

[Act 1998 No 146]



New South Wales

Commission for Children and Young People Bill 1998 (No 2)

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.*

The following Bills are cognate with this Bill:

Child Protection (Prohibited Employment) Bill 1998 (No 3)

Ombudsman Amendment (Child Protection and Community Services) Bill 1998 (No 3)

Overview of Bill

The objects of this Bill are:

- (a) to establish a Commission for Children and Young People and to provide for its functions. and
- (b) to provide for employment screening for child-related employment.

The Bill gives effect to certain recommendations of the Royal Commission into the New South Wales Police Service in its final report relating to the paedophile inquiry.

*Amended in committee—see table at end of volume.

In this Bill, the expression “children” is used as a convenient expression to cover both:

- (a) children under 16 years of age, and
- (b) young persons of or over 16 years of age and under 18 years of age.

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 defines certain words and expressions used in the proposed Act.

Part 2 Constitution of Commission

Clause 4 constitutes the Commission for Children and Young People as a statutory corporation. The functions of the Commission under the proposed Act are to be exercised by a Commissioner for the Commission.

Clause 5 provides for the appointment of a Commissioner for the Commission for Children and Young People by the Governor. The employment of the Commissioner is to be regulated under the provisions of Part 2A of the *Public Sector Management Act 1988* as a chief executive officer. However, the power to appoint the Commissioner under those provisions is to be limited by the clause to a term not exceeding 4 years and to only 2 such terms. In addition, the power of the Governor under those provisions to remove the Commissioner from office is limited by the clause to the grounds of misbehaviour, incapacity or incompetence.

Clause 6 provides for the appointment of an acting Commissioner by the Governor.

Clause 7 provides for the employment or secondment of staff to assist the Commission.

Clause 8 provides for the appointment of an Expert Advisory Committee and such other advisory committees as the Commission considers appropriate to assist the Commission in the exercise of its functions.

Clause 9 provides that the Commission may delegate any of its functions to a member of the staff of the Commission or to a person of a class prescribed by the regulations.

Part 3 Functions of commission

Clause 10 sets out the principles that are to govern the work of the Commission.

Clause 11 outlines the principal functions of the Commission. They are as follows:

- (a) to promote the participation of children in the making of decisions that affect their lives and to encourage government and non-government agencies to seek the participation of children appropriate to their age and maturity.
- (b) to promote and monitor the overall well-being of children in the community and to monitor the trends in complaints made by or on behalf of children.
- (c) to conduct special inquiries into issues affecting children under Part 4 of the proposed Act.
- (d) to make recommendations to government and non-government agencies on legislation, policies, practices and services affecting children.
- (e) to promote the provision of information and advice to assist children,
- (f) to conduct, promote and monitor training on issues affecting children.
- (g) to conduct, promote and monitor public awareness activities on issues affecting children.
- (h) to conduct, promote and monitor research into issues affecting children.
- (i) to participate in and monitor screening for child-related employment in accordance with Part 7 of the proposed Act.
- (j) to develop and administer a voluntary accreditation scheme for persons working with persons who have committed sexual offences against children.

Clause 12 provides that in exercising its functions, the Commission is to give priority to the interests and needs of vulnerable children.

Clause 13 provides that the Commission is to develop means of consulting with children and is to use those means of consultation in exercising its functions and, in particular, before making any significant recommendations.

Clause 14 requires the Commission to work in co-operation with such government or non-government agencies that provide or deal with services or issues affecting children as the Commission thinks appropriate. Arrangements may be made by the relevant Minister to secure such co-operation, including in connection with the provision of information by other government agencies.

Clause 15 provides for the Commission to refer to the police or other appropriate investigative agency any information it obtains of possible criminal or disciplinary offences.

Clause 16 makes it clear that the Commission does not have the function of dealing directly with the complaints or concerns of particular children.

Part 4 Special inquiries by Commission

Clause 17 authorises the Minister to require the Commission to conduct a special inquiry into a specified issue affecting children (at the Commission's request or the Minister's own initiative).

Clause 18 requires the Commission to make a special report on the results of a special inquiry.

Clause 19 deals with the general conduct of a special inquiry. Special inquiries are to be conducted with as little formality as possible, and the Commission may obtain information in whatever manner it wishes and consult whomever it wishes.

