

Advocate for Children and Young People Act 2014 No 29

[2014-29]



New South Wales

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Advocate for Children and Young People Act 2014 No 29



New South Wales

An Act to create the office of Advocate for Children and Young People and to provide for the functions of that office; to repeal the *Commission for Children and Young People Act 1998* and the *Youth Advisory Council Act 1989*; and for other purposes.

Part 1 Preliminary

1 Name of Act

This Act is the *Advocate for Children and Young People Act 2014*.

2 Commencement

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

3 Definitions

(1) In this Act—

Advocate means the Advocate for Children and Young People appointed under this Act.

child means a person under the age of 12 years.

Council means the Youth Advisory Council established under this Act.

function includes a power, authority or duty, and **exercise** a function includes perform a duty.

government agency includes any public or local authority.

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

Parliamentary Joint Committee means the joint committee called the Committee on Children and Young People constituted under this Act.

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

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

special inquiry means a special inquiry conducted by the Advocate under Part 5.

young person means a person who is 12 years of age or above but under 25 years of age.

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

Part 2 Advocate for Children and Young People

4 Appointment of Advocate

The Governor may appoint an Advocate for Children and Young People.

5 Term of office of Advocate

- (1) The Advocate holds office for such term, not exceeding 5 years, as may be specified in the instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.
- (2) A person is not eligible to be appointed for more than 2 terms of office as Advocate (whether or not consecutive terms).

6 Full-time office of Advocate

The office of Advocate is a full-time office and the holder of the office is required to hold it on that basis, except to the extent permitted by the Minister.

7 Employment and remuneration

- (1) The employment of the Advocate is (subject to this Part) to be governed by a contract of employment between the Advocate and the Minister.
- (2) The following provisions of or made under the [Government Sector Employment Act 2013](#) relating to the employment of Public Service senior executives apply to the Advocate (but in the application of those provisions a reference to the employer of any such executive is to be read as a reference to the Minister)—
 - (a) provisions relating to the band in which an executive is to be employed,
 - (b) provisions relating to the contract of employment of an executive,
 - (c) provisions relating to the remuneration, employment benefits and allowances of an executive.

8 Vacancy in office of Advocate

- (1) The office of Advocate becomes vacant if the holder—
 - (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) 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
 - (e) becomes a mentally incapacitated person, or
 - (f) 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
 - (g) is removed from office under section 9.
- (2) If the office of Advocate becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

9 Removal from office of Advocate

The Governor may remove the Advocate from office, but only for incompetence, incapacity or misbehaviour.

10 Advocate not Public Service employee

The office of Advocate is a statutory office and the provisions of the [Government Sector Employment Act 2013](#) relating to the employment of Public Service employees do not apply to that office (except as provided by section 7).

11 Acting Advocate

- (1) The Governor may, from time to time, appoint a person to act in the office of the Advocate during the illness or absence of the Advocate (or during a vacancy in the office of the Advocate) and a person, while so acting, has all the functions of the Advocate.
- (2) The Governor may, at any time, remove a person from the office of acting Advocate.
- (3) The acting Advocate is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine.

12 Staff of Advocate

Persons may be employed in the Public Service under the [Government Sector Employment Act 2013](#) to enable the Advocate to exercise his or her functions.

13 Delegation

The Advocate may delegate any of his or her functions (other than this power of delegation) to a member of the staff of the Advocate or to a person of a class prescribed by the regulations.

Part 3 Functions of Advocate

14 Principles governing work of Advocate

The following principles are to govern the work of the Advocate—

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

15 Functions of Advocate

(1) The functions of the Advocate are as follows—

- (a) to advocate for and promote the safety, welfare and well-being of children and young people,
- (b) to promote the participation of children and young people in the making of decisions that affect their lives and to encourage government and non-government agencies to seek the participation of children and young people appropriate to their age and maturity,
- (c) to conduct special inquiries under Part 5 into issues affecting children and young people,
- (d) to make recommendations to government and non-government agencies on legislation, reports, policies, practices, procedures and services affecting children and young people,
- (e) to conduct, promote and monitor research into issues affecting children and young people,

- (f) to promote the provision of information and advice to assist children and young people,
 - (g) to prepare, in consultation with the Minister, a 3-year strategic plan for children and young people in the State,
 - (h) such other functions as are conferred or imposed on the Advocate by or under this or any other Act.
- (2) In exercising functions under this Act the Advocate must do the following—
- (a) focus on systemic issues affecting children and young people,
 - (b) give priority to the interests and needs of vulnerable and disadvantaged children and young people,
 - (c) consult with children and young people from a broad range of backgrounds and age groups throughout the State,
 - (d) work co-operatively with other organisations that provide services to or represent the interests of children and young people,
 - (e) work co-operatively with the Council.

