

## **House of Assembly—No 22A**

As reported with an amendment, report agreed to and passed remaining stages,  
25 September 2014

South Australia

# **Child Development and Wellbeing Bill 2014**

A BILL FOR

An Act to establish a legislative framework to ensure that the development and wellbeing of children and young people is considered from a whole of government perspective; to recognise the importance of children and young people to the State; to establish a Commissioner for Children and Young People; to establish the Child Development Council; to require the preparation of an Outcomes Framework for Children and Young People; to make related amendments to the *Children's Protection Act 1993* and the *Freedom of Information Act 1991*; and for other purposes.

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## The Parliament of South Australia enacts as follows:

### Part 1—Preliminary

#### 1—Short title

This Act may be cited as the *Child Development and Wellbeing Act 2014*.

#### 2—Commencement

5 This Act will come into operation on a day to be fixed by proclamation.

#### 3—Interpretation

(1) In this Act, unless the contrary intention appears—

*Child Development Council* or *Council* means the Child Development Council established by section 22;

10 *Commissioner for Children and Young People* or *Commissioner* means the person for the time being holding or acting in the office of Commissioner for Children and Young People under Part 4;

*local council* means a council constituted under the *Local Government Act 1999*;

15 *Outcomes Framework for Children and Young People* or *Outcomes Framework* means the Outcomes Framework for Children and Young People prepared in accordance with section 10;

*responsible Minister*, in relation to a State authority, means—

20 (a) if the authority is a person who holds an office established by an Act or a body established by or under an Act—the Minister responsible for the administration of that Act; or

(b) if the authority is an administrative unit—the Minister responsible for that administrative unit; or

25 (c) in any other case—the Minister declared by the regulations to be the responsible Minister for the authority or, in the absence of such a declaration, the Minister responsible for the administration of this Act;

*State authority* means—

- (a) a person who holds an office established by an Act; or
- (b) an administrative unit; or
- (c) South Australia Police; or
- 5 (d) a local council; or
- (e) any incorporated or unincorporated body—
  - (i) established for a public purpose by an Act; or
  - (ii) established for a public purpose under an Act (other than an Act  
10 providing for the incorporation of companies or associations,  
co-operatives, societies or other voluntary organisations); or
  - (iii) established, or subject to control or direction, by the Governor, a  
Minister of the Crown or any instrumentality or agency of the Crown  
or a local council (whether or not established by or under an Act or  
an enactment); or
- 15 (f) a person or body declared by the regulations to be an authority to which this  
Act applies,

but does not include—

- (g) a school established by an Act for a public purpose; or
- 20 (h) any other person or body declared by the regulations to be excluded from the  
ambit of this definition.

- (2) For the purposes of this Act, a reference to *children and young people* will be taken to  
be a reference to persons who are under 18 years of age.

#### 4—Meaning of rights, development and wellbeing

- 25 (1) For the purposes of this Act, a reference to the *rights* of children and young people  
will be taken to include a reference to rights recognised in accordance with statutory  
and common law, rights set out from time to time in the *United Nations Convention  
on the Rights of the Child* and rights set out in any other relevant international human  
rights instruments.
- 30 (2) For the purposes of this Act, a reference to the *development* of children and young  
people will be taken to include a reference to the physical, social, emotional and  
intellectual growth of each individual from birth through to adulthood.
- (3) For the purposes of this Act, a reference to the *wellbeing* of children and young people  
will be taken to include a reference to—
  - 35 (a) the care, development, education, physical and mental health and safety of  
each individual from birth through to adulthood; and
  - (b) the cultural welfare and wellbeing of children and young people.

#### 5—Interaction with other Acts

This Act is in addition to, and does not derogate from, any other Act or law.

## Part 2—Fundamental aspects of Act

### 6—Declaration

This Act recognises the competencies and rights of children and young people in our community.

