

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**
 - [Children Legislation Amendment \(Wood Inquiry Recommendations\) Act 2009 No 13](#) (amended by [Public Sector Restructure \(Miscellaneous Acts Amendments\) Act 2009](#)), Sch 3.1 [2] [3] and [11]–[18] (not commenced)
 - [Crimes Amendment \(Child Pornography and Abuse Material\) Act 2010 No 9](#) (not commenced)
 - [Coroners Amendment \(Domestic Violence Death Review Team\) Act 2010 No 28](#) (not commenced)
- **See also**
 - [Children and Young Persons \(Care and Protection\) Amendment \(Children's Services\) Bill 2010](#)

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 safeguards and impose prohibitions relating to 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:

background checking—see Division 3 of Part 7.

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.

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.

review application—see Part 7.

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 3.1 of the [Public Sector Employment and Management Act 2002](#), but is not subject to Chapter 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 68 of the *Public Sector Employment and Management Act 2002*.
- (4) The Governor may remove the Commissioner from office only for misbehaviour, incapacity or incompetence, despite anything to the contrary in section 77 of the *Public Sector Employment and Management Act 2002*.

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,
- (h1) to determine or intervene in review applications concerning prohibited persons,
- (i) to participate in and monitor background checking under and in accordance with Division 3 of 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,

- (l) to encourage organisations to develop their capacity to be safe and friendly for children,
- (m) to develop and administer a voluntary accreditation scheme for programs for persons who have committed sexual offences against children.

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) The Commission for Children and Young People may, by notice in writing, require any government agency to provide the Commission with information (including documents) relevant to an assessment of whether a person poses a risk to the safety of children.
- (2) A notice under subsection (1) may be given for the purposes of:
 - (a) preparing submissions to the Industrial Relations Commission or Administrative Decisions Tribunal under Subdivision 2 of Division 2 of Part 7 of this Act or section 16 of the *Child Protection (Offenders Registration) Act 2000*, or

- (b) considering a review application made to the Commission.
- (3) A government agency to which any such notice is given is by this section authorised and required to provide the Commission for Children and Young People with the information sought by the notice.
- (4) The Commission for Children and Young People may, by notice in writing, request a person other than a government agency to provide the Commission with a statement setting out information specified by the notice relevant to an assessment of whether a person poses a risk to the safety of children for the purposes of considering a review application made to the Commission.
- (5) A person other than a government agency to whom any such request is given is by this section authorised to provide the Commission for Children and Young People with the information requested.
- (6) A notice under this section may specify a day on or before which the notice is to be complied with.
- (7) 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 preparing the submission or considering an application, 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.

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 Human Services or any other investigative or government agency that the Commission considers appropriate.

15A Reports under [Children and Young Persons \(Care and Protection\) Act 1998](#)

- (1) 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 Human Services under section 24 (Report concerning child or young person at risk of harm) or 27 (Mandatory

reporting) of the *Children and Young Persons (Care and Protection) Act 1998*.

- (2) A report referred to in section 29 of the *Children and Young Persons (Care and Protection) Act 1998* may be provided to the Commission in accordance with a requirement under a provision of this Act. Any such report may not be subsequently dealt with by the Commission in a manner that contravenes that section, except to the extent that it is necessary for the Commission to do so in the exercise of its functions.

15B Power to compel production of information for monitoring or auditing purposes

- (1) For the purposes of exercising its monitoring or auditing functions under Part 7, the Commission may, by notice in writing, require an officer of a government agency or an employer or employer-related body to do any one or more of the following:
- (a) to provide to the Commission, on or before a day specified in the notice, a statement setting out such information as is so specified relating to the matters being monitored or audited,
 - (b) to provide to the Commission, on or before a day specified in the notice, such documents as are so specified relating to the matters being monitored or audited.
- (2) A person who:
- (a) fails, without reasonable excuse, to comply with a requirement of a notice under this section, or
 - (b) provides the Commission with information that the person knows is false or misleading in a material particular,
- is guilty of an offence.
- Maximum penalty: 50 penalty units.
- (3) A notice may specify the manner in which a statement or documents may be given to the Commission.
- (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 exercising its monitoring or auditing functions, 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.
- (5) In any proceedings for an offence against this section, the onus of proving that a

person had a reasonable excuse lies with the defendant.

- (6) Words and expressions used in this section have the same meanings as they have in Part 7.

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 matters concerning a private hearing before the Commission.
- (9) If it is shown to the satisfaction of the Commission that any person is substantially and directly interested in the subject-matter of a special inquiry, the Commission may authorise the person to appear and be heard at the hearing or a specified part of the hearing.

20A Legal representation

- (1) A person appearing at a hearing of a special inquiry is not entitled to be represented by an Australian legal practitioner unless the Commission authorises such representation.
- (2) The Commission is to give a person a reasonable opportunity to make submissions regarding representation by an Australian legal practitioner.
- (3) The Commission is not to give an authorisation unless satisfied that the authorisation is necessary or desirable in the public interest or for the safety, welfare or well-being of a child.

20B Restriction on publication of evidence at private hearings

- (1) The Commission may direct that:
 - (a) any evidence given before the Commission at a private hearing of a special inquiry, or
 - (b) the contents of any document, or a description of any thing, produced to the Commission at a private hearing, or
 - (c) any information that might enable a person who has given or may be about to give evidence at a private hearing to be identified or located, or
 - (d) that fact that any person has given or may be about to give evidence at a private hearing,must not be published except in such manner, and to such persons, as the Commission specifies.
- (2) The Commission is not to give a direction unless satisfied that the direction is necessary or desirable in the public interest or for the safety, welfare or well-being of a child.
- (3) A person must not make a publication in contravention of a direction given under this section.

