

# Commission for Children and Young People Act 1998 No 146

[1998-146]



New South Wales

## Status Information

### Currency of version

Repealed version for 15 June 2013 to 8 January 2015 (accessed 5 December 2024 at 13:23)

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

### Provisions in force

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

### Notes—

- **Repeal**

The Act was repealed by Sch 5 to the [Advocate for Children and Young People Act 2014 No 29](#) with effect from 9.1.2015.

### 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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# 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 amend certain Acts; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

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

### 2 Commencement

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

### 3 Definitions

(1) In this Act:

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

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

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

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

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

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

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

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

**Presiding Officer** means the President of the Legislative Council or the Speaker of

the Legislative Assembly. However:

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

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

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

## Part 2 Constitution of Commission

### 4 Commission

- (1) There is constituted by this Act a corporation with the corporate name of the Commission for Children and Young People.
- (2) The Commission has the functions conferred or imposed on it by or under this or any other Act.
- (3) The functions of the Commission are exercisable by the Commissioner. Any act, matter or thing done in the name of, or on behalf of, the Commission by the Commissioner, or with the authority of the Commissioner, is taken to have been done by the Commission.
- (4) The Commission cannot employ any staff.

**Note—**

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

### 5 Commissioner

- (1) The Governor may appoint a Commissioner for the Commission for Children and Young People.
- (2) The employment of the Commissioner is subject to Part 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)-(m) (Repealed)

### **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 (Repealed)**

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

- (1) This section applies to any information obtained by the Commission in the course of exercising its functions, being information relating to a possible criminal offence under any law or to grounds for possible disciplinary action under any law.
- (2) The Commission may refer any such information to the Commissioner of Police, the Ombudsman, the Department of Family and Community 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 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 (Repealed)**

**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,
  - (a1) to monitor and review the exercise by the Children's Guardian of functions under the *Child Protection (Working with Children) Act 2012*,
  - (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, or on any matter appertaining to the exercise of the Children's Guardian's functions under the *Child Protection (Working with Children) Act 2012*, 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) (Repealed)

## **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.

### **Parts 7, 7A**

#### **31-45X (Repealed)**

### **Part 8 Miscellaneous**

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

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

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

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

#### **48 Protection from liability**

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

#### **48A, 48B (Repealed)**

#### **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 (Repealed)**

#### **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) (Repealed)

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

## **52 (Repealed)**

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

Schedule 3 has effect.

## **53 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after 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*

*Children Legislation Amendment (Child Death Review Team) Act 2011*

any other 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 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.