

# Commission for Children and Young People Act 1998 No 146

[1998-146]



New South Wales

## Status Information

### Currency of version

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Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

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

### Notes—

- **Does not include amendments by**

[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)

[Child Protection Legislation Amendment Act 2003 No 90](#), Sch 2 [6] (not commenced)

[Commission for Children and Young People Amendment Act 2005 No 108](#) (not commenced)

### 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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New South Wales

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# 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:

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

**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.

**Convenor** means Convenor of the Child Death Review Team.

**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.
- (4) The Commission cannot employ any staff.

**Note—**

Staff may be employed under Chapter 1A of the [Public Sector Employment and Management Act 2002](#) in the Government Service to enable the Commission to exercise its functions.

### 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 (Repealed)**

## **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,
- (k) to support and assist the Child Death Review Team in the exercise of its functions under Part 7A.

## **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 (other than its functions under section 11 (k)), 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.

#### **15A Use of information for purposes of report under section 24 of [Children and Young Persons \(Care and Protection\) Act 1998](#)**

Any information obtained by the Commission in the course of exercising its functions (other than its functions under section 11 (k)) may be used for the purposes of making a report to the Director-General of the Department of Community Services under section 24 (Report concerning child or young person at risk of harm) of the [Children and Young Persons \(Care and Protection\) Act 1998](#).

#### **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.
- (4) A reference in this section to the Commission includes a reference to the Child Death Review Team.

### **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 protection prohibition order** means a prohibition order within the meaning of the *Child Protection (Offenders Prohibition Orders) Act 2004*, and includes an order which has expired or been revoked.

**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 reportable conduct or any sexual offence,

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 employment 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 proceedings involving:

- (a) reportable conduct by the employee, or
- (b) an act of violence committed by the employee in the course of employment and in the presence of a child.

**reportable conduct** means:

- (a) any sexual offence, or sexual misconduct, committed against, with or in the presence of a child (including a child pornography offence), or
- (b) any assault, ill-treatment or neglect of a child, or
- (c) any behaviour that causes psychological harm to a child,

whether or not, in any case, with the consent of the child. Reportable conduct does not extend to:

- (a) conduct that is reasonable for the purposes of the discipline, management or care of children, having regard to the age, maturity, health or other characteristics of the children and to any relevant codes of conduct or professional standards, or
- (b) the use of physical force that, in all the circumstances, is trivial or negligible, but only if the employer is an agency to which Part 3A of the *Ombudsman Act 1974* applies and the matter is to be investigated and the result of the investigation recorded under workplace employment procedures, or
- (c) conduct of a class or kind that is exempted from being reportable conduct by the guidelines under section 35.

**Note—**

Examples of conduct that would not constitute **reportable conduct** include (without limitation) touching a child in order to attract a child's attention, to guide a child or to comfort a distressed child; a school teacher raising his or her voice in order to attract attention or to restore order in the classroom; and conduct that is established to be accidental.

- (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 employment 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, for any child protection prohibition orders made against the person or for any relevant employment 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, child protection prohibition orders made against any person and relevant employment 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 other 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, or any child protection prohibition 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 relevant employment 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 employment proceedings have been completed by the employer (other than proceedings in which a finding is made that the alleged reportable conduct, or the alleged commission of an act of violence, did not occur).

(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 employment proceedings under FOI Act**

- (1) A person against whom any relevant employment 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 employment 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 7A Child Death Review Team**

### **Division 1 Object of Part**

#### **45A 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.

### **Division 2 Constitution and procedure of the Team**

#### **45B Constitution of the Team**

There is established by this Act a corporation to be known as the Child Death Review Team.

#### **45C Composition of the Team**

- (1) The Team is to consist of:
  - (a) the Commissioner, who is to be the Convenor of the Team, and
  - (b) persons appointed by the Minister.
- (2) The Team is to include representatives of each of the following:
  - (a) the Department of Community Services,
  - (b) the Department of Health,
  - (c) NSW Police,
  - (d) the Department of Education and Training,
  - (e) the Attorney General's Department,
  - (f) the Office of the Coroner,
  - (g) the Department of Ageing, Disability and Home Care.
- (3) Each representative referred to in subsection (2) is to be nominated by the Minister responsible for the organisation concerned.
- (4) In addition, the Team is to include persons 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.

(5) The Minister is to appoint 2 persons who are Aboriginal (within the meaning of the *Aboriginal Land Rights Act 1983*) as members of the Team.

(6) The Team must consist of not less than 14 members (in addition to the Convenor) and not more than 20 members (in addition to the Convenor) at any one time.

(7) A person who is a member of the Legislative Council or the Legislative Assembly is not eligible to be a member of the Team.

#### **45D Deputy Convenor**

(1) The members of the Team are to elect one of their number 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 subsection (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 section 45H, or

(b) resigns that office by instrument in writing addressed to the Minister, or

(c) ceases to be a member.

#### **45E Term of office of members**

A member, other than the Convenor, holds office for such period (not exceeding 2 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

#### **45F Remuneration**

A member, other than the Convenor or a representative of a department of the government, NSW Police or a statutory body, is entitled to be paid such remuneration and allowances (including travelling or subsistence allowances) as may be determined by the Minister.

#### **45G Vacancy in office of member**

(1) The office of a member, other than the Convenor, 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 section 45H, or
  - (i) is the subject of a communication in writing to the Minister by the Minister that nominated the member, stating that he or she no longer represents that organisation.
- (2) If the office of any member becomes vacant, another person is, subject to this Part, to be appointed to fill the vacancy.