Maximum penalty: 20 penalty units.

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 Cabinet information, 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 Director-General or Deputy Director-General (General Counsel) of the Department of Premier and Cabinet that:
 - (a) any information or question relates to confidential proceedings of Cabinet, or
 - (b) information is Cabinet information,is conclusive of that fact.

- (3) In this section:

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

Cabinet information means information that is Cabinet information under the [Government Information \(Public Access\) Act 2009](#).

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 (Statutory Bodies) Act 1984* 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 7 members, of whom:

- (a) 3 are to be members of, and appointed by, the Legislative Council, and
 - (b) 4 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 Child-related employment

Division 1 Preliminary

31 Object of Part

The object of this Part is to protect children:

- (a) by prohibiting certain persons from being involved in child-related employment, and
- (b) by means of background checking administered by the Commission and other agencies.

32 Safety and welfare of children to be paramount consideration

The safety and welfare of children and, in particular, protecting them from child abuse, is the paramount consideration in the operation of this Part.

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:

- (a) means any employment of the following kind that primarily involves direct contact with children where that contact is not directly supervised by a person having the capacity to direct the person in the course of the employment:

- (i) employment involving the provision of child protection services,
 - (ii) employment in pre-schools, kindergartens and child care centres (including residential child care centres),
 - (iii) employment in schools or other educational institutions (not being universities),
 - (iv) employment in detention centres (within the meaning of the *Children (Detention Centres) Act 1987*) and juvenile correctional centres (within the meaning of the *Crimes (Administration of Sentences) Act 1999*),
 - (v) employment in refuges used by children,
 - (vi) employment in wards of public or private hospitals in which children are patients,
 - (vii) employment in clubs, associations, movements, societies, institutions or other bodies (including bodies of a cultural, recreational or sporting nature) having a significant child membership or involvement,
 - (viii) employment in any religious organisation,
 - (ix) employment in entertainment venues where the clientele is primarily children,
 - (x) employment as a babysitter or childminder that is arranged by a commercial agency,
 - (xi) employment involving fostering or other child care,
 - (xii) employment involving regular provision of taxi services for the transport of children with a disability,
 - (xiii) employment involving the private tuition of children,
 - (xiv) employment involving the direct provision of child health services,
 - (xv) employment involving the provision of counselling or other support services for children,
 - (xvi) employment on school buses,
 - (xvii) employment at overnight camps for children, and
- (a1) means (without limiting paragraph (a)) any employment of the following kind:
- (i) employment comprising the provision of a prescribed children's service,
 - (ii) employment as a person involved in the control or management of a prescribed children's service,

- (iii) employment as an authorised supervisor (within the meaning of section 199 of the *Children and Young Persons (Care and Protection) Act 1998* in relation to a prescribed children's service,
 - (iv) employment as an assessment officer within the meaning of section 27A of the *Children and Young Persons (Care and Protection) Act 1998*,
 - (v) employment as the principal officer of a designated agency within the meaning of the *Children and Young Persons (Care and Protection) Act 1998*,
 - (vi) employment as the principal officer of an accredited adoption service provider within the meaning of the *Adoption Act 2000*,
 - (vii) employment as a self-employed person or as a subcontractor (by or on behalf of or in a relevant agency) if that employment involves direct contact with children and the contact is not directly supervised by a person having capacity to direct the self-employed person or subcontractor in the course of his or her work, and
- (b) includes any other employment of a kind prescribed by the regulations, but does not include any employment of a kind excluded by the regulations.

conviction includes a finding that the charge for an offence is proven, or that a person is guilty of an offence, even though the court does not proceed to a conviction.

employee means any person who is engaged in employment.

employer includes:

- (a) a person who, in the course of business, arranges for the placement of a person in employment with others, or
- (b) a person who engages a person under a contract to perform work, or
- (c) in the case of employment comprising the provision of a prescribed children's service or the performance of work as a person involved in the control or management of a prescribed children's service—the Director-General of the Department of Human Services.

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
- (b) performance of work as a self-employed person or 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, priest, rabbi, mufti or other like religious leader or spiritual officer of a religion or other member of a religious organisation, or
- (f) performance of the duties of an authorised carer within the meaning of the *Children and Young Persons (Care and Protection) Act 1998*, or
- (g) providing a prescribed children's service, or
- (h) performance of work as a person involved in the control or management of a prescribed children's service.

prescribed children's service has the same meaning as in section 199 of the *Children and Young Persons (Care and Protection) Act 1998*.

prohibited person—see section 33B.

relevant agency means any of the following:

- (a) the Department of Human Services,
- (b) the Department of Education and Training,
- (c) the TAFE Commission Division (including the TAFE Commission),
- (d) any other agency or organisation prescribed by the regulations for the purposes of this definition.