### 7—Objects

The objects of this Act include—

- (a) establishing a legislative framework to ensure that—
  - (i) the rights, development and wellbeing of children and young people are considered in relation to government policies in any area that affects them; and
  - (ii) each State authority considers the consequences for children and young people of any policy developed or implemented by the State authority; and
- (b) imposing a duty on State authorities to cooperate in developing policies in areas that affect the development and wellbeing of children and young people; and
- (c) establishing the Commissioner for Children and Young People to provide an authoritative voice and to hold decision makers to account on a systemic level; and
- (d) contributing to an integrated approach, overseen by the Commissioner, in respect of the health, learning and participation of children and young people, the social, economic and environmental influences affecting children and young people and other areas affecting the rights, development and wellbeing of children and young people; and
- (e) developing planning and coordination structures for the development and wellbeing of children and young people that are multi-disciplinary, cross-sector and regionally focussed; and
- (f) embedding key principles relating to the rights, development and wellbeing of children and young people in legislation that will inform the work of government and non-government organisations; and
- (g) strengthening and improving outcomes for children and young people of all cultures;
- (h) strengthening information sharing practices across government and non-government organisations to enhance the quality of care and service delivery while balancing the need to protect and respect privacy; and
- (i) building the capacity of the community to provide environments conducive to the development and wellbeing of children, young people and their families.

## **8—Principles**

The following principles must be taken into account in the administration and operation of this Act:

- (a) children and young people are valued citizens;
- 5 (b) the first 5 years of a child’s development are of particular importance;
- (c) it is the responsibility of each member of the community to ensure every child and young person is supported to play, learn, and develop to be the best that they can at every stage of life and to participate and be responsible citizens in our society;
- 10 (d) parents and carers have the primary role in the development and wellbeing of the children and young people in their care, and governments and others who provide services to children and young people should work in partnership with them;
- (e) children and young people, and their parents, carers and families:
  - 15 (i) are best able to shape their own lives and are not simply passive recipients of services;
  - (ii) have differing needs;
- (f) children and young people should be consulted and provided with opportunities to be involved in decision-making processes that affect their lives;
- 20 (g) the diverse cultural and linguistic nature of our society is to be recognised and valued;
- (h) South Australia’s Aboriginal peoples are part of the oldest continuing cultures in human history and the cultural and linguistic heritage of Aboriginal children and young people must be honoured, celebrated and respected;
- 25 (i) the role of non-government organisations, services and programs within the community can strengthen and improve outcomes for the development and wellbeing of children and young people;
- (j) the rights set out from time to time in the *United Nations Convention on the Rights of the Child* and any other relevant international human rights instruments are to be protected, respected and promoted.
- 30

## **9—Statutory duty in respect of children and young people**

- (1) Every State authority, in carrying out its functions or exercising its powers—
  - (a) must, as far as is reasonably practicable, further the objects of this Act; and
  - 35 (b) must have regard to the principles set out in section 8; and
  - (c) must have regard, and seek to give effect, to the Outcomes Framework for Children and Young People; and
  - (d) must consider the impact that any decisions will have on children and young people; and
  - 40 (e) must take reasonable steps to harmonise their administrative arrangements and practices with the objects, principles and duties imposed by this Act.

- (2) A State authority will be taken not to be in breach of subsection (1) if the State authority is acting—
- (a) in accordance with a requirement under this or any other Act; or
  - (b) in circumstances prescribed by the regulations.

5 (3) A failure by a State authority to comply with this section does not, of itself, give rise to any civil liability against the Crown, the State authority or any other person.

## 10—Outcomes Framework for Children and Young People

- (1) There is to be an *Outcomes Framework for Children and Young People*.
- (2) Without limiting any other matter that may be included in the Outcomes Framework, the Outcomes Framework must include a Charter for Children and Young People.
- (3) The Outcomes Framework is to be prepared by the Child Development Council for consideration and approval by the Minister.

- (4) The Council must, in preparing the Outcomes Framework—
- (a) act in accordance with any instructions of the Minister; and
  - (b) consult with—
    - (i) the Commissioner; and
    - (ii) any other person or body prescribed by the regulations,and may consult with any other person or body that the Council thinks appropriate; and
  - (c) engage children and young people, and their parents, carers and families; and
  - (d) ensure an appropriate focus on the needs of priority population groups; and
  - (e) develop performance indicators against which progress in relation to the development and wellbeing of children and young people in the State can be tracked over time.

25 **Note—**

Section 32 also applies to the Council in respect of its functions under this section.

