

# Commission for Children and Young People Act 1998 No 146

[1998-146]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**
  - [Justices Legislation Repeal and Amendment Act 2001 No 121](#) (not commenced — to commence on 7.7.2003)
  - [Child Protection Legislation Amendment Act 2002 No 98](#), Sch 3 [6] and [13] to the extent that it inserts cl 2 (2) of Sch 3 (not commenced)
- **See also**
  - [Commission for Children and Young People Amendment \(Child Death Review Team\) Bill 2003](#)

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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## Contents

<b>Long title</b> .....	5
<b>Part 1 Preliminary</b> .....	5
1 Name of Act .....	5
2 Commencement .....	5
3 Definitions .....	5
<b>Part 2 Constitution of Commission</b> .....	6
4 Commission .....	6
5 Commissioner .....	6
6 Acting Commissioner .....	6
7 Staff of Commission .....	7
8 Expert Advisory Committee and other advisory committees .....	7
9 Delegation .....	7
<b>Part 3 Functions of Commission</b> .....	8
10 Principles governing work of Commission .....	8
11 Principal functions of Commission .....	8
12 Priority matters .....	9
13 Consultation with children .....	9
14 Co-operation with other agencies .....	9
14A Powers of Commission for Children and Young People to compel production of information .....	9
15 Referral of matters to police and other investigative agencies .....	10

16 Assistance to particular children .....	10
<b>Part 4 Special inquiries by Commission</b> .....	<b>10</b>
17 Establishment of special inquiry .....	10
18 Report of results of special inquiry .....	10
19 General conduct of special inquiries.....	11
20 Hearings in special inquiries.....	11
21 Tendering information, documents and evidence.....	12
22 Exemptions for Cabinet documents and other privileged material.....	12
<b>Part 5 Reports by Commission</b> .....	<b>13</b>
23 Annual reports to Parliament.....	13
24 Special and other reports .....	14
25 Furnishing of draft reports to Minister .....	14
26 Provisions relating to reports to Parliament.....	14
<b>Part 6 Parliamentary Joint Committee</b> .....	<b>15</b>
27 Constitution of Committee.....	15
28 Functions of Committee.....	15
29 Membership of Committee .....	16
30 Provisions with respect to Committee .....	16
<b>Part 7 Employment screening</b> .....	<b>16</b>
31 Object of Part.....	16
32 Welfare of children to be paramount consideration.....	16
33 Definitions .....	16
34 Nature of employment screening .....	18
35 Guidelines relating to procedures and standards for employment screening.....	19
36 Functions of Commission in respect of employment screening .....	19
37 Employment screening mandatory for preferred applicants for certain child-related employment .....	20
38 Notification of information relating to relevant criminal records or apprehended violence orders ..	21
39 Duties of employers with respect to disciplinary proceedings.....	22
40 Duties of employers to notify Commission of rejected applicant in connection with employment screening .....	22

41 Protection of persons involved in employment screening .....	23
42 Unauthorised disclosure or dishonest collection of information .....	23
43 Obtaining and correcting information on relevant disciplinary proceedings under FOI Act .....	24
44 Effect of Part on other rights and procedures .....	24
45 Staged implementation of duties under Part .....	24
<b>Part 8 Miscellaneous</b> .....	<b>25</b>
46 Act to bind Crown .....	25
47 Charges made by Commission .....	25
48 Protection from liability .....	25
49 Proceedings for offences .....	25
50 Offences by corporations.....	25
51 Regulations.....	26
52 Amendment of other Acts.....	26
52A Savings, transitional and other provisions.....	26
53 Review of Act.....	26
<b>Schedule 1 Parliamentary Joint Committee</b> .....	<b>26</b>
<b>Schedule 2 Amendment of other Acts and regulations</b> .....	<b>31</b>
<b>Schedule 3 Savings, transitional and other provisions</b> .....	<b>33</b>

# Commission for Children and Young People Act 1998 No 146



New South Wales

An Act to establish the Commission for Children and Young People and provide for its functions; to provide for employment screening for child-related employment; to amend certain Acts; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Commission for Children and Young People Act 1998*.

### 2 Commencement

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

### 3 Definitions

(1) In this Act:

**children** means persons under the age of 18 years.

**Commission** means the Commission for Children and Young People constituted by this Act.

**Commissioner** means the Commissioner for the Commission for Children and Young People.

**employment screening**—see Part 7.

**exercise** a function includes perform a duty.

**function** includes a power, authority or duty.

**government agency** includes any public or local authority.

**non-government agency** includes any commercial or non-commercial organisation.

**Parliamentary Joint Committee** means the joint committee called the Committee

on Children and Young People constituted under this Act.

**Presiding Officer** means the President of the Legislative Council or the Speaker of the Legislative Assembly. However:

- (a) if there is a vacancy in the office of President, the reference to the President is a reference to the Clerk of the Legislative Council, or
- (b) if there is a vacancy in the office of Speaker, the reference to the Speaker is a reference to the Clerk of the Legislative Assembly.

**special inquiry** means a special inquiry conducted by the Commission under Part 4.

- (2) Notes included in this Act do not form part of this Act.

## Part 2 Constitution of Commission

### 4 Commission

- (1) There is constituted by this Act a corporation with the corporate name of the Commission for Children and Young People.
- (2) The Commission has the functions conferred or imposed on it by or under this or any other Act.
- (3) The functions of the Commission are exercisable by the Commissioner. Any act, matter or thing done in the name of, or on behalf of, the Commission by the Commissioner, or with the authority of the Commissioner, is taken to have been done by the Commission.