16 Co-operation with other agencies

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

17 Referral of matters to police and other investigative agencies

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

18 Reports under *Children and Young Persons (Care and Protection) Act 1998*

- (1) Any information obtained by the Advocate in the course of exercising his or her functions may be used for the purposes of making a report to the Secretary of the Department of Family and Community Services under section 24 (Report concerning child or young person at risk of significant 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 Advocate in accordance with a requirement under a provision of this Act. Any such report may not be subsequently dealt with by the Advocate in a manner that contravenes that section, except to the extent that it is necessary for the Advocate to do so in the exercise of his or her functions.

19 Assistance to particular children or young people

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

Part 4 Youth Advisory Council and other advisory committees

20 Establishment of Council

There is established by this Act a Youth Advisory Council.

21 Membership of Council

- (1) The Council is to consist of—
 - (a) 12 part-time members appointed by the Minister, and
 - (b) an ex-officio member, being the Advocate or the Advocate's nominee.
- (2) The persons appointed by the Minister as part-time members must have such experience, skills and qualifications as the Minister considers necessary for them to make a contribution to the work of the Council.
- (3) At least 6 of the part-time members are to be persons who are under the age of 25 years at the time of their appointment.
- (4) The membership of the Council is to reflect the diversity of young people in the State.
- (5) The Minister is to consider any recommendations made by the Advocate in relation to the appointment of members.

- (6) Schedule 1 contains provisions relating to the membership and procedure of the Council.

22 Functions of Council

- (1) The Council has the following functions—
- (a) to advise the Minister and the Advocate on the planning, development, integration and implementation of government policies and programs concerning young persons,
 - (b) to consult with young persons, community groups and government agencies on issues and policies concerning young persons,
 - (c) to monitor and evaluate legislation and government policies and programs concerning young persons and to recommend changes if required,
 - (d) to conduct forums, approved by the Minister, on issues of interest to young persons,
 - (e) to collect, analyse and provide the Minister and the Advocate with information on issues and policies concerning young persons.
- (2) Any advice given to the Minister by the Council may be given either at the request of the Minister or without any such request.
- (3) The Council must work co-operatively with the Advocate in exercising its functions.
- (4) The Council has such other functions as are conferred or imposed on it by or under this or any other Act.

23 Other advisory committees

- (1) The Advocate may appoint such other advisory committees as he or she considers appropriate to assist in the exercise of the Advocate's and the Council's functions.
- (2) The Advocate may disband any such committee at any time.
- (3) The procedure of any other advisory committee is to be determined by the Advocate or (subject to any determination by the Advocate) by the committee itself.
- (4) A member of an advisory committee is entitled to such allowances in connection with the work of the committee as the Minister approves in respect of that member.

Part 5 Special inquiries by Advocate

24 Establishment of special inquiry

- (1) The Minister may require the Advocate to conduct a special inquiry into a specified

issue affecting children or young people, either at the request of the Advocate or on the Minister's own initiative.

- (2) The Advocate 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 Advocate considers appropriate.

25 Report of results of special inquiry

The Advocate is to make a special report under Part 6 on the results of a special inquiry.

26 General conduct of special inquiries

In a special inquiry, the Advocate—

- (a) is to act with as little formality as possible, and
- (b) may inform himself or herself on any matter in any way the Advocate 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 the Advocate thinks fit.

27 Hearings in special inquiries

- (1) The Advocate may hold hearings for the purposes of a special inquiry.
- (2) The Advocate may also hold public seminars, conduct workshops and establish working groups and task forces for the purposes of a special inquiry.
- (3) Before the Advocate begins to hold hearings, the Advocate must give reasonable notice, by advertisement published in a newspaper circulating throughout the State and in such other manner as the Advocate considers appropriate—
 - (a) of the Advocate's intention to hold the hearings, and
 - (b) of the subject-matter of the hearings, and
 - (c) of the time and place at which the first of the hearings is to begin.
- (4) The Advocate 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 Advocate may extend the time for the making of submissions.
- (5) The Advocate (or a member of the staff of the Advocate appointed by the Advocate) 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 Advocate 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 or young person and the child or young person 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 Advocate.
- (9) If it is shown to the satisfaction of the Advocate that any person is substantially and directly interested in the subject-matter of a special inquiry, the Advocate may authorise the person to appear and be heard at the hearing or a specified part of the hearing.