- (5) The regulations may make further provisions with regard to the Outcomes Framework including, without limiting the generality of this subsection, provisions relating to—
- (a) how the Outcomes Framework is to be prepared; and
  - (b) the form of the Outcomes Framework and any variation of the Outcomes Framework; and
  - (c) the kinds of information to be included in the Outcomes Framework; and
  - (d) consultation requirements relating to the Outcomes Framework; and
  - (e) the consideration and approval of the Outcomes Framework by the Minister; and
  - (f) requirements as to the ongoing review of the Outcomes Framework; and
  - (g) variation or substitution of the Outcomes Framework.

- (6) The Outcomes Framework, and any variation or substitution of the Outcomes Framework, has effect from the time it is approved by the Minister.
- (7) The Council must, on the Outcomes Framework, or a variation of the Outcomes Framework, being approved by the Minister—
- 5           (a) cause the Outcomes Framework or variation to be published in the Gazette; and
- (b) cause the Outcomes Framework, as in force from time to time, to be published on a website determined by the Minister; and
- 10           (c) ensure that copies of the Outcomes Framework are reasonably available for inspection (without charge) and purchase by the public at a place or places determined by the Minister.

## **Part 3—Administration**

### **11—Functions of Minister**

The functions of the Minister under this Act are—

- 15           (a) to promote public awareness of the availability and quality of services related to the development and wellbeing of children and young people; and
- (b) to work with the Commissioner for Children and Young People, the Child Development Council and other bodies to foster and support the development and wellbeing of children and young people; and
- 20           (c) to facilitate the coordination of services related to the development and wellbeing of children and young people; and
- (d) such other functions as may be assigned to the Minister by or under this or any other Act.

### **12—Power of delegation**

- 25           (1) The Minister may delegate a function or power under this Act (other than a prescribed function or power) to a specified body or person (including a person for the time being holding or acting in a specified office or position).
- (2) A delegation under this section—
- (a) must be by instrument in writing; and
- 30           (b) may be absolute or conditional; and
- (c) does not derogate from the ability of the Minister to act in any matter; and
- (d) is revocable at will.
- (3) A function or power delegated under this section may, if the instrument of delegation so provides, be further delegated.
- 35           (4) A person to whom a function has been delegated under subsection (1) who has a direct or indirect personal or pecuniary interest in any matter in relation to which the person proposes to perform the functions must disclose the nature of the interest in writing to the Minister.

Maximum penalty: \$20 000.



- (5) It is a defence to a charge of an offence against subsection (4) for the defendant to prove that he or she was not, at the time of the alleged offence, aware of his or her interest in the matter.

## Part 4—Commissioner for Children and Young People

### 13—Commissioner for Children and Young People

There will be a Commissioner for Children and Young People.

### 14—Terms and conditions of appointment

- (1) The Commissioner will be appointed by the Governor on the nomination of the Minister for a term not exceeding 5 years and on conditions determined by the Governor and, at the end of a term of appointment, will be eligible for reappointment.
- (2) The Minister must, before nominating a person for appointment as Commissioner, call for expressions of interest in accordance with a scheme determined by the Minister for the purposes of this section.
- (3) The Minister must, in relation to the scheme referred to in subsection (2)—
- 15 (a) cause details of the scheme to be published in the Gazette; and
- (b) ensure that details of the scheme are published on a website determined by the Minister.
- (4) The appointment of the Commissioner may be terminated by the Governor on the ground that the Commissioner—
- 20 (a) has been guilty of misconduct; or
- (b) has been convicted of an offence punishable by imprisonment; or
- (c) has become bankrupt or has applied to take the benefit of a law for the relief of insolvent debtors; or
- 25 (d) has been disqualified from managing corporations under Chapter 2D Part 2D.6 of the *Corporations Act 2001* of the Commonwealth; or
- (e) has, because of mental or physical incapacity, failed to carry out duties of the position satisfactorily; or
- (f) is incompetent or has neglected the duties of the position.
- (5) The Commissioner must inform the Minister in writing of—
- 30 (a) any direct or indirect pecuniary interest that the Commissioner has or acquires in any business, or in any body corporate carrying on a business, in Australia or elsewhere; and
- (b) any other direct or indirect interest that the Commissioner has or acquires that conflicts, or may conflict, with his or her duties under this Act.
- 35 (6) The Commissioner must not, without the consent of the Minister, engage in any other remunerated employment.

