houses



New South Wales

Children Legislation Amendment (Child Death Review Team) Bill 2011

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I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2011*



New South Wales

Children Legislation Amendment (Child Death Review Team) Bill 2011

Act No , 2011

An Act to amend the *Community Services (Complaints, Reviews and Monitoring) Act 1993* with respect to the Child Death Review Team; and for other purposes.

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Children Legislation Amendment (Child Death Review Team) Act 2011*.

2 Commencement

This Act commences on the date of assent to this Act.

Schedule 1 Amendment of Community Services (Complaints, Reviews and Monitoring) Act 1993 No 2

[1] Section 4 Definitions

Insert in alphabetical order in section 4 (1):

Child Death Review Team or *Team* means the Child Death Review Team established under Part 5A.

Commission for Children and Young People means the Commission for Children and Young People constituted under the *Commission for Children and Young People Act 1998*.

Commissioner for Children and Young People means the Commissioner for the Commission for Children and Young People appointed under the *Commission for Children and Young People Act 1998*.

[2] Part 5A

Insert after Part 5:

Part 5A Child Death Review Team

Division 1 Preliminary

34A Object of Part

The object of this Part is to prevent and reduce the deaths of children in New South Wales through the constitution of the Child Death Review Team which is to exercise the functions conferred or imposed on it under this Part.

34B Definitions

In this Part:

child means a person under the age of 18 years.

Convenor means the Convenor of the Child Death Review Team.

court includes any tribunal or person having power to require the production of documents or the answering of questions.

member means a member of the Child Death Review Team.

produce includes permit access to.

Team-related person means the following:

- (a) a member of the Team,

- (b) a member of staff of the Ombudsman's Office who is supporting and assisting the Team in the exercise of its functions,
- (c) any person engaged to assist the Team in the exercise of its functions, including persons appointed under section 34E.

Division 2 Constitution and functions of the Team

34C Establishment and composition of the Team

- (1) The Child Death Review Team is established by this Act.
- (2) The Team is to consist of the following members:
 - (a) the Ombudsman, who is to be the Convenor of the Team,
 - (b) the Commissioner for Children and Young People,
 - (c) the Community and Disability Services Commissioner,
 - (d) such other persons as may be appointed by the Minister.
- (3) The Team is to be supported and assisted in the exercise of its functions by members of staff of the Ombudsman's Office.
- (4) The Team is to include representatives of each of the following:
 - (a) that part of the Department of Family and Community Services comprising the group of staff who are principally involved in the administration of the *Children and Young Persons (Care and Protection) Act 1998*,
 - (b) the Ministry of Health,
 - (c) the NSW Police Force,
 - (d) the Department of Education and Communities,
 - (e) the Department of Attorney General and Justice,
 - (f) the Office of the NSW State Coroner, within the Department of Attorney General and Justice,
 - (g) that part of the Department of Family and Community Services comprising the group of staff who are principally involved in the administration of the *Disability Services Act 1993*.
- (5) Each representative referred to in subsection (4) is to be nominated by the Minister responsible for the organisation concerned.

- (6) In addition, the Team is to include persons recommended by the Convenor and who, in the opinion of the Minister, are:
 - (a) experts in health care, research methodology, child development or child protection, or
 - (b) persons who, because of their qualifications or experience, or both, are likely to make a valuable contribution to the work of the Team.
- (7) The Minister is to appoint 2 persons who are Aboriginal persons (within the meaning of the *Aboriginal Land Rights Act 1983*) as members of the Team.
- (8) The Team must consist of not less than 14 members (in addition to the Convenor, Commissioner for Children and Young People and the Community and Disability Services Commissioner) and not more than 20 members (in addition to the Convenor and those Commissioners) at any one time.
- (9) A person who is a member of the Legislative Council or the Legislative Assembly is not eligible to be a member of the Team.
- (10) Schedule 2 contains provisions relating to the members and procedure of the Team.