### 5 Commissioner

- (1) The Governor may appoint a Commissioner for the Commission for Children and Young People.
- (2) The employment of the Commissioner is subject to Part 2A of the *Public Sector Management Act 1988*, but is not subject to Part 2 of that Act.
- (3) The Commissioner may not be appointed for a term that exceeds 5 years and may not be appointed for more than 2 successive terms of office, despite anything to the contrary in section 42F of the *Public Sector Management Act 1988*.
- (4) The Governor may remove the Commissioner from office only for misbehaviour, incapacity or incompetence, despite anything to the contrary in section 42Q of the *Public Sector Management Act 1988*.

### 6 Acting Commissioner

- (1) The Governor may, from time to time, appoint a person to act in the office of the

Commissioner during the illness or absence of the Commissioner (or during a vacancy in the office of Commissioner) and a person, while so acting, has all the functions of the Commissioner.

- (2) The Governor may, at any time, remove a person from the office of acting Commissioner.
- (3) The acting Commissioner is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine.

## **7 Staff of Commission**

- (1) Such staff as may be necessary to assist the Commission may be employed under Part 2 of the *Public Sector Management Act 1988*.
- (2) The Commission may arrange for the use of the services of any staff (by secondment or otherwise) or facilities of any government agency. Any such staff of which the Commission makes use is taken to be the staff of the Commission for the purposes of this Act.
- (3) The Commission may engage persons as consultants to the Commission or to perform services for it.

## **8 Expert Advisory Committee and other advisory committees**

- (1) The Commission is to appoint an Expert Advisory Committee, consisting of not more than 8 members, to assist the Commission in the exercise of its functions.
- (2) The members of the Expert Advisory Committee are to be persons, approved by the Minister on the recommendation of the Commission, with child-related expertise in the fields of health, education, child protection, child development, disabilities, the law, employment, sport or the arts.
- (3) The Commission may appoint such other advisory committees as it considers appropriate to assist the Commission in the exercise of its functions. The Commission may disband any such advisory committee at any time.
- (4) The procedure of the Expert Advisory Committee or any other advisory committee is to be determined by the Commission or (subject to any determination of the Commission) by the committee.
- (5) A member of the Expert Advisory Committee or any other advisory committee is entitled to such allowances in connection with the work of the committee as the Minister approves in respect of the member.

## **9 Delegation**

The Commission may delegate any of its functions (other than this power of delegation) 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**

### **10 Principles governing work of Commission**

The following principles are to govern the work of the Commission:

- (a) the safety, welfare and well-being of children are the paramount considerations,
- (b) the views of children are to be given serious consideration and taken into account,
- (c) a co-operative relationship between children and their families, and between children and their community, is important for the safety, welfare and well-being of children.

### **11 Principal functions of Commission**

The principal functions of the Commission 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 safety, welfare and 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 under Part 4 into issues affecting children,
- (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,
- (j) to develop and administer a voluntary accreditation scheme for persons working with persons who have committed sexual offences against children.

#### **Note—**

Under Part 7A of the *Children (Care and Protection) Act 1987*, the Commissioner is the convenor of the Child Death Review Team established under that Part and the Commission is required to provide administrative



support to that Review Team.

## **12 Priority matters**

In exercising its functions, the Commission is to give priority to the interests and needs of vulnerable children.

## **13 Consultation with children**

- (1) The Commission is to develop means of consulting with children that are appropriate to their age and maturity.
- (2) The Commission is to use those means of consultation in exercising its functions and, in particular, before making any significant recommendations.

## **14 Co-operation with other agencies**

- (1) The Commission and other government or non-government agencies that provide or deal with services or issues affecting children must work in co-operation in the exercise of their respective functions.
- (2) Arrangements may be made by the Minister with the Minister administering a government agency to secure such co-operation, including in connection with the provision by the agency of information (or access to documents) required by the Commission in relation to services or issues affecting children.
- (3) A reference in this section to the provision of access to documents includes a reference to the provision of copies of documents.

## **14A Powers of Commission for Children and Young People to compel production of information**

- (1) For the purpose of preparing submissions to the Industrial Relations Commission or Administrative Decisions Tribunal under:
  - (a) section 9 of the *Child Protection (Prohibited Employment) Act 1998*, or
  - (b) section 16 of the *Child Protection (Offenders Registration) Act 2000*,the Commission for Children and Young People may direct any government agency to provide the Commission with information relevant to an assessment of whether the applicant poses a risk to the safety of children.
- (2) A government agency to which a direction under subsection (1) is given is by this section authorised and required to provide the Commission for Children and Young People with the information sought by the direction.
- (3) For the purpose of determining an application for an order under section 8A of the *Child Protection (Prohibited Employment) Act 1998*, the Commission may, by notice in

writing served on an officer of a government agency or any other person, request the officer or other person to send to the Commission, on or before a day specified in the notice, a statement setting out such information as is so specified.

- (4) Any such officer or other person is authorised to provide a statement requested under subsection (3) to the Commission.
- (5) The Commission may request a statement under subsection (3) only if the applicant for the order has consented in writing to the Commission doing so.
- (6) The Commission is to give a copy of every statement referred to in subsection (3) that it receives in relation to an application for an order to the applicant.

#### **15 Referral of matters to police and other investigative agencies**

- (1) This section applies to any information obtained by the Commission in the course of exercising its functions, being information relating to a possible criminal offence under any law or to grounds for possible disciplinary action under any law.
- (2) The Commission may refer any such information to the Commissioner of Police, the Ombudsman, the Department of Community Services or any other investigative or government agency that the Commission considers appropriate.

#### **16 Assistance to particular children**

- (1) The Commission does not have the function of dealing directly with the complaints or concerns of particular children.
- (2) The Commission may, despite subsection (1), provide children and their families, friends and advocates with information about and referral to government and non-government programs and services.

### **Part 4 Special inquiries by Commission**

#### **17 Establishment of special inquiry**

- (1) The Minister may require the Commission to conduct a special inquiry into a specified issue affecting children, either at the request of the Commission or on the Minister's own initiative.
- (2) The Commission is to cause public notice of any such special inquiry to be given in a newspaper circulating throughout the State and in such other manner as the Commission considers appropriate.