Note—

This definition is relevant for the purposes of paragraph (a1) (vii) of the definition of **child-related employment**.

relevant apprehended violence order means (subject to subsection (6)) a final apprehended violence order made under the *Crimes (Domestic and Personal Violence) Act 2007*, or a final order made under Part 15A of the *Crimes Act 1900* before its repeal, 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 subsections (7) and (8)) 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 proceedings (including 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, or
 - (a1) any child pornography offence or misconduct involving child pornography, or
 - (a2) any child-related personal violence offence (within the meaning of Division 2), or
 - (a3) an offence under section 91J, 91K, 91L or 91M of the *Crimes Act 1900* committed against, with or in the presence of a child, or
 - (a4) an offence that was reportable conduct at the time that it was committed, 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) (Repealed)
- (3) For the avoidance of doubt, the performance of the duties of a foster carer engaged by the Department of Human 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).
- (6) The following are not relevant apprehended violence orders:
 - (a) an apprehended violence order made by a court before 3 July 1995 under Part 15A of the *Crimes Act 1900*,
 - (b) an external protection order (within the meaning of section 562RA of the *Crimes Act 1900*) made before 3 July 1995,
 - (c) an external protection order (within the meaning of Part 13 of the *Crimes (Domestic and Personal Violence) Act 2007*) that is not registered under that Part.
- (7) The following offences are not part of the relevant criminal record of a person:
 - (a) an offence that was a serious sex offence at the time of its commission if the conduct constituting the offence has ceased to be an offence in New South Wales,
 - (b) an offence involving sexual activity or an act of indecency if the conduct constituting the offence occurred in a public place and would not have constituted an offence in New South Wales if the place were not a public place.
- (8) A criminal record is not a relevant criminal record if:
 - (a) the record relates to a registrable offence within the meaning of the *Child Protection (Offenders Registration) Act 2000* that was committed elsewhere than in New South Wales, and
 - (b) the Commission, or an employer or employer-related body, is unable to obtain access to the record (whether because the record cannot be released under the law of the jurisdiction in which the offence concerned was committed or for any other reason).

33A (Repealed)

Division 2 Prohibitions on child-related employment

Subdivision 1 Persons prohibited from being employed in child-related employment

33B Prohibited persons

(1) For the purposes of this Division, a **prohibited person** means:

- (a) a person convicted of a serious sex offence, the murder of a child or a child-related personal violence offence, whether before or after the commencement of this subsection, or
- (b) a person who is a registrable person within the meaning of the *Child Protection (Offenders Registration) Act 2000*.

(2) For the purposes of this Division, a person is not a prohibited person in respect of an offence if an order in force under Subdivision 2 declares that this Division is not to apply to the person in respect of the offence.

(3) In this Division:

child-related personal violence offence means:

- (a) an offence committed by an adult involving intentionally wounding or causing grievous bodily harm to a child, or
- (b) an offence committed by an adult of attempting, or of conspiracy or incitement, to commit an offence referred to in paragraph (a),

but does not include an offence committed by an adult who is not more than 3 years older than the child concerned.

serious sex offence means (subject to subsections (4) and (5)):

- (a) an offence involving sexual activity or acts of indecency that was committed in New South Wales and that was punishable by penal servitude or imprisonment for 12 months or more, or
- (b) an offence, involving sexual activity or acts of indecency, 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, or
- (c) an offence under section 80D or 80E of the *Crimes Act 1900*, where the person against whom the offence is committed is a child, or
- (d) an offence under sections 91D–91G of the *Crimes Act 1900* (other than if committed by a child prostitute) or a similar offence under a law other than a law

of New South Wales, or

- (e) an offence under section 91H, 578B or 578C (2A) of the *Crimes Act 1900* or a similar offence under a law other than a law of New South Wales, or
- (f) an offence an element of which is an intention to commit an offence referred to in paragraph (a) or (b), or
- (g) an offence of attempting, or of conspiracy or incitement, to commit an offence referred to in the preceding paragraphs, or
- (h) any other offence, whether under the law of New South Wales or elsewhere, prescribed by the regulations.

Note—

A conviction for an offence includes a finding that an offence is proven, or that a person is guilty of an offence, even though the court does not proceed to a conviction.

- (4) An offence that was a serious sex offence at the time of its commission is not a serious sex offence for the purposes of this Division if the conduct constituting the offence has ceased to be an offence in New South Wales.
- (5) An offence involving sexual activity or an act of indecency is not a serious sex offence for the purposes of this Division if the conduct constituting the offence:
 - (a) occurred in a public place, and
 - (b) would not have constituted an offence in New South Wales if the place were not a public place.
- (6) For the purposes of this Division, section 579 of the *Crimes Act 1900* does not apply to or in respect of a serious sex offence or a child-related personal violence offence.

33C Offences relating to prohibited persons

- (1) A prohibited person must not:
 - (a) apply for, or otherwise attempt to obtain, child-related employment, or
 - (b) undertake child-related employment, or
 - (c) remain in child-related employment.

Maximum penalty: 100 penalty units, or imprisonment for 2 years, or both.

- (2) A person is not criminally responsible for an offence against this section if the person did not know, at the time of the commission of the offence, that the employment concerned was child-related employment.

33D Employer to ascertain whether employee is prohibited person

- (1) An employer must not commence employing any other person in child-related employment without first requiring that other person to disclose whether or not that other person is a prohibited person.

Maximum penalty: 20 penalty units, in the case of a corporation, and 10 penalty units in any other case.

- (2) A person must not, in purported compliance with a requirement under this section, make any statement that the person knows is false.

Maximum penalty: 100 penalty units, or imprisonment for 12 months, or both.

- (3) This section does not apply to the employment of a person in child-related employment if all the children with whom the person is required to have contact in that employment are related to the employer (whether or not the person is related to the employer).

Note—

Under section 37, an employer also has a duty to carry out background checking procedures in relation to a preferred applicant for primary child-related employment before employing the applicant. An employer who fails to do so may be required, by notice, to comply with his or her duty.

33E Employer not to employ prohibited person in child-related employment

An employer must not commence employing, or continue to employ, in child-related employment a person that the employer knows is a prohibited person.