34D Functions of the Team

- (1) The Team has the following functions:
 - (a) to maintain the register of child deaths occurring in New South Wales that has recorded such deaths since 1 January 1996,
 - (b) to classify those deaths according to cause, demographic criteria and other relevant factors,
 - (c) to analyse data to identify patterns and trends relating to those deaths,
 - (d) to undertake, alone or with others, research that aims to help prevent or reduce the likelihood of child deaths,
 - (e) to make recommendations, arising from the Team's maintenance of the register of child deaths and from its research, as to legislation, policies, practices and services for implementation by government and non-government agencies and the community to prevent or reduce the likelihood of child deaths,
 - (f) to identify areas requiring further research by the Team or other agencies or persons.

- (2) Any function of the Team with respect to child deaths occurring in New South Wales may also be exercised by the Team in connection with the death of a child dying outside the State while ordinarily resident in the State.
- (3) The Convenor may enter into an agreement or other arrangement for the exchange of information between the Team and a person or body having functions under the law of another State or a Territory that are substantially similar to the functions of the Team, being information relevant to the exercise of the functions of the Team or that person or body.
- (4) The Team may not undertake a review of a reviewable death (within the meaning of Part 6) but may:
 - (a) include a reviewable death in research that examines a sample or population of child deaths, and
 - (b) with the approval of the Minister, conduct research about reviewable deaths.
- (5) The Team may exercise functions with respect to the death of a child even though the death is or may be the subject of a review by the Domestic Violence Death Review Team established under the *Coroners Act 2009*.

34E Appointment of expert advisers

- (1) The Convenor may, otherwise than under a contract of employment, appoint persons with relevant qualifications and experience to advise the Team in the exercise of its functions.
- (2) A person so appointed is entitled to be paid such remuneration and allowances (including travelling and subsistence allowances) as may be determined by the Convenor in respect of the person.

34F Annual report to Parliament

- (1) The Team is required to prepare, within the period of 4 months after 30 June in each year, a report of its operations during the year that ended on that 30 June and to provide the report to the Presiding Officer of each House of Parliament.
- (2) A report by the Team under this section must include the following:
 - (a) a description of its activities during that year in relation to each of its functions,
 - (b) details of the extent to which its previous recommendations have been accepted,

- (c) whether any information has been authorised to be disclosed by the Convenor as referred to in section 34L (1) (b),
 - (d) if the Team has not presented a report to Parliament under section 34H within the previous 3 years, the reasons why such a report has not been presented.
- (3) A report by the Team under this section may include, in relation to any details referred to in subsection (2) (b), comment on the extent to which those recommendations have been implemented in practice.

34G Annual child death review report

- (1) The Team is required to prepare, within the period of 4 months after 30 June in each year, a report consisting of data collected and analysed in relation to child deaths registered during the previous calendar year and provide the report to the Presiding Officer of each House of Parliament.
- (2) A report by the Team under this section may include any recommendations made for the purposes of section 34D (1) (e) or (f).

34H Other reports

The Team may, at any time, make a report containing the results of research undertaken in the exercise of its research functions under this Part and provide the report to the Presiding Officer of each House of Parliament.

34I Preparation and presentation of reports

- (1) Each report prepared by the Team is to be provided to the Minister.
- (2) A report provided to the Presiding Officer of a House of Parliament under this Part is to be laid before that House within 15 sitting days of that House after it is received by the Presiding Officer.
- (3) The Team may include in a report a recommendation that the report be made public as soon as practicable.
- (4) If a report includes a recommendation by the Team that the report be made public as soon as practicable, a Presiding Officer of a House of Parliament may make it public whether or not that House is in session and whether or not the report has been laid before that House.

- (5) If such a report is made public by a Presiding Officer of a House of Parliament before it is laid before that House, it attracts the same privileges and immunities as if it had been laid before that House.
- (6) A Presiding Officer need not inquire whether all or any conditions precedent have been satisfied as regards a report purporting to have been made and provided in accordance with this Part.
- (7) A report of the Team under this Part may be presented separately from any other such report or together with any other such report.

34J Application of Ombudsman Act 1974

- (1) The provisions of section 31B (1) (a)–(c) and (e), (2) (a) and (3) of the *Ombudsman Act 1974* apply to and in respect of the exercise of functions by the Team and reports prepared by the Team in the same way as those provisions apply to and in respect of the exercise of functions by the Ombudsman and reports made by the Ombudsman.