## **15—Appointment of acting Commissioner**

- (1) The Minister may appoint a person (who may be a Public Service employee) to act as the Commissioner during any period for which—
- (a) no person is for the time being appointed as the Commissioner; or
  - (b) the Commissioner is absent from, or unable to discharge, official duties.
- (2) The terms and conditions of appointment of the person appointed to act as the Commissioner will be determined by the Minister.

## **16—Function of Commissioner**

- (1) The function of the Commissioner is to further the objects of this Act and, in particular, to—
- (a) promote and advocate for the rights and interests of children and young people in South Australia; and
  - (b) promote the participation of children and young people in the making of decisions that affect their lives; and
  - (c) guide, cooperate with and monitor State authorities in respect of the rights, development and wellbeing of children and young people; and
  - (d) inquire into, and keep under review, matters related to the rights, development and wellbeing of children and young people at a systemic level; and
  - (e) prepare and publish reports on matters related to the rights, development and wellbeing of children and young people at a systemic level; and
  - (f) monitor the way in which State authorities investigate or otherwise deal with complaints made by, or in relation to, children and young people and the outcome of such complaints; and
  - (g) monitor trends in complaints made by, or in relation to, children and young people to State authorities; and
  - (h) advise, and make recommendations to, Ministers, State authorities and other bodies on matters related to the rights, development and wellbeing of children and young people at a systemic level; and
  - (i) assist in ensuring that the State, as part of the Commonwealth, satisfies its international obligations in respect of children and young people; and
  - (j) undertake such other functions as may be conferred on the Commissioner by or under this or any other Act or by the Minister.
- (2) Without limiting any other provision of this Act, the Commissioner should engage children and young people in the performance of his or her functions under this Act, and in particular should seek to engage those groups of children and young people whose ability to make their views known is limited for any reason.
- (3) The Commissioner must develop or adopt and keep under review a strategy for ensuring that the requirements under subsection (2) are satisfied.

## 17—Delegation

- 5
- (1) Subject to this section, the Commissioner may delegate a function or power under this Act (other than a prescribed function or power) to any person or body of persons that is, in the Commissioner's opinion, competent to perform or exercise the relevant function or power.
- (2) A delegation under this section—
- (a) must be in writing; and
  - (b) may be conditional or unconditional; and
  - (c) is revocable at will; and
  - 10 (d) does not prevent the delegator from acting in any matter.
- (3) A function or power delegated under this section may, if the instrument of delegation so provides, be further delegated.

## 18—Honesty and accountability

15 The Commissioner and any other person appointed to act as the Commissioner are senior officials for the purposes of the *Public Sector (Honesty and Accountability) Act 1995*.

## 19—Commissioner may require information

- 20
- (1) The Commissioner may, by notice in writing, require a State authority to give the Commissioner information in its possession that the Commissioner requires for the performance of his or her functions under this Act.
- (2) A State authority must give the specified information to the Commissioner within the period specified in the notice.
- (3) If a State authority refuses or fails to comply with a notice under subsection (1), the Commissioner may, after consultation with the State authority—
- 25
- (a) report the refusal or failure to the Minister and to the Minister responsible for the State authority; and
  - (b) include details of the refusal or failure in the annual report of the Commissioner.
- (4) The Minister may, by notice in writing, exempt a specified person or body, or persons or bodies of a specified class, from the operation of this section.
- 30
- (5) An exemption—
- (a) may be conditional or unconditional; and
  - (b) may be varied or revoked by the Minister by further notice in writing.

## 20—Commissioner's reports

- 35
- (1) The Commissioner may, after inquiring into and considering a matter, prepare and present a report on the matter to the Minister.
- (2) The Minister must cause a copy of a report under subsection (1) to be laid before both Houses of Parliament within 12 sitting days after receiving the report.

- (3) The Minister must, on being presented with a report under this section that contains recommendations that specified action be taken, respond in writing to the Commissioner in respect of the report and include in the response—
- 5           (a) which (if any) recommendations of the Commissioner will be carried out and the manner in which they will be carried out; and
- (b) which (if any) recommendations of the Commissioner will not be carried out and the reasons for not carrying them out.
- (4) A response under subsection (3) must be given to the Commissioner within such period as may be agreed between the Minister and the Commissioner.
- 10       (5) The Minister must cause a copy of a response under subsection (3) to be laid before both Houses of Parliament within 12 sitting days after giving the response to the Commissioner.
- 15       (6) The Commissioner may, once a report or response has been laid before each House of Parliament and after consultation with the Minister, publish all or part of the report or response in any manner the Commissioner thinks fit.