Maximum penalty: 100 penalty units, in the case of a corporation, and 50 penalty units in any other case.

Subdivision 2 Review of prohibition of employment of prohibited persons

33F Definitions

In this Subdivision:

relevant tribunal—see section 33I.

review application means an application under section 33H or 33I.

33G Persons not entitled to make review applications

- (1) A prohibited person who has been convicted of any of the following offences, committed by the person as an adult, is not entitled to make an application under section 33H or 33I:

- (a) murder of a child,

- (b) an offence under section 66A, 66B, 66C, 66D or 73 of the *Crimes Act 1900* or a similar offence under that Act or any other law involving sexual intercourse with a child (including a law other than a law of New South Wales),
 - (c) an offence under section 91H (2) of the *Crimes Act 1900*, involving the production of child pornography, or a similar offence under a law other than a law of New South Wales,
 - (d) an offence of attempting, or of conspiracy or incitement, to commit an offence referred to in the preceding paragraphs.
- (2) The Commission or a relevant tribunal may grant leave to a prohibited person to make a review application, despite a conviction for an offence referred to in subsection (1), if the Commission or tribunal is satisfied that:
- (a) the offence is an offence referred to in subsection (1) (b), or an offence of attempting, or of conspiracy or incitement to commit such an offence, and
 - (b) the prohibited person was not more than 3 years older than the child against whom the offence was committed, and
 - (c) the offence did not involve circumstances of aggravation within the meaning of section 66C of the *Crimes Act 1900*.

33H Commission may make declarations concerning prohibited persons

- (1) On the application of a prohibited person, the Commission may make an order declaring that this Division is not to apply to the person in respect of a specified offence.
- (2) An application must be made in a form approved by the Commission. An applicant must fully disclose to the Commission any matters relevant to the application.
- (3) Orders under this section may be made subject to conditions.
- (4) The Commission is not to make an order that is subject to conditions without the consent in writing of the applicant to the conditions.
- (5) If the Commission proposes to make an order that is subject to conditions, it is to notify the applicant in writing that:
 - (a) it proposes to make the order subject to the conditions specified in the notification, and
 - (b) the applicant may consent in writing to the making of the order subject to those specified conditions or request the Commission to take no further action, and
 - (c) the Commission will take no further action in relation to the application unless the applicant has consented in writing to the making of the proposed order subject to

the specified conditions, and

- (d) if the applicant does not consent to the making of the order subject to the specified conditions, the applicant may apply under section 33I to the Industrial Relations Commission or the Administrative Decisions Tribunal for an order declaring that this Division is not to apply to the person in respect of a specified offence.
- (6) If the Commission makes an order, it is to notify the applicant in writing that the Commission has made the order and (if applicable) that the order is subject to the conditions specified in the notification.
- (7) If the Commission considers that an applicant under this section poses a risk to the safety of children or, for whatever reason, cannot make a decision as to whether the applicant poses such a risk, the Commission is to notify the applicant in writing that:
 - (a) the Commission cannot make an order under this section, and
 - (b) the Commission will take no further action in relation to the application, and
 - (c) the applicant may apply under section 33I to the Industrial Relations Commission or the Administrative Decisions Tribunal for an order declaring that this Division is not to apply to the person in respect of a specified offence.

33I IRC and ADT may make declarations concerning prohibited persons

- (1) On the application of a prohibited person, a relevant tribunal may make an order declaring that this Division is not to apply to the person in respect of a specified offence.
- (2) A **relevant tribunal** is:
 - (a) the Industrial Relations Commission, or
 - (b) the Administrative Decisions Tribunal.
- (3) The Commission for Children and Young People is to be a party to any proceedings for an order under this section. The Commission may make submissions in opposition to or support of the making of the order.
- (4) An applicant must fully disclose to the relevant tribunal any matters relevant to the application.
- (5) If a relevant tribunal refuses to make an order under this section, the prohibited person is not entitled to make an application for an order under this section or section 33H in respect of that offence until after the period of 5 years from the date of the tribunal's refusal, unless the tribunal otherwise orders at the time of refusal.
- (6) Orders under this section may be made subject to conditions.

- (7) The following applies to proceedings before the Administrative Decisions Tribunal under this section:
- (a) the Tribunal may not award costs,
 - (b) an appeal lies on a question of law to the Supreme Court by any party to the proceedings.

33J Matters to be considered in determining review applications

- (1) The Commission or a relevant tribunal is not to make an order on a review application unless it is satisfied that the person the subject of the application does not pose a risk to the safety of children.
- (2) In any proceedings for a review application, it is to be presumed, unless the applicant proves to the contrary, that the applicant poses a risk to the safety of children.
- (3) In deciding whether or not to make an order in relation to a person, the Commission or a relevant tribunal is to take into account the following:
 - (a) the seriousness of the offences with respect to which the person is a prohibited person,
 - (b) the period of time since those offences were committed,
 - (c) the age of the person at the time those offences were committed,
 - (d) the age of each victim of the offences at the time they were committed,
 - (e) the difference in age between the prohibited person and each such victim,
 - (f) whether the person knew, or could reasonably have known, that the victim was a child,
 - (g) the prohibited person's present age,
 - (h) the seriousness of the prohibited person's total criminal record,
 - (i) such other matters as the Commission or tribunal considers relevant.

33K Stay pending determination of review application

On a review application, the Commission or a relevant tribunal may, by order, stay the operation of a prohibition under this Division pending the determination of the matter.

33L Multiple applications not permitted

A person may not make a review application under section 33H or 33I if the person has another application pending under either of those sections.