28 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 Advocate authorises such representation.
- (2) The Advocate is to give a person a reasonable opportunity to make submissions regarding representation by an Australian legal practitioner.
- (3) The Advocate is not to give an authorisation unless he or she is satisfied that the authorisation is necessary or desirable in the public interest or for the safety, welfare or well-being of a child or young person.

29 Restriction on publication of evidence at private hearings

- (1) The Advocate may direct that—
 - (a) any evidence given before the Advocate at a private hearing of a special inquiry, or
 - (b) the contents of any document, or a description of any thing, produced to the Advocate 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) the 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 Advocate specifies.
- (2) The Advocate 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 or young person.

- (3) A person must not make a publication in contravention of a direction given under this section.

Maximum penalty—20 penalty units.

30 Tendering information, documents and evidence

- (1) For the purposes of a special inquiry, the Advocate may, by notice in writing served on any employee of a government agency or any other person require the employee or other person to do any one or more of the following—

(a) to send to the Advocate, on or before a day specified in the notice, a statement setting out such information as is so specified,

(b) to send to the Advocate, on or before a day specified in the notice, such documents as are so specified,

(c) to attend a hearing before the Advocate to give evidence.

- (2) Any such employee 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 employee or other person is required to answer by the person presiding at the hearing before the Advocate.

- (3) A person must not—

(a) give to the Advocate, whether orally or in writing, information that the person knows is false or misleading in a material particular (unless the person informs the Advocate of that fact), or

(b) at a hearing before the Advocate, 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 Advocate under this section, the Advocate—

(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 the documents 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 Advocate.

31 Exemptions for Cabinet documents and other privileged material

- (1) Nothing in Part 3 or this Part—
 - (a) requires or authorises any person to give any statement of information or answer any question that 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 Secretary or General Counsel of the Cabinet Office that—
 - (a) any information or question relates to confidential proceedings of Cabinet, or
 - (b) the 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 6 Reports by Advocate

32 Annual reports to Parliament

- (1) The Advocate is required to prepare, within the period of 4 months after 30 June in each year, a report of the Advocate's 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 Advocate under this section must include the following—
- (a) a description of the Advocate’s activities during that year in relation to each of the Advocate’s functions,
 - (b) an evaluation of the response of relevant authorities to the recommendations of the Advocate,
 - (c) any recommendations for changes in the laws of the State, or for administrative action, that the Advocate considers should be made as a result of the exercise of the Advocate’s functions,
 - (d) a description of any request made by the Advocate 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 that request.

33 Special and other reports

- (1) The Advocate 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 Advocate to the Presiding Officer of each House of Parliament.
- (2) The Advocate may, at any time, make a report on any particular issue or general matter relating to the Advocate’s functions and furnish the report to the Presiding Officer of each House of Parliament.

34 Furnishing of draft reports to Minister

- (1) The Advocate 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 one month (or other period agreed by the Minister) before it is furnished to the Presiding Officers.
- (3) The Minister may provide the Advocate with any comments the Minister wishes to make in relation to a draft report.
- (4) The Minister may require the Advocate 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 Advocate is not bound to amend the Advocate’s report in light of any comments made by the Minister, but must, before finalising the Advocate’s report, consider any comment that was provided to the Advocate by the Minister (and the results of further consultation) before the report is furnished to the Presiding Officers.

35 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 Advocate may include in a report a recommendation that the report be made public immediately.
- (3) If a report includes a recommendation by the Advocate that the report be made public immediately, 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.

Part 7 Parliamentary Joint Committee

36 Constitution of Committee

- (1) On the commencement of this Part and as soon as practicable after 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.

37 Functions of Committee

- (1) The Parliamentary Joint Committee has the following functions under this Act—
 - (a) to monitor and review the exercise by the Advocate of the Advocate's functions,
 - (b) to monitor and review the exercise by the Children's Guardian of functions under—
 - (i) the *Child Protection (Working with Children) Act 2012*, or
 - (ii) the *Children's Guardian Act 2019* in relation to the reportable conduct scheme and working with relevant entities to prevent, identify and respond to reportable conduct and promote compliance with the scheme, or