#### **18 Report of results of special inquiry**

The Commission is to make a special report under Part 5 on the results of a special inquiry.

## **19 General conduct of special inquiries**

In a special inquiry, the Commission:

- (a) is to act with as little formality as possible, and
- (b) may inform itself on any matter in any way it thinks fit and is not bound by the rules of evidence, and
- (c) may receive information or submissions in the form of oral or written statements, and
- (d) may consult with such persons as it thinks fit.

## **20 Hearings in special inquiries**

- (1) The Commission may hold hearings for the purposes of a special inquiry.
- (2) The Commission may also hold public seminars, conduct workshops and establish working groups and task forces for the purposes of a special inquiry.
- (3) Before the Commission begins to hold hearings, it must give reasonable notice, by advertisement published in a newspaper circulating throughout the State and in such other manner as the Commission considers appropriate:
  - (a) of its intention to hold the hearings, and
  - (b) of the subject of the hearings, and
  - (c) of the time and place at which the first of the hearings is to begin.
- (4) The Commission may call for written submissions to be made before the hearings begin, and may specify a time and date by which those submissions must be made. The Commission may extend the time for the making of submissions.
- (5) The Commissioner (or a member of the staff of the Commission appointed by the Commissioner) is to preside at a hearing.
- (6) A hearing is to be held in public.
- (7) However, a hearing is to be held in private if:
  - (a) the Commission is satisfied that it is desirable to do so because of the confidential nature of any evidence or matter or for any other reason, or
  - (b) the hearing concerns the evidence of a child and the child requests a private hearing.
- (8) The regulations may make provision for or with respect to hearings and, in particular, for or with respect to prohibiting or restricting the publication or disclosure of evidence or other matters concerning a private hearing before the Commission.

## **21 Tendering information, documents and evidence**

- (1) For the purposes of a special inquiry, the Commission may, by notice in writing served on any officer of a government agency or any other person, require the officer or other person to do any one or more of the following:
  - (a) to send to the Commission, on or before a day specified in the notice, a statement setting out such information as is so specified,
  - (b) to send to the Commission, on or before a day specified in the notice, such documents as are so specified,
  - (c) to attend a hearing before the Commission to give evidence.
- (2) Any such officer or other person is, subject to this Act and any other relevant Act or law, under a duty to comply with the notice and to answer any question the officer or other person is required to answer by the person presiding at the hearing before the Commission.
- (3) A person must not:
  - (a) give to the Commission, whether orally or in writing, information that the person knows is false or misleading in a material particular (unless the person informs the Commission of that fact), or
  - (b) at a hearing before the Commission, give evidence that the person knows is false or misleading in a material particular.

Maximum penalty: 50 penalty units or imprisonment for 6 months, or both.

- (4) If documents are given to the Commission under this section, the Commission:
  - (a) may take possession of, and make copies of or take extracts from, the documents, and
  - (b) may keep possession of the documents for such period as is necessary for the purposes of the special inquiry to which they relate, and
  - (c) during that period must permit them to be inspected at all reasonable times by the persons who would be entitled to inspect them if they were not in the possession of the Commission.

## **22 Exemptions for Cabinet documents and other privileged material**

- (1) Nothing in Parts 3 and 4:
  - (a) requires or authorises any person to give any statement of information or answer any question which relates to confidential proceedings of Cabinet, or to disclose a Cabinet document, or

(b) requires any person to give any statement of information, answer any question or disclose any document if the person can claim privilege not to do so.

(2) For the purposes of this section, a certificate of the head of The Cabinet Office that any information or question relates to confidential proceedings of Cabinet or that a document is a Cabinet document is conclusive of the matter certified.

(3) In this section:

**Cabinet** includes a committee of Cabinet or a subcommittee of such a committee.

**Cabinet document** means a document that is a restricted document by virtue of clause 1 of Part 1 of Schedule 1 to the [Freedom of Information Act 1989](#).

**disclosure** of a document includes the provision of copies of the document, the granting of access to the document or the disclosure of the contents of the document.

**document** includes a part of a document.

**privilege** means privilege based on a claim by a person that evidence or other information about a matter or document:

- (a) might tend to incriminate the person or make the person liable to any forfeiture or penalty, or
- (b) could not be required to be adduced in proceedings before a New South Wales court by reason of the operation of section 10 (Parliamentary privilege preserved) or Part 3.10 (Privileges) of Chapter 3 of the [Evidence Act 1995](#).

## Part 5 Reports by Commission

### 23 Annual reports to Parliament

- (1) The Commission is required to prepare, within the period of 4 months after 30 June in each year, a report of its operations during the year ended on that 30 June and furnish the report to the Presiding Officer of each House of Parliament.
- (2) A report by the Commission under this section must include the following:
  - (a) a description of its activities during that year in relation to each of its principal functions,
  - (b) an evaluation of the response of relevant authorities to the recommendations of the Commission,
  - (c) any recommendations for changes in the laws of the State, or for administrative action, that the Commission considers should be made as a result of the exercise of its functions,

- (d) a description of any request made by the Commission to conduct a special inquiry that was not approved by the Minister and a statement of the reasons given by the Minister for not approving of that request.

#### **24 Special and other reports**

- (1) The Commission is to make a special report to the Minister on any particular issue or general matter requested by the Minister (whether or not in connection with a special inquiry). The special report may be furnished by the Commission to the Presiding Officer of each House of Parliament.
- (2) The Commission may, at any time, make a report on any particular issue or general matter relating to its functions and furnish the report to the Presiding Officer of each House of Parliament.