33M Further review of persons who obtain orders

- (1) The Commission may apply to a relevant tribunal to revoke or vary an order made under this Subdivision by the Commission or the tribunal.
- (2) The relevant tribunal may:
 - (a) revoke an order, if it is satisfied, on the basis of fresh evidence provided by the Commission, that the person the subject of the proposed order poses a risk to the safety of children, or
 - (b) vary an order, if it is satisfied, on the basis of fresh evidence provided by the Commission, that the person is likely to pose such a risk if the order is not varied.
- (3) A relevant tribunal may consider fresh evidence provided by the Commission.
- (4) Orders under this section may be made subject to conditions.
- (5) The following applies to proceedings before the Administrative Decisions Tribunal under this section:
 - (a) the Tribunal may not award costs,
 - (b) an appeal lies on a question of law to the Supreme Court by any party to the proceedings.

33N Commissioner of Police to be notified

The Commission or a relevant tribunal must notify the Commissioner of Police of the terms of any order made under this Subdivision by the Commission or tribunal.

33O Jurisdiction of Industrial Relations Commission

The Industrial Relations Commission may not make an order under this Subdivision unless:

- (a) the person is an employee within the meaning of the *Industrial Relations Act 1996* who is liable to be dismissed from that employment under this Act, or
- (b) the person was such an employee who was dismissed from that employment under this Act.

Subdivision 3 Miscellaneous

33P Self-employed persons

- (1) This section applies to self-employed persons engaged in child-related employment.
- (2) The regulations may make provision for or with respect to the following matters:
 - (a) additional persons who are not self-employed who may be treated as self-employed persons for the purposes of this section and any regulations made

under this section,

- (b) requirements for obtaining, displaying and producing certificates that a person is not a prohibited person,
- (c) the issue of such certificates,
- (c1) the charging of fees for the issue of such certificates, being fees prescribed by the regulations,
- (d) regulating or prohibiting the engagement of self-employed persons in child-related employment if certificate requirements are not complied with,
- (e) prohibiting the use of certificates by persons other than self-employed persons,
- (f) matters ancillary to matters referred to in paragraphs (a)-(e).

33PA Child-related employment to which Division does not apply

- (1) This Division does not apply to the employment of a person in child-related employment if:
 - (a) all the children with whom the person is required to have contact in that employment are related to the person, or
 - (b) all the children with whom the person is required to have contact in that employment are related to the employer and the person is related to the employer.
- (2) For the purposes of this section, a person is **related** to another person if:
 - (a) the person is a relative of the other person, or
 - (b) the person is the guardian of the other person or a person having the custody of or parental responsibility for the other person (otherwise than as the holder of a public office), or
 - (c) the spouse of the person is related to the other person (as referred to in paragraph (a) or (b)).
- (3) In this section:

relative of a person means the spouse, parent, child, grandparent, grandchild, uncle, aunt, brother, sister, niece or nephew of the person, whether the relationship is of the whole or the half-blood and whether the relationship is natural or depends on the adoption of a person.

spouse of a person includes any person who is living with that other person as that other person's partner on a bona fide domestic basis.

33Q Prohibited person may be transferred to other employment

This Division does not prevent an employer who removes a prohibited person from child-related employment in accordance with this Division from transferring the person to employment of a different kind.

33R Commission may advise on status

The Commission may, on the application of a person, advise the person as to whether the person is a prohibited person or is eligible to make a review application.

33S Monitoring and auditing functions

- (1) The Commission may monitor and audit compliance with requirements and procedures relating to prohibited persons.
- (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 any such direction. The Commission is to include any such direction in the Commission's annual report.

Division 3 Background checking

34 Nature of background checking

For the purposes of this Division, **background checking** 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 estimate 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, including any risk arising from the particular workplace,
- (d) the disclosure of the results of any such check or estimate of risk 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 background checking

- (1) The Minister must publish guidelines from time to time relating to the procedures and standards for background checking.

- (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 background checking,
 - (b) the information to be provided to persons subject to background checking (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 background checking on their behalf.
- (3) The guidelines must contain provision for notifying applicants for child-related employment of information obtained about them during background checking 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 background checking.
- (4), (5) (Repealed)
- (6) The Minister may, from time to time, amend or revoke guidelines published under this section.
- (7) Guidelines made under this section, or amendments to guidelines, are to be published in the Gazette and take effect from the date of publication or such later date as is specified in the guidelines or amendments.

36 Functions of Commission in respect of background checking

- (1) The Commission may exercise the following functions with respect to background checking:
 - (a) collecting and maintaining (including updating and correcting) 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 background checking 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 background checking on behalf of employers for whom the Commission has agreed to conduct any such checking,
 - (d) making recommendations to the Minister on appropriate procedures and standards for background checking,

(e) promoting public awareness and providing training and advice on appropriate procedures and standards for background checking,

(f) monitoring and auditing compliance with the procedures and standards for background checking.

(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 Background checking 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 background checking of the preferred applicant before employing the preferred applicant in that child-related employment.

(3) Some or all of the procedures of background checking 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 background checking 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 Division, 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 and section 37A:

primary child-related employment means:

- (a) paid child-related employment, or
- (b) child-related employment of a minister, priest, rabbi, mufti or other like religious leader or spiritual official of a religion, or
- (c) child-related employment involving the fostering of children, or
- (c1) child-related employment of a student that involves working in the Department of Human Services, or
- (c2) child-related employment of a volunteer that involves the mentoring of disadvantaged children, or
- (c3) child-related employment of a volunteer that involves the provision of personal care services to children with disabilities, but only if the work involves an intimate level of contact with those children (such as assistance with bathing, dressing or toileting), or
- (d) if the regulations so require—child-related employment of the kind prescribed by the regulations.