Note. Section 31B of the *Ombudsman Act 1974* provides for the monitoring of the exercise of functions by the Ombudsman and review of reports of the Ombudsman by the Committee on the Office of the Ombudsman and the Police Integrity Commission.

- (2) In addition to the functions that the Committee on the Office of the Ombudsman and the Police Integrity Commission has in relation to the Team under subsection (1), the Committee has the function of examining trends and changes in services and issues affecting children, and reporting to both Houses of Parliament any changes that the Committee thinks desirable to the functions and procedures of the Team.

Division 3 Access to and confidentiality of information

34K Duty of persons to assist the Team

- (1) It is the duty of each of the following persons 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:
 - (a) the Director-General, the Department Head, chief executive officer or senior member of any department of the government, statutory body or local authority,
 - (b) the Commissioner of Police,

- (c) the State Coroner,
 - (d) a medical practitioner or health care professional who, or the head of a body which, delivers health services to children,
 - (e) a person who, or the head of a body which, delivers welfare services to children (including family support services, children's services, foster care or residential out-of-home care, and disability services),
 - (f) the principal of a non-government school (within the meaning of the *Education Act 1990*).
- (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) In this section, *record* means any document or other source of information compiled, recorded or stored in written form or on film, or by electronic process, or in any other manner or by any other means.

34L Confidentiality of information

- (1) A Team-related person must not make a record of, or directly or indirectly disclose to any person, any information (including the contents of any document) that was acquired by the person by reason of being a Team-related person, unless:
 - (a) the record or disclosure is made in good faith for the purpose of exercising a function under this Part, or
 - (b) the record or disclosure is authorised to be made by the Convenor in connection with research that is undertaken for the purpose of helping to prevent or reduce the likelihood of deaths of children in New South Wales, or
 - (c) the record or disclosure is made by the Convenor for the purpose of:
 - (i) providing information to the Commissioner of Police in connection with a possible criminal offence, or

- (ii) reporting to the Director-General of the Department of Family and Community Services that a child or class of children may be at risk of harm, or
 - (iii) providing information to the State Coroner that may relate to a death that is within the jurisdiction of the State Coroner, whether or not the death has been the subject of an inquest under the *Coroners Act 2009*, or
 - (iv) providing information to the Domestic Violence Death Review Team established under the *Coroners Act 2009* in connection with that Team's functions, or
 - (v) providing information to the Ombudsman concerning the death of a child that is relevant to the exercise of any of the Ombudsman's functions, or
 - (vi) giving effect to any agreement or other arrangement entered into under section 34D (3), or
- (d) the record or disclosure is made by a member of the Team to a Minister, or to a Department Head, chief executive officer or senior member of any department of the government or a statutory body, in connection with a draft report prepared for the purpose of this Part, or
- (e) the record or disclosure is made by a member of the Team to any person, body or organisation for the purpose of obtaining information or advice, or enabling comments to be made to the Team, in connection with a draft report or part of a draft report prepared for the purposes of this Part.

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

- (2) A Team-related person 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 Team-related person.
- (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 Team-related person 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).

34M Dishonestly obtaining information

A person who dishonestly obtains information (including the contents of any document) that was acquired by a person by reason of being a Team-related person is guilty of an offence.

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

Division 4 Miscellaneous

34N 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 Convenor or another member authorised by the Convenor.

34O Proceedings for offences under Part

Despite any other law, proceedings for an offence under this Part must be commenced not later than 2 years from when the offence was alleged to have been committed.

34P 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.

[3] Section 48 Exclusion of personal liability

Insert at the end of section 48 (b):

or

- (c) the Child Death Review Team, a member of the Team or any person acting under the direction of the Team,

[4] Section 48

Insert “, the officer, a member of the Team” after “Ombudsman” where thirdly occurring.

[5] Section 52 Regulations

Insert after section 52 (1):

- (1A) Without limiting subsection (1), the regulations may make provision for or with respect to the constitution, functions, procedure and other matters relating to the Child Death Review Team.