#### **25 Furnishing of draft reports to Minister**

- (1) The Commission is to provide the Minister with a draft of each report that is to be furnished to the Presiding Officers under this Part.
- (2) Each draft report is to be provided to the Minister at least 1 month (or other period agreed by the Minister) before it is furnished to the Presiding Officers.
- (3) The Minister may provide the Commission with any comments the Minister wishes to make in relation to a draft report.
- (4) The Minister may require the Commission to consult further in relation to a draft report and provide a further draft report in accordance with subsection (2). Only one such requirement can be made with respect to a report.
- (5) The Commission is not bound to amend its report in light of any comments made by the Minister, but must, before finalising its report, consider any comment that was provided to it by the Minister (and the results of further consultation) before the report is furnished to the Presiding Officers.

#### **26 Provisions relating to reports to Parliament**

- (1) A copy of a report furnished 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.
- (2) The Commission may include in a report a recommendation that the report be made public forthwith.
- (3) If a report includes a recommendation by the Commission that the report be made public forthwith, 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.

- (4) 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.
- (5) 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 furnished in accordance with this Act.
- (6) The *Annual Reports (Departments) Act 1985* is, in its application to the annual report of the Commission, modified to the extent necessary for the purposes of this Part.

## **Part 6 Parliamentary Joint Committee**

### **27 Constitution of Committee**

- (1) As soon as practicable after the commencement of this Part and the commencement of the first Session of each Parliament, a joint committee of members of Parliament, to be known as the Committee on Children and Young People, is to be appointed.
- (2) The Parliamentary Joint Committee has the functions conferred or imposed on it by or under this Act or any other Act.

### **28 Functions of Committee**

- (1) The Parliamentary Joint Committee has the following functions under this Act:
  - (a) to monitor and review the exercise by the Commission of its functions,
  - (b) to report to both Houses of Parliament, with such comments as it thinks fit, on any matter appertaining to the Commission or connected with the exercise of its functions to which, in the opinion of the Joint Committee, the attention of Parliament should be directed,
  - (c) to examine each annual or other report of the Commission and report to both Houses of Parliament on any matter appearing in, or arising out of, any such report,
  - (d) to examine trends and changes in services and issues affecting children, and report to both Houses of Parliament any changes that the Joint Committee thinks desirable to the functions and procedures of the Commission,
  - (e) to inquire into any question in connection with the Committee's functions which is referred to it by both Houses of Parliament, and report to both Houses on that question.
- (2) Nothing in this Part authorises the Parliamentary Joint Committee to investigate a matter relating to particular conduct.

- (3) The Commission may, as soon as practicable after a report of the Parliamentary Joint Committee has been tabled in a House of Parliament, make and furnish to the Presiding Officer of that House a report in response to the report of the Committee. Section 26 applies to such a report.

## 29 Membership of Committee

- (1) The Parliamentary Joint Committee is to consist of 11 members, of whom:
- (a) 5 are to be members of, and appointed by, the Legislative Council, and
  - (b) 6 are to be members of, and appointed by, the Legislative Assembly.
- (2) The appointment of members of the Parliamentary Joint Committee is, as far as practicable, to be in accordance with the practice of Parliament with respect to the appointment of members to serve on joint committees of both Houses of Parliament.
- (3) A person is not eligible for appointment as a member of the Parliamentary Joint Committee if the person is a Minister of the Crown or a Parliamentary Secretary.

## 30 Provisions with respect to Committee

Schedule 1 has effect with respect to the Parliamentary Joint Committee.

## Part 7 Employment screening

### 31 Object of Part

The object of this Part is to protect children by means of employment screening for child-related employment administered by the Commission and other agencies.

### 32 Welfare of children to be paramount consideration

The welfare of children and, in particular, protecting them from child abuse, is the paramount consideration in employment screening.

### 33 Definitions

- (1) In this Part:

**approved screening agency** means the Commission or an employer (or employer-related body) approved by the Minister as referred to in section 37 (4).

**child abuse** means:

- (a) assault (including sexual assault) of a child, or
- (b) ill-treatment or neglect of a child, or
- (c) exposing or subjecting a child to behaviour that psychologically harms the child,



whether or not, in any case, with the consent of the child.

**child-related employment** means any employment that involves direct contact with children where the contact is not directly supervised, and includes any employment of a kind prescribed by the regulations but does not include any employment of a kind excluded by the regulations.

**employee** means any person who is engaged in employment within the meaning of this Part.

**employer** means any person who engages the person in employment within the meaning of this Part, and includes a person who, in the course of a business, arranges for the placement of a person in employment with others.

**employer-related body** means any body that supervises, represents or has other functions with respect to an employer.

**employment** means (subject to the regulations):

- (a) performance of work under a contract of employment or as the holder of a remunerated position, 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, or
- (e) performance of work as a minister of religion or other member of a religious organisation.

**relevant apprehended violence order** means (subject to subsection (2)):

- (a) an apprehended violence order (other than an interim order) made by a court under Part 15A of the [Crimes Act 1900](#), or
- (b) an interstate restraint order (within the meaning of Part 15A of the [Crimes Act 1900](#)), whether or not it is registered under that Part,

being an order made on the application of a police officer or other public official for the protection of a child (or a child and others).

**relevant criminal record** means (subject to subsection (2)) the criminal record of a person with respect to an offence involving sexual activity, acts of indecency, child abuse or child pornography, or an offence an element of which is an intention to commit such an offence, or an offence of attempting, or of conspiracy or incitement, to commit any of the preceding offences:

- (a) that was committed in New South Wales and that was punishable by penal

servitude or imprisonment for 12 months or more, or

- (b) that was committed elsewhere and that would have been an offence punishable by penal servitude or imprisonment for 12 months or more if it had been committed in New South Wales,

and includes the criminal record of a registrable person within the meaning of the *Child Protection (Offenders Registration) Act 2000*, but only in relation to registrable offences within the meaning of that Act.

**relevant disciplinary proceedings** means (subject to subsection (2)) disciplinary proceedings (in this State 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:

- (a) child abuse, sexual misconduct by the employee, or
- (b) acts of violence committed by the employee in the course of employment.