37A Background checking for certain short-term employees

- (1) This section applies to any decision by an employer to employ a person in primary child-related employment for a period of less than 6 months or such other period as may be prescribed by the regulations.
- (2) The employer is taken to have complied with section 37 if:
 - (a) background checking procedures have been carried out in accordance with that section in relation to the person within the period of 12 months immediately preceding the employment of the person by the employer, and

- (b) the background checking procedures were carried out in respect of a decision by the same employer to employ the person in the same kind of primary child-related employment.
- (3) The employer is taken to have complied with section 37 if:
 - (a) background checking procedures have been carried out in accordance with that section in relation to the person by an employer-related body approved by the Minister within the period of 12 months immediately preceding the employment of the person by the employer, and
 - (b) the background checking procedures were carried out in respect of a decision by the same or another employer to employ the person in the same kind of primary child-related employment.

38 Notification of information relating to relevant criminal records or other orders

- (1) The Commissioner of Police may, in accordance with this Division and the regulations, disclose (or arrange for a member of the NSW Police Force 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 background checking.
- (2) The Commission and any such approved employer (or employer-related body) may, in accordance with this Division and the regulations, disclose that information to other employers for the purposes of background checking undertaken 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.
- (5) (Repealed)

38A Notification of information relating to criminal history for interstate child-related

employment screening

- (1) The Commissioner of Police may disclose (or arrange for a member of the NSW Police Force to disclose) information relating to any criminal history of persons to the following persons for the purposes of interstate child-related employment screening:
 - (a) CrimTrac,
 - (b) a police force or service of the Commonwealth or another State or Territory,
 - (c) an approved interstate screening agency.
- (2) A person to whom information is disclosed under subsection (1) may disclose that information to an approved interstate screening agency for the purposes of interstate child-related employment screening undertaken by the agency.
- (3) The Commissioner of Police may disclose (or arrange for a member of the NSW Police Force to disclose) to an approved interstate screening agency, at the request of the agency, information relating to the circumstances of an offence or alleged offence disclosed under this section for the purposes of interstate child-related employment screening.
- (4) Subsection (3) applies:
 - (a) for the period of 12 months after the commencement of this section, or
 - (b) for such further period or periods as may be prescribed by the regulations.
- (5) Information that may be disclosed under this section includes:
 - (a) information relating to convictions, including spent convictions, quashed convictions and offences for which a pardon has been given, despite anything to the contrary in the [Criminal Records Act 1991](#),
 - (b) information relating to criminal charges, whether heard or not heard, proven, dismissed, withdrawn or discharged,
 - (c) information relating to offences, despite anything to the contrary in section 579 of the [Crimes Act 1900](#).
- (6) This section does not limit the persons to whom, or the circumstances in which, information relating to the criminal history, including the criminal record of persons, may be disclosed apart from this Act.
- (7) In this section:

approved interstate screening agency means:

 - (a) a person or body prescribed by the regulations, or

- (b) a body that is authorised under a law of the Commonwealth, another State or a Territory to conduct interstate child-related employment screening and is approved by the Minister for the purposes of this section.

interstate child-related employment screening means using information about persons who work, or seek to work with children, in a way that is authorised or required under a law of the Commonwealth, another State or a Territory, for the purpose of estimating the risk to the safety of children posed by any such person if working with children.

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:
 - (a) in which a finding is made that the alleged reportable conduct, or the alleged commission of an act of violence, did not occur, or
 - (b) in which a finding is made that the allegations in respect of which the proceedings were brought were vexatious or misconceived.
- (1A) For the purposes of this Part, relevant employment proceedings are taken to have been completed when a finding has been made by the employer as to whether the alleged reportable conduct, or the alleged commission of an act of violence, occurred or may have occurred, and a decision has been made by the employer as to what action (if any) is to be taken against the employee in respect of the finding.
- (2) The employer who notifies the Commission of information under subsection (1) must also notify sufficient details of the proceedings concerned to the Commission and each approved screening agency that requests the information:
 - (a) for the purposes of background checking by the Commission or that approved screening agency, or
 - (b) for the purposes of the Commission exercising its function under section 36 (1) (a) of maintaining a database of completed relevant employment proceedings.
- (3) Notification under this section extends to 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 Division.
- (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 background checking

- (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 an estimate of risk in background checking.
- (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 Division.
- (4) The guidelines under section 35 may provide for follow-up action to be taken by approved screening agencies, after carrying out background checking, for the purpose of ensuring that employers comply with this section.
- (5) **Follow-up action** means:
 - (a) contacting the employer after carrying out background checking to inform the employer of the employer's obligations under this section, and
 - (b) requesting the employer to provide to the approved screening agency the information the employer is required to notify to the Commission under this section, and
 - (c) providing the information to the Commission.
- (6) An employer who provides to an approved screening agency the information that it is required to notify to the Commission under this section is taken to have complied with this section in relation to that information.
- (7) An approved screening agency is not to use, or give access to, any information obtained from an employer as a result of follow-up action, other than for the purposes of providing the information to the Commission.
- (8) In this section, **approved screening agency** does not include the Commission.

41 Enforcement notices

- (1) The Commission may, by notice in writing served on an employer, require the employer to comply with obligations of the employer under section 37, 39 or 40 within the period specified in the notice.
- (2) The Commission may serve a notice on an employer under this section if it is of the opinion that the employer has failed to comply with any provision of section 37, 39 or

40.