- (iii) the *Children's Guardian Act 2019* in relation to out-of-home care,
 - (c) to report to both Houses of Parliament, with such comments as it thinks fit, on any matter relating to the Advocate or connected with the exercise of the Advocate's functions, or on any matter relating to the exercise of the Children's Guardian's functions specified in paragraph (b), to which, in the opinion of the Joint Committee, the attention of Parliament should be directed,
 - (d) to examine each annual or other report of the Advocate and report to both Houses of Parliament on any matter appearing in, or arising out of, any such report,
 - (e) to examine trends and changes in services and issues affecting children and young people, and report to both Houses of Parliament any changes that the Joint Committee thinks desirable to the functions and procedures of the Advocate,
 - (f) to inquire into any question in connection with the Advocate'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—
- (a) to investigate a matter relating to particular conduct, including conduct under Part 4 of the *Children's Guardian Act 2019*, or
 - (b) to review a decision to investigate, not to investigate or to discontinue investigation of a particular matter, or
 - (c) to review the findings, recommendations or other decisions of the Children's Guardian in relation to a particular matter.
- (3) The Advocate 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 35 applies to such a report.

38 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.

- (4) Schedule 2 contains provisions relating to the Parliamentary Joint Committee.

Part 8 Miscellaneous

39 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.

40 Protection from liability

A matter or thing done or omitted to be done by the Advocate, a member of staff of the Advocate, the Council, members of the Council, an advisory committee of the Advocate, a member of any such advisory committee or any person acting under the direction of the Advocate or the Council or any advisory committee 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 Advocate, a member of staff of the Advocate, a member of the Council or advisory committee or a person so acting personally to any action, liability, claim or demand.

41 Proceedings for offences

- (1) Proceedings for offences under 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.

42 Regulations

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

43 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 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.
- (4) When carrying out the review, the Minister is required—

- (a) to consult with government and non-government agencies that provide or deal with services or issues affecting children and young people, and
- (b) to consult, as far as practicable, with children and young people, and
- (c) to invite and consider public submissions relating to the review of this Act.

Schedule 1 Provisions relating to membership and procedure of Youth Advisory Council

(Section 21 (6))

1 Definition

In this Schedule, **member** means a member of the Youth Advisory Council.

2 Chair and Deputy Chair of Council

- (1) Of the appointed members of the Council, 2 are (in and by their respective instruments of appointment or in and by other instruments executed by the Minister) to be appointed as Chair and Deputy Chair of the Council respectively.
- (2) The Minister may remove a member from the office of Chair or Deputy Chair of the Council at any time.
- (3) A person holding office as Chair or Deputy Chair of the Council vacates that office if the person—
 - (a) is removed from that office by the Minister, or
 - (b) resigns that office by instrument in writing addressed to the Minister, or
 - (c) ceases to be a member.

3 Deputies of members

- (1) The Minister may, from time to time, appoint a person to be the deputy of a member, and the Minister may revoke any such appointment.
- (2) In the absence of a member, the member's deputy—
 - (a) is, if available, to act in the place of the member, and
 - (b) while so acting, has all the functions of the member and is taken to be a member.
- (3) The deputy of a member who is Chair or Deputy Chair of the Council does not (because of this clause) have the member's functions as Chair or Deputy Chair.
- (4) A person, while acting in the place of a member, is entitled to be paid such allowances as the Minister may from time to time determine in respect of the person.

4 Terms of office

Subject to this Schedule, an appointed member holds office for such period (not exceeding 2 years) as may be specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

5 Allowances

An appointed member is entitled to be paid such allowances as the Minister may from time to time determine in respect of the member.

6 Vacancy in office of member

- (1) The office of an appointed member becomes vacant if the member—
- (a) dies, or
 - (b) completes a term of office and is not re-appointed, or
 - (c) resigns the office by instrument in writing addressed to the Minister, or
 - (d) is removed from office by the Minister under this clause or by the Governor under Part 6 of the [Government Sector Employment Act 2013](#), or
 - (e) is absent from 4 consecutive meetings of the Council of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Council or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Council for having been absent from those meetings, or
 - (f) 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
 - (g) becomes a mentally incapacitated person, or
 - (h) 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.
- (2) The Minister may remove an appointed member from office at any time.

7 Filling of vacancy in office of member

If the office of an appointed member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

8 Effect of certain other Acts

- (1) The provisions of the [Government Sector Employment Act 2013](#) relating to the

employment of Public Service employees do not apply to 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,

the provision does not operate to disqualify the person from holding that office and also the office of an appointed member or from accepting and retaining any remuneration payable to the person under this Act as such a member.

(3) The office of an appointed member is not, for the purposes of any Act, an office or place of profit under the Crown.

9 General procedure

The procedure for the calling of meetings of the Council and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Council.