Clause 20 enables the Commission to conduct hearings for the purposes of a special inquiry. The Commission is to give public notice of hearings and may call for written submissions before a hearing begins. Hearings are to be held in public, unless the Commission decides that a hearing in private is required or it is requested by a child giving evidence.

Clause 21 authorises the Commission to require officers of government agencies and other persons to give a statement of information, to attend a hearing to give evidence or to produce a document for the purposes of a special inquiry. The clause makes ancillary provision with respect to any such requirement.

Clause 22 provides for exemptions in respect of a special inquiry for Cabinet documents and other privileged material.

Part 5 Reports by Commission

Clause 23 requires the Commission to prepare annual reports to Parliament of its operations and to furnish those reports to the Presiding Officer of each House of Parliament within 4 months after 30 June of each year. Those reports must include a description of the Commission's activities during that year, an evaluation of the response of relevant authorities to the Commission's recommendations and any recommendations for changes in the laws of the State, or for administrative action, that the Commission considers should be made.

Clause 24 requires the Commission to make such a special report to the Minister at the request of the Minister. The Commission may also make a report to Parliament on any particular issue or general matter relating to its functions.

Clause 25 requires the Commission to provide the Minister with a draft of each of its reports to Parliament at least 1 month (or other agreed period) before it is furnished to the Presiding Officers. The Minister may comment on a draft report and require the Commissioner to consult about it, but the Commission is not bound to make any changes to its draft report because of any comment of the Minister.

Clause 26 provides for a copy of a report furnished to the Presiding Officers to be laid before each House of Parliament. If the report includes a recommendation that the report be made public forthwith, the Presiding Officer may make it public whether or not the House is in session and whether or not the report has been laid before the House. Such publicised reports attract the same privileges and immunities as if they had been laid before the House. The clause modifies, for the purposes of giving effect to those requirements, the *Annual Reports (Departments) Act 1985* in its application to an annual report of the Commission.

Part 6 Parliamentary Joint Committee

Clause 27 constitutes a joint committee of Parliament to be called the Committee on Children and Young People.

Clause 28 outlines the functions of the Parliamentary Joint Committee. These include the monitoring and review of the exercise by the Commission of the Commission's functions and the examination of each annual or other report of the Commission.

Clause 29 provides that the Parliamentary Joint Committee is to consist of 11 members, 3 from the Legislative Council and 8 from the Legislative Assembly.

Clause 30 contains provisions relating to the Parliamentary Joint Committee. They are similar to those that apply to the Parliamentary Joint Committee on the Office of the Ombudsman and the Police Integrity Commission under Part 4A of the *Ombudsman Act 1974*.

Part 7 Employment screening

Clause 31 provides that the object of the Part is to protect children by means of employment screening for child-related employment administered by the Commission and other agencies.

Clause 32 declares that the welfare of children and, in particular, protecting them from child abuse, is the paramount consideration in employment screening.

Clause 33 defines words and expressions for the purposes of the Part. In particular:

child-related employment is generally defined to mean (subject to the regulations) any employment that involves direct contact with children where the contact is not directly supervised.

employment is generally defined to mean:

- (a) performance of work under a contract of employment. or
- (b) performance of work as a subcontractor, or
- (c) performance of work as a volunteer for an organisation. or
- (d) undertaking practical training as part of an educational or vocational course.

relevant apprehended violence order is generally defined to mean NSW or interstate orders that are made on the application of police officers or other public officials to protect a child.

relevant criminal record is defined to mean the criminal record of a person with respect to an offence involving sexual activity, acts of indecency or child abuse (wherever committed) of a kind that was punishable in NSW by at least 12 months' imprisonment.

relevant disciplinary proceedings is defined to mean disciplinary proceedings (in NSW or elsewhere) against an employee by the employer or by a professional or other body that supervises the professional conduct of the employee, being completed proceedings involving child abuse, sexual misconduct or acts of violence by the employee.

Clause 33 describes the nature of *employment screening* in respect of employees or prospective employees for child-related employment. The procedures include:

- (a) a relevant criminal record check, and a check for relevant apprehended violence orders made against the person or relevant disciplinary proceedings completed against the person.

- (b) an assessment of the risk to children involved in the child-related employment arising from anything disclosed by such a check having regard to all the circumstances of the case.