- (3) The notice must set out the reasons for the notice being given.
- (4) The period specified in a notice is to be not less than 28 days.
- (5) The Commission may revoke a notice at any time.
- (6) A person who fails, without reasonable excuse, to comply with a notice in force under this section is guilty of an offence.

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

- (7) In any proceedings for an offence against this section, the onus of proving that a person had a reasonable excuse lies with the defendant.
- (8) Nothing in this section prevents the Commission from contacting employers for the purpose of informing them of their obligations under this Act or requesting any information that employers are required to provide to the Commission under this Act.

42 (Repealed)

43 Obtaining and correcting information on relevant employment proceedings under [Government Information \(Public Access\) Act 2009](#)

- (1) A person against whom any relevant employment proceedings have been taken is, subject to this section, entitled to apply for access under the [Government Information \(Public Access\) Act 2009](#) to any 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 6A of the [Privacy and Personal Information Protection Act 1998](#) applies to the amendment of an agency's records relating to information about relevant employment proceedings.
- (4) The provisions of the [Government Information \(Public Access\) Act 2009](#) and Part 6A of the [Privacy and Personal Information Protection Act 1998](#) apply for the purposes of this section whether or not the agency is an agency to which those provisions apply.
- (5) The regulations under this Act may modify any provisions of those Acts in their application under this section.

43A Rectification or withdrawals of notifications

- (1) An employer may amend or withdraw a notification to the Commission under section 39 or 40 if the employer determines that the notification was incorrect or wrongly made.

- (2) An amendment or withdrawal of a notification is to be in the form directed by the Commission.

44 Effect of Division on other rights and procedures

- (1) Background checking or interstate child-related employment screening (as referred to in section 38A) may be conducted, and information disclosed or obtained, in accordance with this Division despite any other Act or law to the contrary.
- (2) Nothing in this Division 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 background checking carried out under this Division in connection with the employment concerned and the welfare of children as the paramount consideration in that background checking.
- (3) Nothing in this Division affects the operation of the *Criminal Records Act 1991* in relation to spent convictions within the meaning of that Act.
- (4) Nothing in this Division affects the operation of Part 2 of Chapter 9 of the *Health Services Act 1997*.

45 Application of background checking provisions to adult persons residing with authorised carers or children's service providers

- (1) In this section:

applied provisions means the background checking provisions that are, because of subsection (2), taken to apply to and in respect of a relevant person who resides at the home of an authorised carer or children's service provider.

authorised carer and **designated agency** have the same meanings as in the *Children and Young Persons (Care and Protection) Act 1998*.

background checking provisions means the provisions of this Division (including the provisions of section 33 in their application to this Division) that relate to background checking for child-related employment.

children's service provider means:

- (a) in the case of a family day care children's service licensed under the *Children and Young Persons (Care and Protection) Act 1998*—the person who is the family day care carer under that Act for the service, or
- (b) in the case of a home based children's service licensed under that Act—the person who is the licensee under that Act for the service.

relevant person means a person (other than an authorised carer or children's

service provider) who is of or above the age of 18 years.

- (2) The background checking provisions apply to and in respect of a relevant person who resides at the home of an authorised carer or children's service provider in the same way as those provisions apply to and in respect of background checking for child-related employment, with:
 - (a) subject to paragraph (b), such adaptations as may be necessary, and
 - (b) such exclusions and modifications as may be prescribed by the regulations.
- (3) For the purposes of this section, a relevant person is taken to **reside** at the home of an authorised carer or children's service provider if:
 - (a) that home is the place at which the authorised carer or licensed service provides the foster care or the children's service concerned, and
 - (b) the person has been living at that home on a regular basis for a period of not less than 3 months.
- (4) Without limiting subsection (2), the following provisions have effect in relation to the operation of the applied provisions:
 - (a) a reference to an employer is taken to be a reference to:
 - (i) in the case of a relevant person who resides at the home of an authorised carer—the designated agency that authorises the carer, or
 - (ii) in the case of a relevant person who resides at the home of a children's service provider—the licensee of the children's service concerned,
 - (b) a reference to a person who is employed or who is an applicant for employment is taken to be a reference to the relevant person who resides at the home of the authorised carer or children's service provider (as the case requires),
 - (c) it is the duty under section 37 of the designated agency or the licensee of the children's service (as the relevant employer) to carry out all the relevant procedures of background checking of the relevant person to determine whether it is appropriate for that person to reside at the home of the authorised carer or children's service provider concerned.

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 Establishment of the Team

A committee of the Commission, to be known as the Child Death Review Team, is established by this Act.

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 Human Services,
 - (b) the Department of Health,
 - (c) the NSW Police Force,
 - (d) the Department of Education and Training,
 - (e) the Department of Justice and Attorney General,
 - (f) the Office of the NSW State Coroner, within the Department of Justice and Attorney General,
 - (g) Ageing, Disability and Home Care, within the Department of Human Services.
- (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, the NSW Police Force 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.
- (1A) Any function of the Team with respect to child deaths occurring in New South Wales may also be exercised by the Team in connection with the death of a child dying outside the State while ordinarily resident in the State.
- (1B) The Convenor may enter into an agreement or other arrangement for the exchange of information between the Team and a person or body having functions under the law

of another State or a Territory that are substantially similar to the functions of the Team, being information relevant to the exercise of the functions of the Team or that person or body.

- (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.