[6] Schedule 1 Savings and transitional provisions

Insert at the end of clause 1 (1):

Children Legislation Amendment (Child Death Review Team) Act 2011

[7] Schedule 1, Part 4

Insert after clause 14:

Part 4 Children Legislation Amendment (Child Death Review Team) Act 2011

15 Continuation of existing entity

The Child Death Review Team established by section 34C is taken to be a continuation of, and the same legal entity as, the Child Death Review Team established under section 45B of the *Commission for Children and Young People Act 1998*.

16 Continuation of existing members

A person who, immediately before the commencement of this clause held office as a member of the Team under section 45C of the *Commission for Children and Young People Act 1998*, is taken to have been appointed under section 34C of this Act for the balance of the term for which he or she was appointed under that section 45C, subject to clauses 5 and 6 of Schedule 2 to this Act.

17 Annual reports of Child Death Review Team

The reference to section 34H in section 34F (2) (d) includes a reference to section 45P of the *Commission for Children and Young People Act 1998*.

[8] Schedule 2

Insert after Schedule 1:

Schedule 2 Provisions relating to the Child Death Review Team

(Section 34C (10))

1 Definitions

In this Schedule:

appointed member means a member of the Team appointed by the Minister under section 34C (2) (d).

Convenor means the Convenor of the Team.

member means a member of the Team.

2 Deputy Convenor

- (1) The members of the Team are to elect one member as the Deputy Convenor of the Team.
- (2) The member so elected holds office as Deputy Convenor for the balance of the member's term of office, subject to subclause (3).
- (3) A person holding the office of Deputy Convenor vacates that office if the person:
 - (a) is removed from that office by the Minister under clause 6, 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

An appointed member holds office for such period (not exceeding 3 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

4 Remuneration

An appointed member other than a representative of a department of the government, the NSW Police Force or a statutory body, is entitled to be paid such remuneration and allowances (including travelling or subsistence allowances) as the Minister may from time to time determine in respect of the member.

5 Vacancy in office of appointed member

- (1) The office of an appointed 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 by instrument 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 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 an assignment of his or her remuneration for their benefit, or
 - (f) becomes a mentally incapacitated person, or
 - (g) is convicted in New South Wales of an offence that is punishable by 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 under clause 6, 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 an appointed member becomes vacant, another person is, subject to this Schedule, to be appointed to fill the vacancy.

6 Removal from office

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

7 Effect of certain other Acts

- (1) Chapter 2 of the *Public Sector Employment and Management Act 2002* does not apply to or in respect of the appointment of a person as 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 Schedule as a member.

8 General procedure

- (1) Subject to the regulations, 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 Convenor.
- (2) The Team is to meet not less than 4 times in each calendar year.

9 Quorum for meetings

The quorum for a meeting of the Team is a majority of its members for the time being.

10 Presiding member

- (1) The Convenor, or in the absence of the Convenor, the Deputy Convenor, is to preside at any meeting of the Team.
- (2) If both the Convenor and the Deputy Convenor 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.

Schedule 2 Amendment of other legislation

2.1 Commission for Children and Young People Act 1998 No 146

[1] Section 3 Definitions

Omit the definitions of *Child Death Review Team* and *Convenor* from section 3 (1).

[2] Section 28 Functions of Committee

Omit section 28 (4).

[3] Part 7A Child Death Review Team

Omit the Part.

[4] Section 48 Protection from liability

Omit “, or the Child Death Review Team, a member of the Team or a person acting under the direction of the Team”.

[5] Section 48

Omit “, member of the Team”.

[6] Section 51 Regulations

Omit section 51 (1A).

[7] Schedule 3 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

*Children Legislation Amendment (Child Death Review Team)
Act 2011*

2.2 Community Services (Complaints, Reviews and Monitoring) Regulation 2004

Clause 8 Reports required to be prepared by Child Death Review Team

Omit “*Commission for Children and Young People Act 1998*” from clause 8 (3).

Insert instead “*Community Services (Complaints, Reviews and Monitoring) Act 1993*”.

2.3 Coroners Act 2009 No 41

Section 101B Interpretation

Omit “Part 7A of the *Commission for Children and Young People Act 1998*” from the definition of ***Child Death Review Team*** in section 101B (1).

Insert instead “Part 5A of the *Community Services (Complaints, Reviews and Monitoring) Act 1993*”.