Clause 35 authorises the Minister to publish guidelines relating to the procedures and standards for employment screening (including relating to the confidentiality of information obtained for or as a result of employment screening and the information to be provided to persons subject to employment screening). The guidelines must provide for disclosure of information obtained about an applicant for child-related employment that may adversely affect the application.

Clause 36 sets out the functions of the Commission with respect to employment screening. Those functions include:

- (a) collecting and maintaining a database of relevant apprehended violence orders and relevant completed disciplinary proceedings, and providing access to the database to certain employers for employment screening.
- (b) conducting employment screening on behalf of employers for whom the Commission has agreed to conduct any such screening,
- (c) making recommendations to the Minister on appropriate procedures and standards for employment screening,
- (d) promoting public awareness and providing training on appropriate procedures and standards for employment screening.
- (e) monitoring and auditing compliance with the procedures and standards for employment screening.

Clause 37 requires mandatory employment screening by employers (or by the Commission or other approved employer on their behalf) of preferred applicants for certain primary child-related employment (that is, paid employment of the kind subject to prohibitions on employment under the proposed *Children (Prohibited Employment) Act 1998*, foster care or other employment prescribed by regulation).

Clause 38 enables the Commissioner of Police to disclose information relating to the relevant criminal record of persons for the purposes of employment screening (including information relating to spent convictions under the *Criminal Records Act 1991* or criminal charges, whether or not heard, proven, dismissed, withdrawn or discharged).

Clause 39 requires employers to notify the Commission of the name and other identifying particulars of any employee against whom relevant disciplinary proceedings have been completed by the employer (irrespective of the finding in those proceedings) and to provide details of the proceedings concerned to another employer, or to the Commission. for the purposes of employment screening by the other employer or the Commission. The clause prohibits the destruction of any such record of disciplinary proceedings;

Clause 40 requires an employer to notify the Commission of the name of any person whose application for child-related employment with the employer has been rejected primarily because of a risk assessment in employment screening. The Commission may only use that information in connection with the monitoring and auditing of the proposed employment screening procedures.

Clause 41 protects persons acting in good faith and with reasonable care from liability in connection with employment screening (including protection from proceedings in defamation and for the payment of damages as a result of action taken as a consequence of employment screening).

Clause 42 prohibits unauthorised disclosure or dishonest collection of information in relation to employment screening.

Clause 43 enables persons who may be subject to employment screening to obtain access under the *Freedom of Information Act 1989* to information on relevant disciplinary proceedings against the person. and to have the information corrected if appropriate.

Clause 43 deals with the effect of the Part on other statutory and other rights and powers. The Part is to prevail in the event of an inconsistency. The statutory rights to review of termination of employment are preserved. but the court or tribunal concerned is required to have regard to the results of employment screening.

Clause 45 provides for the staged implementation of the duties imposed by the Part.

Part 8 Miscellaneous

Clause 46 provides that the proposed Act is to bind the Crown.

Clause 47 provides that the Commission may charge reasonable fees for any services or materials it supplies to any person who requests those services or materials.

Clause 48 exculpates the Commissioner, members of advisory committees and other persons acting on their directions from personal liability for anything done or omitted in good faith in the execution of the proposed Act.

Clause 49 provides for the summary disposal of offences against the proposed Act or regulations.

Clause 50 deals with offences committed by corporations.

Clause 51 gives the Governor a general regulation-making power.

Clause 52 is a formal provision giving effect to the Schedule of amendments of other Acts and regulations.

Clause 53 requires the Minister to review the proposed Act after 5 years.

Schedule 1 contains standard provisions relating to the Parliamentary Joint Committee.

Schedule 2 amends the following Acts:

The *Children (Care and Protection) Act 1987* is amended:

- (a) to make the Commissioner a member of the Child Death Review Team under that Act in the place of a representative of the Child Protection Council, and
- (b) to make the Commissioner the convenor of that Review Team, and
- (c) to require the Commission to provide administrative support to that Review Team.

The *Criminal Records Act 1991* is amended to make consequential amendments in connection with employment screening for child-related employment.

The *Public Sector Management Act 1988* is amended to constitute the staff of the Commission as a separate Department with the Commissioner as its Department Head. As a consequence, the Commissioner will be a chief executive officer for the purposes of the provisions of Part 2A of that Act which regulate the Commissioner's employment.