450 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 Human Services that a child or class of children may be at risk of harm, or
 - (iii) providing information to the State Coroner that may relate to a death that is within the jurisdiction of the State Coroner, whether or not the death has been the subject of an inquest under the *Coroners Act 2009*, or
 - (iv) providing information to the Ombudsman concerning the death of a child that is relevant to the exercise of any of the Ombudsman's functions, or

(v) giving effect to any agreement or other arrangement entered into under section 45N (1B), 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 or omitted 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.

48A Protection of persons relating to child-related employment

- (1) Anything done by a person in good faith and with reasonable care:
 - (a) for the purpose of background checking, or
 - (b) for the purpose of exercising a function under Part 7,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 background checking or exercising a function under Part 7, 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 an estimate of risk carried out in good faith and with reasonable care for the purposes of background checking or an application for an order under Subdivision 2 of Division 2 of Part 7.
- (3) This section does not limit or affect any other right, privilege or immunity that a person has as a defendant in any proceedings.

48B Unauthorised disclosure or dishonest collection of information

- (1) A person who discloses any information obtained by the person in connection with background checking or the exercise of functions under Part 7 is guilty of an offence unless the disclosure:
 - (a) is made in good faith for the purposes of background checking or the exercise of a function under Part 7, or
 - (b) is made with the consent of the person to whom the information relates, 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 background checking or the exercise of functions under Part 7 is guilty of an offence.

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

49 Proceedings for offences

- (1) Proceedings for offences against this Act or the regulations are to be dealt with

summarily before the Local Court.

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

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 Relationship with other Acts and laws

- (1) A prohibition on employment under this Act prevails to the extent of any inconsistency between it and any other Act or law.
- (2) The Industrial Relations Commission or any other court or tribunal does not have jurisdiction under any Act or law to order the re-instatement or re-employment of a person or employee contrary to a prohibition on employment imposed by this Act, or to order the payment of damages or compensation for any removal from employment in accordance with this Act.

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 8 March 2010.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament by 8 March 2011.
- (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 Chair and Deputy Chair

- (1) There is to be a Chair and a Deputy Chair 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 Chair or Deputy Chair 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 Chair is absent from New South Wales or is, for any reason, unable to perform the duties of Chair or there is a vacancy in that office, the Deputy Chair may exercise the functions of the Chair 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, 4 members constitute a quorum, but the committee must meet as a joint committee at all times.
- (4) The Chair or, in the absence of the Chair, the Deputy Chair (or, in the absence of both the Chair and the Deputy Chair, 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 Deputy Chair or other member presiding at a meeting of the Parliamentary Joint Committee has, in relation to the meeting, all the functions of the Chair.
- (6) The Chair, Deputy Chair 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 Chair, 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

Commission for Children and Young People Amendment Act 2005

Commission for Children and Young People Amendment Act 2007

Children Legislation Amendment (Wood Inquiry Recommendations) Act 2009, to the extent that it amends this Act

Commission for Children and Young People Amendment Act 2009

- (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.

Part 5 Provisions consequent on enactment of Commission for Children and Young People Amendment Act 2005

7 Definitions

(1) In this Part:

amending Act means the *Commission for Children and Young People Amendment Act 2005*.

repealed Act means the *Child Protection (Prohibited Employment) Act 1998*.

(2) Words and expressions used in this Part have the same meanings as they have in Part 7 of this Act, as amended by the amending Act.

8 Persons convicted of child-related personal violence offences

- (1) A person who was, immediately before the commencement of this clause, employed in child-related employment and who had previously been convicted of a child-related personal violence offence does not commit an offence under Part 7 of this Act by remaining in that employment.
- (2) An employer who continues to employ a person referred to in subclause (1) is not guilty of an offence under Part 7 of this Act.
- (3) However, a person referred to in subclause (1) is a prohibited person in relation to the conviction for the child-related personal violence offence for the purposes of any child-related employment (subject to Subdivision 2 of Division 2 of Part 7) commencing after the commencement of this clause.

9 Existing declarations

- (1) An order made under the repealed Act, and in force immediately before the repeal of that Act, continues in force and is taken to have been made under Division 2 of Part 7.
- (2) Subclause (1) has effect whether or not the prohibited person the subject of the order is a person in respect of whom an order may be made under that Division.

10 Review of existing orders

Section 33M, as inserted by the amending Act, applies in respect of orders made under the repealed Act and in force immediately before the commencement of that section.

11 General savings

- (1) Anything of a kind required or permitted to be done by or under a provision of Division 2 of Part 7 of this Act, as inserted by the amending Act, that was required or permitted to be done under a corresponding provision of the repealed Act and that still had effect immediately before its repeal continues in effect on or after that repeal as if:
 - (a) Division 2 of Part 7 of this Act had been in force when it was done, and
 - (b) it had been done by or under the corresponding provision of Division 2 of Part 7 of this Act.
- (2) The repeal of the repealed Act does not affect the operation of the repealed Act to the extent that it provided that a person was not liable for an offence under that Act.

Part 6 Provisions consequent on enactment of [Commission for Children and Young People Amendment Act 2007](#)

12 Meaning of “amending Act”

In this Part:

amending Act means the *Commission for Children and Young People Amendment Act 2007*.

13 Abolition of old Child Death Review Team

The Child Death Review Team constituted as a corporation by section 45B (as in force immediately before the repeal and re-enactment of that section by the amending Act), is abolished.

14 Continuation of existing membership of Child Death Review Team

A person who, immediately before the repeal and re-enactment of section 45B by the amending Act, 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 as re-enacted for the balance of his or her term of office, subject to this Act.