## **21—Use of staff etc of Public Service**

The Commissioner may, by agreement with the Minister responsible for an administrative unit of the Public Service, make use of the services of the staff, equipment or facilities of that administrative unit.

## **Part 5—Child Development Council**

### **22—Establishment of Child Development Council**

- (1) The *Child Development Council* is established.
- (2) The Council consists of up to 12 members appointed by the Governor on the nomination of the Minister, being persons who collectively have, in the opinion of the
- 25       Minister, the knowledge, skills and experience necessary to enable the Council to carry out its functions effectively.
- (3) The Minister must, before nominating a person for appointment to the Council, call for expressions of interest under a scheme determined by the Minister for the purposes of this section.
- 30       (4) The Minister must, in relation to the scheme referred to in subsection (3)—
- (a) cause details of the scheme to be published in the Gazette; and
- (b) ensure that details of the scheme are published on a website determined by the Minister.
- (5) The Minister may, before nominating a person for appointment to the Council, call for
- 35       nominations from any non-government organisation that should, in the Minister's opinion, be represented on the Council.
- (6) In nominating the members of the Council, the Minister should, as far as is reasonably practicable—
- 40       (a) endeavour to achieve a gender balance on the Council; and
- (b) ensure broad representation from across the community; and

- (c) ensure that Aboriginal people are appropriately represented on the Council.
- (7) The Governor may, on the nomination of the Minister, appoint a person to be the deputy of a member of the Council.
- (8) A deputy may act as a member of the Council during any period of absence of the member in relation to whom the deputy has been appointed.

### **23—Presiding member and deputy presiding member**

The Minister must appoint 1 of the members of the Council to be the presiding member of the Council and 1 to be the deputy presiding member.

### **24—Terms and conditions of membership**

- (1) Subject to this section, a member of the Council will hold office on conditions determined by the Governor for a term, not exceeding 3 years, specified in the instrument of appointment and is, at the expiration of a term of office, eligible for reappointment.
- (2) A member of the Council cannot hold office for consecutive terms that exceed 9 years in total.
- (3) The Governor may remove a member of the Council from office—
- (a) for breach of, or non-compliance with, a condition of appointment; or
  - (b) for mental or physical incapacity to carry out duties of office satisfactorily; or
  - (c) for neglect of duty; or
  - (d) for dishonourable conduct.
- (4) The office of a member of the Council becomes vacant if the member—
- (a) dies; or
  - (b) completes a term of office and is not reappointed; or
  - (c) resigns by written notice addressed to the Minister; or
  - (d) is found guilty of a prescribed offence; or
  - (e) is removed from office by the Governor under subsection (3).

### **25—Allowances and expenses**

A member of the Council is entitled to fees, allowances and expenses approved by the Governor.

### **26—Validity of acts**

An act or proceeding of the Council is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.

### **27—Power of delegation**

- (1) The Council may delegate a function or power under this Act (other than a prescribed function or power)—
- (a) to a member of the Council; or
  - (b) to a committee established by the Council; or

(c) to a specified body or person (including a person for the time being holding or acting in a specified office or position).

(2) A delegation under this section—

(a) must be by instrument in writing; and

(b) may be absolute or conditional; and

(c) does not derogate from the ability of the Council to act in any matter; and

(d) is revocable at will.

(3) A function or power delegated under this section may, if the instrument of delegation so provides, be further delegated.

(4) A person to whom a function has been delegated under subsection (1) who has a direct or indirect personal or pecuniary interest in any matter in relation to which the person proposes to perform the functions must disclose the nature of the interest in writing to the Council.

Maximum penalty: \$20 000.

(5) It is a defence to a charge of an offence against subsection (4) to prove that the defendant was not, at the time of the alleged offence, aware of his or her interest in the matter.

## **28—Committees**

(1) The Council may establish committees—

(a) to advise the Council; or

(b) to carry out functions on behalf of the Council.

(2) The membership of a committee will be determined by the Council and may, but need not, consist of, or include, members of the Council.

(3) The Council will determine who will be the presiding member of a committee.