(2) The regulations may declare that, for the purposes of this Part:

- (a) orders of a particular kind are or are not relevant apprehended violence orders, or
- (b) offences of a particular kind are or are not part of the relevant criminal record of a person, or
- (c) disciplinary proceedings of a particular kind are or are not relevant disciplinary proceedings.

(3) For the avoidance of doubt, the performance of the duties of a foster carer engaged by the Department of Community Services or by any foster care agency constitutes employment for the purposes of this Part.

(5) For the purposes of this Act, section 579 of the *Crimes Act 1900* does not apply to or in respect of an offence referred to in the definition of **relevant criminal record** in subsection (1).

### 34 Nature of employment screening

For the purposes of this Part, **employment screening** is any or all of the following procedures with respect to a person who is employed or who has applied to be employed in child-related employment:

- (a) a check for any relevant criminal record of the person, for any relevant apprehended violence orders made against the person or for any relevant disciplinary proceedings completed against the person,
- (b) any other relevant probity check relating to the previous employment or other activities of the person,

- (c) an assessment of the risk to children involved in that child-related employment arising from anything disclosed by such a check, having regard to all the circumstances of the case,
- (d) the disclosure of the results of any such check or risk assessment to any person who determines whether the person is to be employed or continue to be employed in that child-related employment (or to a person who advises or makes recommendations on the matter).

### **35 Guidelines relating to procedures and standards for employment screening**

- (1) The Minister must publish guidelines from time to time relating to the procedures and standards for employment screening.
- (2) Without limiting subsection (1), the guidelines must contain procedures and standards relating to:
  - (a) the confidentiality of information obtained for or as a result of employment screening,
  - (b) the information to be provided to persons subject to employment screening (including procedures enabling those persons to correct any such information),
  - (c) the information to be provided to (or withheld from) employers by agencies carrying out employment screening on their behalf.
- (3) The guidelines must contain provision for notifying applicants for child-related employment of information obtained about them during employment screening that may adversely affect their application. The guidelines must also deal with access by employees or prospective employees to information that is or may be used in employment screening.
- (4) The Minister must ensure that guidelines are published with effect on the commencement of this Part.
- (5) The Minister is to review the guidelines to determine whether they remain effective and appropriate having regard to the policy objectives of this Part (including relevant industrial and privacy issues). The review is to be undertaken within 2 years after the commencement of this Part.

### **36 Functions of Commission in respect of employment screening**

- (1) The Commission may exercise the following functions with respect to employment screening:
  - (a) collecting and maintaining a database of relevant apprehended violence orders against any person and relevant disciplinary proceedings that have been completed against any person,

- (b) giving access to information on that database for the purposes of employment screening by employers (or employer-related bodies) who have entered into a memorandum of understanding with the Commission on such access and the use of the information obtained,
  - (c) conducting employment screening on behalf of employers for whom the Commission has agreed to conduct any such screening,
  - (d) making recommendations to the Minister on appropriate procedures and standards for employment screening,
  - (e) promoting public awareness and providing training and advice on appropriate procedures and standards for employment screening,
  - (f) monitoring and auditing compliance with the procedures and standards for employment screening.
- (2) The Minister may give the Commission a written direction on the exercise of its functions under this section, and the Commission is to comply with the direction. The Commission is to include any such direction in the Commission's annual report.

**37 Employment screening mandatory for preferred applicants for certain child-related employment**

- (1) This section applies to any decision by an employer to employ a person in primary child-related employment, being a person not already employed by the employer in child-related employment of that kind.
- (2) It is the duty of an employer to carry out all the relevant procedures of employment screening of the preferred applicant before employing the preferred applicant in that child-related employment.
- (3) Some or all of the procedures of employment screening may be deferred in a particular case if the employer can establish that it was not reasonably practicable to carry out those procedures in the circumstances. In that case, those procedures are to be carried out as soon as reasonably practicable after the person is employed.
- (4) An employer may engage:
- (a) the Commission, or
  - (b) an employer (or employer-related body) approved by the Minister,
- to carry out all or any of the relevant procedures of employment screening on its behalf.
- (4A) An employer is taken to have fulfilled the employer's obligations in relation to carrying out a procedure referred to in section 34 (a) and section 34 (c) (to the extent

that it relates to a procedure referred to in section 34 (a)) if:

- (a) the employer engages an approved screening agency to carry out those procedures, and
- (b) the employer receives the results of carrying out those procedures from that agency.

(4B) For the purposes of this section, an employer or an approved screening agency need only carry out such of the procedures referred to in section 34 (a) and section 34 (c) (to the extent that it relates to a procedure referred to in section 34 (a)) in relation to an applicant for employment as are required by this Part, and as are able, to be carried out:

- (a) at the time the person is being considered for employment, or
- (b) if the carrying out of the procedures has been deferred as referred to in subsection (3), at the time those procedures are required to be carried out in accordance with that subsection.

(5) Nothing in this section gives rise to, or can be taken into account in, any civil cause of action, other than an action to require future compliance of the employer with the duty under this section.

(6) In this section:

***primary child-related employment*** means:

- (a) paid child-related employment to which the *Child Protection (Prohibited Employment) Act 1998* applies, or
- (b) child-related employment to which that Act applies by a minister of religion or other member of a religious organisation, or
- (c) child-related employment involving the fostering of children, or
- (d) if the regulations so require—child-related employment of the kind prescribed by the regulations.

### **38 Notification of information relating to relevant criminal records or apprehended violence orders**

- (1) The Commissioner of Police may, in accordance with this Part and the regulations, disclose (or arrange for a member of the Police Service to disclose) to the Commission, and to any employer (or employer-related body) approved by the Minister, information relating to any relevant criminal record of persons, or any relevant apprehended violence orders in respect of persons, for the purposes of employment screening.
- (2) The Commission and any such approved employer (or employer-related body) may, in

accordance with this Part and the regulations, disclose that information to other employers for the purposes of employment screening undertaken on their behalf by the Commission or approved employer (or employer-related body).