#### **45H Removal from office**

The Minister may remove a member, other than the Convenor, from office for incapacity, incompetence or misbehaviour.

#### **45I 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 Part as a member.

#### **45J General procedure**

- (1) The procedure for the calling of meetings of the Team and for the conduct of business at those meetings is to be as determined by the Convenor.
- (2) The Team is to meet not less than 4 times in each calendar year.

#### **45K Quorum for meetings**

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

#### **45L 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.

#### **45M 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.

### **Division 3 Functions of the Team**

#### **45N 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) with the approval of the Minister, 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) The Team may not undertake a review of a reviewable death (within the meaning of Part 6 of the *Community Services (Complaints, Reviews and Monitoring) Act 1993*) 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.
- (3) Before granting an approval for the purposes of subsection (2) (b), the Minister is to consult with and consider the advice of the Ombudsman.

#### **45O 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 Minister in respect of the person.

#### **45P 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 ended on that 30 June and furnish 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 45U (1) (b),
  - (d) if the Team has not presented a report to Parliament under section 45R 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.

#### **45Q 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 furnish 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 45N (1) (e) or (f).

#### **45R Other reports**

The Team may, at any time, make a report containing the results of research undertaken in exercise of its research functions under section 45N and furnish the report to the Presiding Officer of each House of Parliament.

#### **45S Preparation and presentation of reports**

- (1) Section 25 applies to a report under section 45P, 45Q or 45R in the same way as it applies to a report of the Commission under Part 5.
- (2) Section 26 applies to a report under section 45P, 45Q or 45R in the same way as it applies to a report of the Commission under Part 5.
- (3) A report of the Team under section 45P, 45Q or 45R may be presented separately from any other such report or together with any other such report or as part of a report of the Commission under Part 5.

### **Division 4 Access to and confidentiality of information**

#### **45T Duty of persons to assist the Team**

- (1) It is the duty of each of the following persons, namely:
  - (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),

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

- (2) Access to which the Team is entitled under subsection (1) includes the right to inspect and, on request, to be provided with copies of, any record referred to in that subsection and to inspect any non-documentary evidence associated with any such record.
- (3) A provision of any Act or law that restricts or denies access to records does not prevent a person to whom subsection (1) applies from complying, or affect the person's duty to comply, with that subsection.
- (4) 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.

#### **45U 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 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 1980*, or
    - (iv) 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

- (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 section 45P, 45Q or 45R.

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).

- (4) In this section:

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

***produce*** includes permit access to.

***Team-related person*** means a member of the Team, a member of staff of the Team and any person engaged to assist the Team in the exercise of its functions, including persons appointed under section 45O.

#### **45V 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 (within the meaning of section 45U) is guilty of an offence.

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

### **Division 5 Miscellaneous**

#### **45W 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.

#### **45X Review of Part**

- (1) The Minister is to review this Part to determine whether the policy objectives of this Part remain valid and whether the terms of this Part remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the commencement of this Part.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.
- (4) A review of this Part may also be undertaken as part of the review required under section 53 and the report on the outcome of the review may be included in the report under that section.

### **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, or the Child Death Review Team, a member of the Team or a person acting under the direction of the Team 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, member of the Team 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.

## **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.
- (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.
- (2) The regulations may create offences punishable by a penalty not exceeding 20 penalty units.

## **52 (Repealed)**

### **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, 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.

**Note—**

The *Defamation Act 2005* makes provision for 2 defences in respect of the publication of defamatory matter that is contained in evidence taken by, or documents produced to, the Parliamentary Joint Committee in private, but only if the evidence or documents have been disclosed or published in accordance with this clause.

Section 28 of the *Defamation Act 2005* (when read with clause 8 of Schedule 2 to that Act) ensures that such documents attract the defence relating to public documents in defamation proceedings.

Section 29 of the *Defamation Act 2005* (when read with clause 17 of Schedule 3 to that Act) ensures that proceedings in which such evidence is taken or documents produced attract the defences relating to fair reports of proceedings of public concern in defamation proceedings.



## **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 (Repealed)**

## **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*

*Commission for Children and Young People Amendment (Child Death Review Team) Act 2003*

*Child Protection Legislation Amendment Act 2003*

- (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.

## **Part 3 Provisions consequent on enactment of [Commission for Children and Young People Amendment \(Child Death Review Team\) Act 2003](#)**

### **3 Continuation of existing entity**

The Child Death Review Team established by section 45B is taken to be a continuation of, and the same legal entity as, the Child Death Review Team established under section 102 of the [Children \(Care and Protection\) Act 1987](#).

### **4 Continuation of existing members**

A person who, immediately before the repeal of section 102 of the [Children \(Care and Protection\) Act 1987](#), held office as a member of the Child Death Review Team established by that section continues to hold office as a member of the Child Death Review Team established by section 45B for the balance of his or her term of office, subject to sections 45G and 45H.

### **5 Furnishing of annual reports of Child Death Review Team for year ended 30 June 2003**

Sections 45P and 45Q extend to the preparation and presentation of the annual reports of the Child Death Review Team for the year ended 30 June 2003.

## **Part 4 Provisions consequent on [Child Protection Legislation Amendment Act 2003](#)**

### **6 Child Protection Legislation Amendment Act 2003**

Subject to any regulations under clause 1, the amendments made to this Act by the [Child Protection Legislation Amendment Act 2003](#) extend to matters arising before the

commencement of those amendments, but do not affect any action that is or has been taken by the Commission or by an employer, or to any employment screening, in relation to a matter notified to the Commission before that commencement.