(4) The procedures to be observed in relation to the conduct of the business of a committee will be—

(a) as determined by the Council; and

(b) insofar as a procedure is not determined under paragraph (a)—as determined by the committee.

## **29—Council's procedures**

(1) Subject to this Act, a quorum of the Council consists of one half the total number of its members (ignoring any fraction resulting from the division) plus 1.

(2) The Council must meet at least 6 times in any calendar year.

(3) A meeting of the Council will be chaired by the presiding member or, in his or her absence, by the deputy presiding member and, in the absence of both the presiding member and the deputy presiding member, the members present at a meeting of the Council must choose 1 of their number to preside at the meeting.

(4) A decision carried by a majority of the votes cast by members of the Council at a meeting is a decision of the Council.

- (5) Each member present at a meeting of the Council has 1 vote on any question arising for decision (but, to avoid doubt, the member presiding at the meeting does not have a casting vote if the votes are equal).
- 5 (6) A conference by telephone or other electronic means between the members of the Council will, for the purposes of this section, be taken to be a meeting of the Council at which the participating members are present if—
- (a) notice of the conference is given to all members in the manner determined by the Council for the purpose; and
- 10 (b) each participating member is capable of communicating with every other participating member during the conference.
- (7) A proposed resolution of the Council becomes a valid decision of the Council despite the fact that it is not voted on at a meeting of the Council if—
- (a) notice of the proposed resolution is given to all members of the Council in accordance with procedures determined by the Council; and
- 15 (b) a majority of the members express concurrence in the proposed resolution by letter, fax, email or other written communication setting out the terms of the resolution.
- (8) The Council must have accurate minutes kept of its meetings.
- (9) Subject to this Act, the Council may determine its own procedures.

### 20 **30—Commissioner or representative may attend meetings of Council**

The Commissioner, or a person authorised in writing by the Commissioner—

- (a) may attend and take part in discussions at any meeting of the Council; and
- (b) may have access to papers provided to members for the purposes of any meeting of the Council,

25 but does not have a vote on any question arising for decision at a meeting of the Council.

### **31—Conflict of interest under *Public Sector (Honesty and Accountability) Act 1995***

30 A member of the Council will not be taken to have a direct or indirect interest in a matter for the purposes of the *Public Sector (Honesty and Accountability) Act 1995* by reason only of the fact that the member has an interest in the matter that is shared in common with persons involved in the development and wellbeing of children and young people generally, or a substantial section of persons involved in the development and wellbeing of children and young people.

35 **Note—**

The *Public Sector (Honesty and Accountability) Act 1995* imposes duties of honesty and accountability on public sector office holders, including members of the Council.

### **32—Functions of Council**

- 40 (1) The primary function of the Council is to prepare and maintain the *Outcomes Framework for Children and Young People*.

(2) The Council has the following additional functions:

(a) to advise and report to the Government on the effectiveness of the Outcomes Framework in—

- (i) keeping children and young people safe from harm; and
- (ii) ensuring that children and young people are cared for in a way that allows them to realise their potential; and
- (iii) improving the physical and mental health, and the emotional wellbeing, of children and young people; and
- (iv) improving the participation of children and young people in educational and vocational training; and
- (v) improving the participation of children and young people in sporting, creative, cultural and other recreational activities; and
- (vi) ensuring that children and young people are properly prepared for taking their position in society as responsible citizens; and
- (vii) maintaining the cultural identity of children and young people;

(b) to prepare and provide such other reports to the Minister as may be required under this or any other Act;

(c) to promote the implementation of the Outcomes Framework in respect of matters affecting children and young people under all Acts and laws of the State;

(d) such other functions as may be assigned to the Council under this or any other Act or by the Minister.

(3) In performing the functions under this section, the Council should, as far as is reasonably practicable, seek to work collaboratively with—

- (a) State authorities and Commonwealth agencies that have functions that are relevant to those of the Council; and
- (b) relevant industry, professional and community groups and organisations.

### **33—Council may require information**

(1) The Council may, by notice in writing, require a State authority to give the Council information in its possession that the Council requires for the performance of its functions under this Act.

(2) A State authority must give the specified information to the Council within the period specified in the notice.

(3) If a State authority refuses or fails to comply with a notice under subsection (1), the Council may, after consultation with the State authority—

- (a) report the refusal or failure to the responsible Minister and to the Premier; and
- (b) include details of the refusal or failure in the annual report of the Council.