- (3) Information that may be disclosed under this section includes:
  - (a) information relating to spent convictions, despite anything to the contrary in the *Criminal Records Act 1991*, and
  - (b) information relating to criminal charges, whether or not heard, proven, dismissed, withdrawn or discharged, and
  - (c) information relating to offences, despite anything to the contrary in section 579 of the *Crimes Act 1900*.
- (4) This section does not limit the persons to whom, or the circumstances in which, the criminal record of persons, or information relating to relevant apprehended violence orders in respect of persons, may be disclosed apart from this Act.

### **39 Duties of employers with respect to disciplinary proceedings**

- (1) It is the duty of an employer 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).
- (2) The employer who notified the Commission of any such information may notify, on request, sufficient details of the proceedings concerned to another employer (or employer-related body), or to the Commission, for the purposes of employment screening by the other employer (or body) or the Commission. The employer is under a duty to notify those details if the regulations so provide.
- (3) Notification under this section extends to disciplinary proceedings completed within the period of 5 years immediately before the commencement of this section.
- (4) Notification under this section is to be in such form as the regulations provide or, subject to the regulations, as the Commission directs and consistent with the guidelines published under this Part.
- (5) It is the duty of an employer to retain records of information that the employer is required to notify under this section. That duty applies despite any requirement for disposal of the record (for example, any regulation applying to records of information of disciplinary proceedings with respect to public sector employees).

### **40 Duties of employers to notify Commission of rejected applicant in connection with employment screening**

- (1) It is the duty of an employer to notify the Commission of the name and other

identifying particulars of any person whose application for child-related employment with the employer has been rejected primarily because of a risk assessment in employment screening.

- (2) Notification under this section is to be in such form as the Commission directs.
- (3) The Commission is not to use, or give access to, any information notified to the Commission under this section, other than for the purpose of its monitoring or auditing compliance functions under this Part.

#### **41 Protection of persons involved in employment screening**

- (1) Anything done by a person in good faith and with reasonable care:
  - (a) for the purposes of employment screening, or
  - (b) for the purposes of exercising any function under this Part,does not subject the person to any action, liability, claim or demand.
- (2) Without limiting subsection (1):
  - (a) a person has qualified privilege in proceedings for defamation in respect of anything done by the person for the purposes of employment screening or exercising a function under this Part, and
  - (b) damages or compensation (whether for breach of contract or otherwise) are not payable in respect of a decision not to employ a person as a result of a risk assessment carried out in good faith and with reasonable care for the purposes of employment screening.
- (3) This section does not limit or affect any other right, privilege or immunity that a person has as a defendant in any proceedings.

#### **42 Unauthorised disclosure or dishonest collection of information**

- (1) A person who discloses any information obtained by the person in connection with employment screening or the exercise of functions under this Part is guilty of an offence unless the disclosure:
  - (a) is made in good faith for the purposes of employment screening or the exercise of a function under this Part, or
  - (b) is made with the consent of the person from whom the information was obtained, or
  - (c) is ordered by a court, or any other body or person exercising judicial functions, for the purposes of the hearing or determination by the court, body or person of any matter, or

(d) is made with other lawful excuse.

- (2) A person who dishonestly obtains confidential information relating to employment screening or the exercise of functions under this Part is guilty of an offence.

Maximum penalty: 50 penalty units or imprisonment for 6 months, or both.

#### **43 Obtaining and correcting information on relevant disciplinary proceedings under FOI Act**

- (1) A person against whom any relevant disciplinary proceedings have been taken is, subject to this section, entitled to apply for access under the [Freedom of Information Act 1989](#) to any documents of an agency containing information about those proceedings. That Act applies to the determination of any such application for access.
- (2) Any provision of that Act relating to fees or charges payable by applicants does not apply to such an application for access.
- (3) Part 4 of that Act applies to the amendment of an agency's records relating to information about relevant disciplinary proceedings.
- (4) That Act applies for the purposes of this section whether or not the agency is an agency to which that Act applies.
- (5) The regulations under this Act may modify that Act in its application under this section.

#### **44 Effect of Part on other rights and procedures**

- (1) Employment screening may be conducted, and information disclosed or obtained, in accordance with this Part despite any other Act or law to the contrary.
- (2) Nothing in this Part affects any statutory right that an employee may have in relation to employment or termination of employment. However, any court or tribunal exercising jurisdiction with respect to any such right must have regard to the results of any employment screening carried out under this Part in connection with the employment concerned and the welfare of children as the paramount consideration in that employment screening.
- (3) Nothing in this Part affects the operation of the [Criminal Records Act 1991](#) in relation to spent convictions within the meaning of that Act.
- (4) Nothing in this Part affects the operation of Part 2 of Chapter 9 of the [Health Services Act 1997](#).

#### **45 Staged implementation of duties under Part**

- (1) The regulations may provide for the staged implementation of the duties imposed by this Part.



- (2) Any such duty does not arise until the date fixed by or in accordance with the regulations. Different dates may be fixed (without limitation) for different duties, for different kinds of employers or for different kinds of child-related employment.
- (3) However, this section does not prevent the voluntary performance of any such duty before that date, and this Part applies accordingly.

## **Part 8 Miscellaneous**

### **46 Act to bind Crown**

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of the Parliament of New South Wales permits, the Crown in all its other capacities.

### **47 Charges made by Commission**

The Commission may charge reasonable fees for any services or materials it supplies to any person who requests those services or materials.