10 Quorum

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

11 Presiding member

- (1) The Chair of the Council or, in the absence of the Chair, the Deputy Chair of the Council or, in the absence of both, another member elected to chair the meeting by the members is to preside at a meeting of the Council.
- (2) The person presiding at any meeting of the Council has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

12 Voting

A decision supported by a majority of the votes cast at a meeting of the Council at which a quorum is present is the decision of the Council.

13 First meeting

The Minister is to call the first meeting of the Council in such manner as the Minister thinks fit.

Schedule 2 Parliamentary Joint Committee

(Section 38 (4))

1 Definition

In this Schedule, **Committee** means the Parliamentary Joint Committee constituted under section 36 (1) of this Act.

2 Vacancies

- (1) A member of the 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 Committee appointed by that House.

3 Chair and Deputy Chair

- (1) There is to be a Chair and a Deputy Chair of the Committee, who are to be elected by and from the members of the Committee.
- (2) A member of the Committee ceases to hold office as Chair or Deputy Chair of the 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.

4 Procedure

- (1) The procedure for the calling of meetings of the 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 Committee in each Parliament in such manner as the Clerk thinks fit.
- (3) Subclause (2) does not apply to the Committee as first constituted under this Act.
- (4) At a meeting of the Committee, 4 members constitute a quorum, but the Committee must meet as a joint committee at all times.
- (5) 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 Committee elected to chair the meeting by the members present) is to preside at a meeting of the Committee.
- (6) The Deputy Chair or other member presiding at a meeting of the Committee has, in relation to the meeting, all the functions of the Chair.
- (7) The Chair, Deputy Chair or other member presiding at a meeting of the Committee has a deliberative vote and, in the event of an equality of votes, also has a casting vote.
- (8) A question arising at a meeting of the Committee is to be determined by a majority of the votes of the members present and voting.
- (9) The Committee may sit and transact business despite any prorogation of the Houses of Parliament or any adjournment of either House of Parliament.
- (10) The Committee may sit and transact business on a sitting day of a House of Parliament during the time of sitting.

5 Reporting when Parliament not in session

- (1) If a House of Parliament is not sitting when the 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.

6 Evidence

- (1) The Committee has power to send for persons, papers and records.
- (2) Subject to clause 7, the Committee must take all evidence in public.
- (3) If the 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 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.

7 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 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 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 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 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 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 Committee.

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

- (8) If evidence taken by the 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 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.

8 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 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 Committee is to be regarded as having originated in the Legislative Assembly.

9 Validity of certain acts or proceedings

Any act or proceeding of the 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 3 Savings, transitional and other provisions

Part 1 Regulations

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.
- (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 on the NSW legislation website, 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.
- (4) Any such provision has effect despite anything to the contrary in this Schedule.
- (5) The regulations may make separate savings and transitional provisions or amend this Schedule to consolidate the savings and transitional provisions.

Part 2 Provisions consequent on enactment of this Act

2 Definitions

In this Part—

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

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

former Act means the *Commission for Children and Young People Act 1998*, as in force before its repeal by this Act.

3 Abolition of Commission

(1) On the commencement of this clause—

(a) the Commission is abolished, and

(b) any assets, rights and liabilities of the Commission become the assets, rights and liabilities of the Crown.

(2) In this clause—

assets means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description (including money), and includes securities, choses in action and documents.

liabilities means all liabilities, debts and obligations (whether present or future and whether vested or contingent).

rights means all rights, powers, privileges and immunities (whether present or future and whether vested or contingent).

4 Commissioner

(1) On the commencement of this clause, the person who, immediately before that commencement, held office as the Commissioner of the Commission ceases to hold that office.

(2) A person who, under this clause, ceases to hold office is not entitled to any remuneration or compensation because of the loss of that office.

5 References to Commission or Commissioner

A reference in any other Act or in an instrument made under an Act or in any other document to the Commission or to the Commissioner is to be construed as a reference to the Advocate for Children and Young People.

6 Continuation of membership of Youth Advisory Council

- (1) A person who holds office as an appointed member of the Youth Advisory Council established under the *Youth Advisory Council Act 1989* immediately before the repeal of that Act (the **former Council**) is taken to be appointed as a member of the Youth Advisory Council established under this Act for the remainder of the term for which the person was so appointed.
- (2) A reference in subclause (1) to an appointed member of the former Council includes a reference to the Chair or Deputy Chair of the former Council.

7 Continuation of existing Parliamentary Joint Committee

On the commencement of Part 7 of this Act, the joint committee of members of Parliament appointed under Part 6 of the *Commission for Children and Young People Act 1998* (as in force immediately before its repeal by this Act) is taken to be appointed as the Committee on Children and Young People under this Act.

Schedules 4, 5 (Repealed)