(4) The Minister may, by notice in writing, exempt a specified person or body, or persons or bodies of a specified class, from the operation of this section.



- (5) An exemption—
- (a) may be conditional or unconditional; and
  - (b) may be varied or revoked by the Minister by further notice in writing.

### **34—Use of Staff etc of Public Service**

- 5           The Council may, under an arrangement established by the Minister administering an administrative unit of the Public Service, make use of the staff, equipment or facilities of that administrative unit.

## **Part 6—Miscellaneous**

### **35—Confidentiality**

- 10           (1) A person engaged or formerly engaged in the administration of this Act must not divulge or communicate personal information obtained (whether by that person or otherwise) in the course of official duties except—
- (a) as required or authorised by or under this Act or any other Act or law; or
  - (b) with the consent of the person to whom the information relates; or
  - 15           (c) in connection with the administration or enforcement of this or any other Act; or
  - (d) to an agency or instrumentality of this State, the Commonwealth or another State or a Territory of the Commonwealth for the purposes of the proper performance of its functions.
- 20           Maximum penalty: \$10 000.
- (2) Subsection (1) does not prevent disclosure of statistical or other data that could not reasonably be expected to lead to the identification of any person to whom it relates.
- (3) Information that has been disclosed under subsection (1) for a particular purpose must not be used for any other purpose by—
- 25           (a) the person to whom the information was disclosed; or
  - (b) any other person who gains access to the information (whether properly or improperly and whether directly or indirectly) as a result of that disclosure.
- Maximum penalty: \$10 000.
- (4) The regulations may make further provision in respect of the disclosure of information
- 30           obtained in the course of the administration of this Act.

### **36—Service**

- (1) A notice or document required or authorised to be given or sent to, or served on, a person for the purposes of this Act may—
- (a) be given to the person personally; or
  - 35           (b) be posted in an envelope addressed to the person at the person's last known residential, business or (in the case of a corporation) registered address; or

(c) be left for the person at the person's last known residential, business or (in the case of a corporation) registered address with someone apparently over the age of 16 years; or

(d) be transmitted by fax or email to a fax number or email address provided by the person (in which case the notice or document will be taken to have been given or served at the time of transmission).

(2) Without limiting the effect of subsection (1), a notice or other document required or authorised to be given or sent to, or served on, a person for the purposes of this Act may, if the person is a company or registered body within the meaning of the *Corporations Act 2001* of the Commonwealth, be served on the person in accordance with that Act.

### **37—Review of Act**

(1) The Minister must cause a review of the operation of this Act to be conducted, and a report on the results of the review submitted to the Minister, before the fifth anniversary of the commencement of this Act.

(2) The Minister must cause a copy of the report submitted under subsection (1) to be laid before both Houses of Parliament within 12 sitting days after receiving the report.

### **38—Regulations**

(1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.

(2) Without limiting subsection (1), the regulations may require the provision of information, returns or reports to the Minister, the Commissioner, the Council or other specified person or body.

(3) The regulations may—

(a) be of general application or vary in their application according to prescribed factors;

(b) provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Minister, the Commissioner, the Council or other specified person or body.

(4) The regulations may refer to or incorporate, wholly or partially and with or without modification, a code, standard or other document prepared or published by a specified person or body, either as in force at the time the regulations are made or as in force from time to time.

(5) If a code, standard or other document is referred to or incorporated in the regulations—

(a) a copy of the code, standard or other document must be kept available for public inspection, without charge and during ordinary office hours, at an office or offices specified in the regulations; and

(b) evidence of the contents of the code, standard or other document may be given in any legal proceedings by production of a document apparently certified by the Minister to be a true copy of the code, standard or other document.

## **Schedule 1—Related amendment**

### **Part 1—Preliminary**

#### **1—Amendment provisions**

5           In this Schedule, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

### **Part 2—Amendment of *Children's Protection Act 1993***

#### **2—Repeal of Part 7B**

Part 7B—delete the Part

### **Part 3—Amendment of *Freedom of Information Act 1991***

#### **10   3—Amendment of Schedule 2—Exempt agencies**

Schedule 2—after paragraph (eb) insert:

(ec) the Commissioner for Children and Young People;