### **48 Protection from liability**

A matter or thing done or omitted to be done by the Commission, the Commissioner, an advisory committee of the Commission, a member of any such advisory committee or any person acting under the direction of the Commission, the Commissioner or the advisory committee does not, if the matter or thing was done in good faith for the purposes of executing this or any other Act, subject the Commissioner, member of the advisory committee or a person so acting personally to any action, liability, claim or demand.

### **49 Proceedings for offences**

Proceedings for offences against this Act or the regulations are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

### **50 Offences by corporations**

- (1) If a corporation contravenes, whether by act or omission, any provision of this Act or the regulations, each person who is a director of the corporation or who is concerned in the management of the corporation is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.
- (2) A person may be proceeded against and convicted under a provision pursuant to this section whether or not the corporation has been proceeded against or been convicted under that provision.
- (3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against this Act or the regulations.

## **51 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) The regulations may create offences punishable by a penalty not exceeding 20 penalty units.

## **52 Amendment of other Acts**

The Acts specified in Schedule 2 are amended as set out in that Schedule.

### **52A Savings, transitional and other provisions**

Schedule 3 has effect.

## **53 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act 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 date of assent to this Act.
- (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) When carrying out the review, the Minister is required:
  - (a) to consult with government and non-government agencies that provide or deal with services or issues affecting children, and
  - (b) to consult, as far as practicable, with children, utilising the means of consultation developed by the Commission under section 13, and
  - (c) to invite and consider public submissions relating to the review of the Act.

## **Schedule 1 Parliamentary Joint Committee**

(Section 30)

### **1 Vacancies**

- (1) A member of the Parliamentary Joint Committee ceases to hold office:
  - (a) when the Legislative Assembly is dissolved or expires by the effluxion of time, or
  - (b) if the member becomes a Minister of the Crown or a Parliamentary Secretary, or

- (c) if the member ceases to be a member of the Legislative Council or Legislative Assembly, or
- (d) if, being a member of the Legislative Council, the member resigns the office by instrument in writing addressed to the President of the Legislative Council, or
- (e) if, being a member of the Legislative Assembly, the member resigns the office by instrument in writing addressed to the Speaker of the Legislative Assembly, or
- (f) if the member is discharged from office by the House of Parliament to which the member belongs.

(2) Either House of Parliament may appoint one of its members to fill a vacancy among the members of the Parliamentary Joint Committee appointed by that House.

## **2 Chairman and Vice-Chairman**

- (1) There is to be a Chairman and a Vice-Chairman of the Parliamentary Joint Committee, who are to be elected by and from the members of the Parliamentary Joint Committee.
- (2) A member of the Parliamentary Joint Committee ceases to hold office as Chairman or Vice-Chairman of the Parliamentary Joint Committee if:
  - (a) the member ceases to be a member of the Committee, or
  - (b) the member resigns the office by instrument in writing presented to a meeting of the Committee, or
  - (c) the member is discharged from office by the Committee.
- (3) At any time when the Chairman is absent from New South Wales or is, for any reason, unable to perform the duties of Chairman or there is a vacancy in that office, the Vice-Chairman may exercise the functions of the Chairman under this Act or under the [Parliamentary Evidence Act 1901](#).

## **3 Procedure**

- (1) The procedure for the calling of meetings of the Parliamentary Joint Committee and for the conduct of business at those meetings is, subject to this Act, to be as determined by the Committee.
- (2) The Clerk of the Legislative Assembly is to call the first meeting of the Parliamentary Joint Committee in each Parliament in such manner as the Clerk thinks fit.
- (3) At a meeting of the Parliamentary Joint Committee, 6 members constitute a quorum, but the committee must meet as a joint committee at all times.
- (4) The Chairman or, in the absence of the Chairman, the Vice-Chairman (or, in the absence of both the Chairman and the Vice-Chairman, a member of the Parliamentary

Joint Committee elected to chair the meeting by the members present) is to preside at a meeting of the Committee.

- (5) The Vice-Chairman or other member presiding at a meeting of the Parliamentary Joint Committee has, in relation to the meeting, all the functions of the Chairman.
- (6) The Chairman, Vice-Chairman or other member presiding at a meeting of the Parliamentary Joint Committee has a deliberative vote and, in the event of an equality of votes, also has a casting vote.
- (7) A question arising at a meeting of the Parliamentary Joint Committee is to be determined by a majority of the votes of the members present and voting.
- (8) The Parliamentary Joint Committee may sit and transact business despite any prorogation of the Houses of Parliament or any adjournment of either House of Parliament.
- (9) The Parliamentary Joint Committee may sit and transact business on a sitting day of a House of Parliament during the time of sitting.

#### **4 Reporting when Parliament not in session**

- (1) If a House of Parliament is not sitting when the Parliamentary Joint Committee seeks to furnish a report to it, the Committee may present copies of the report to the Clerk of the House.
- (2) The report:
  - (a) on presentation and for all purposes is taken to have been laid before the House, and
  - (b) may be printed by authority of the Clerk, and
  - (c) if printed by authority of the Clerk, is for all purposes taken to be a document published by or under the authority of the House, and
  - (d) is to be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after receipt of the report by the Clerk.

#### **5 Evidence**

- (1) The Parliamentary Joint Committee has power to send for persons, papers and records.
- (2) Subject to clause 6, the Parliamentary Joint Committee must take all evidence in public.
- (3) If the Parliamentary Joint Committee as constituted at any time has taken evidence in relation to a matter but the Committee as so constituted has ceased to exist before

reporting on the matter, the Committee as constituted at any subsequent time, whether during the same or another Parliament, may consider that evidence as if it had taken the evidence.

- (4) The production of documents to the Parliamentary Joint Committee is to be in accordance with the practice of the Legislative Assembly with respect to the production of documents to select committees of the Legislative Assembly.

## **6 Confidentiality**

- (1) If any evidence proposed to be given before, or the whole or a part of a document produced or proposed to be produced to, the Parliamentary Joint Committee relates to a secret or confidential matter, the Committee may, and at the request of the witness giving the evidence or the person producing the document must:

- (a) take the evidence in private, or
- (b) direct that the document, or the part of the document, be treated as confidential.

- (2) If a direction under subclause (1) applies to a document or part of a document produced to the Parliamentary Joint Committee:

- (a) the contents of the document or part are, for the purposes of this clause, to be regarded as evidence given by the person producing the document or part and taken by the Committee in private, and

- (b) the person producing the document or part is, for the purposes of this clause, to be regarded as a witness.

- (3) If, at the request of a witness, evidence is taken by the Parliamentary Joint Committee in private:

- (a) the Committee must not, without the consent in writing of the witness, and
- (b) a person (including a member of the Committee) must not, without the consent in writing of the witness and the authority of the Committee under subclause (5),

disclose or publish the whole or a part of that evidence.

Maximum penalty: 20 penalty units or imprisonment for 3 months, or both.

- (4) If evidence is taken by the Parliamentary Joint Committee in private otherwise than at the request of a witness, a person (including a member of the Committee) must not, without the authority of the Committee under subclause (5), disclose or publish the whole or part of that evidence.

Maximum penalty: 20 penalty units or imprisonment for 3 months, or both.

- (5) The Parliamentary Joint Committee may, in its discretion, disclose or publish or, by

writing under the hand of the Chairman, authorise the disclosure or publication of evidence taken in private by the Committee, but this subclause does not operate so as to affect the necessity for the consent of a witness under subclause (3).

(6) Nothing in this clause prohibits:

- (a) the disclosure or publication of evidence that has already been lawfully published, or
- (b) the disclosure or publication by a person of a matter of which the person has become aware otherwise than by reason, directly or indirectly, of the giving of evidence before the Parliamentary Joint Committee.

(7) This clause has effect despite section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975*.

(8) If evidence taken by the Parliamentary Joint Committee in private is disclosed or published in accordance with this clause:

- (a) sections 5 and 6 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* apply to and in relation to the disclosure or publication as if it were a publication of that evidence under the authority of section 4 of that Act, and
- (b) Division 5 of Part 3 of, and Schedule 2 to, the *Defamation Act 1974* apply to and in relation to that evidence as if it were taken by the Committee in public.

## **7 Application of certain Acts**

For the purposes of the *Parliamentary Evidence Act 1901* and the *Parliamentary Papers (Supplementary Provisions) Act 1975* and for any other purposes:

- (a) the Parliamentary Joint Committee is to be regarded as a joint committee of the Legislative Council and Legislative Assembly, and
- (b) the proposal for the appointment of the Parliamentary Joint Committee is to be regarded as having originated in the Legislative Assembly.

## **8 Validity of certain acts or proceedings**

Any act or proceeding of the Parliamentary Joint Committee is, even though at the time when the act or proceeding was done, taken or commenced there was:

- (a) a vacancy in the office of a member of the Committee, or
  - (b) any defect in the appointment, or any disqualification, of a member of the Committee,
- as valid as if the vacancy, defect or disqualification did not exist and the Committee were fully and properly constituted.

## Schedule 2 Amendment of other Acts and regulations

(Section 52)

### 2.1 Children (Care and Protection) Act 1987 No 54

#### [1] Section 102 Constitution of Child Death Review Team

Omit “, consisting of persons appointed by the Minister”.

Insert instead:

The Team is to consist of:

- (a) persons appointed by the Minister, and
- (b) the Commissioner for the Commission for Children and Young People.

#### [2] Section 102 (2) (a)

Omit the paragraph.

#### [3] Section 103A

Insert after section 103:

##### **103A Administrative support**

The Commission for Children and Young People is to provide administrative support to the Team.

#### [4] Section 105 Reports of findings and recommendations of the Team

Omit section 105 (4). Insert instead:

- (4) At the time the report is submitted to the Minister it is also to be furnished to the Presiding Officers of each House of Parliament in accordance with the requirements of Part 5 of the [Commission for Children and Young People Act 1998](#) relating to annual reports of the Commission for Children and Young People (and that Part applies to it accordingly). The report may be combined with a report of the Commission for Children and Young People under that Part.

#### [5] Schedule 2A Child Death Review Team

Omit the definition of **member** in clause 1. Insert instead:

**member** means a member of the Team, but in clauses 2–7 does not include the

Convener.

**[6] Schedule 2A**

Omit clause 2 (1). Insert instead:

- (1) The Commissioner for the Commission for Children and Young People is to be the Convener of the Team.

**[7] Schedule 2A**

Omit “Convener or” and “(in the case of the Deputy Convener)” from clause 2 (3).

## **2.2 Criminal Records Act 1991 No 8**

**[1] Section 13 Unlawful disclosure of information concerning spent convictions**

Insert after section 13 (4):

- (4A) It is not an offence for a person to make information relating to a spent conviction available in accordance with section 38 of the *Commission for Children and Young People Act 1998*.

**[2] Section 15 Employment in certain occupations**

Insert after section 15 (1):

- (1A) Section 12 does not apply in relation to an application by a person for employment in child-related employment within the meaning of Part 7 of the *Commission for Children and Young People Act 1998*.

## **2.3 Public Sector Management Act 1988 No 33**

### **Schedule 1 Departments**

Insert in columns 1 and 2, respectively, after the matter relating to the Cabinet Office:

Commission for Children and Young People	Commissioner for the Commission for Children and Young People
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## Schedule 3 Savings, transitional and other provisions

(Section 52A)

### Part 1 Preliminary

#### 1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

this Act

*Child Protection Legislation Amendment Act 2002*

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

### Part 2 Provisions consequent on enactment of **Child Protection Legislation Amendment Act 2002**

#### 2 Employment screening

- (1) A provision of section 37 (4A) or (4B) applies to and in respect of the screening of an applicant for employment whether occurring before or after the commencement of the provision.