

Legislative Council—No 32A

As reported with an amendment, report adopted, Standing Orders suspended and passed remaining stages, 20 June 2007

South Australia

**Commission of Inquiry (Children in State Care)
(Children on APY Lands) Amendment Bill 2007**

A BILL FOR

An Act to amend the *Commission of Inquiry (Children in State Care) Act 2004*.

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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 *Commission of Inquiry (Children in State Care) (Children on APY Lands) Amendment Act 2007*.

5 2—Amendment provisions

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

Part 2—Amendment of *Commission of Inquiry (Children in State Care) Act 2004*

10 3—Amendment of long title

- (1) Long title—after "children;" insert:

to provide for a Commission of Inquiry into the incidence of sexual offences against children resident on the Anangu Pitjantjatjara Yankunytjatjara lands;

- (2) Long title—delete "the inquiry" and substitute:

15 the inquiries

4—Substitution of section 1—Short title

Section 1—delete the section and substitute:

1—Short title

This Act may be cited as the *Commission of Inquiry (Children in State Care and Children on APY Lands) Act 2004*.

5—Amendment of section 3—Interpretation

(1) Section 3, definition of *authorised person*, (b)—after "Inquiry" insert:

(including an Assistant Commissioner appointed under section 4A)

(2) Section 3, definition of *Commissioner*—after "section 4" insert:

(although see section 4A(4))

(3) Section 3, definition of *Inquiry*—delete "commission" and substitute:

commissions

6—Insertion of section 4A

After section 4 insert:

4A—Constitution of commission—children on APY lands

(1) A commission of inquiry is established with the terms of reference set out in Schedule 2.

(2) The commission is to be constituted by the person appointed to constitute the commission of inquiry under section 4.

(3) The Governor must appoint 2 Assistant Commissioners to assist in the conduct of the commission, of whom—

(a) 1 must be male and the other female; and

(b) at least 1 must be of Aboriginal descent.

(4) An Assistant Commissioner may exercise the powers and perform the functions of the Commissioner under this Act in accordance with an arrangement entered into with the Commissioner and, to the extent that an Assistant Commissioner does so, a reference in this Act to the Commissioner extends to the Assistant Commissioner.

7—Amendment of section 11—Completion of inquiry and presentation of report

Section 11(1) to (3) (inclusive)—delete subsections (1) to (3) and substitute:

(1) The Commissioner must complete each commission of inquiry, and prepare a report on its outcome, before 31 December 2007 or such later date as is nominated by the Governor by notice in the Gazette for completion of the inquiry.

7A—Insertion of section 11A

After section 11 insert:

11A—Report of Minister in response to Commissioner's report

The Minister must respond to each report of the Commissioner as follows:

- (a) within 3 months after receipt of the report by the Governor, the Minister must make a preliminary response indicating which (if any) of the recommendations of the Commissioner it is intended be carried out; and
- (b) within 6 months after receipt of the report by the Governor, the Minister must make a full response stating—
 - (i) the recommendations of the Commissioner that will be carried out and the manner in which they will be carried out; and
 - (ii) the recommendations of the Commissioner that will not be carried out and the reasons for not carrying them out; and
- (c) for each year for 5 years following the making of the full response, the Minister must, within 3 months after the end of the year, make a further response stating—
 - (i) the recommendations of the Commissioner that have been wholly or partly carried out in the relevant year and the manner in which they have been carried out; and
 - (ii) if, during the relevant year, a decision has been made not to carry out a recommendation of the Commissioner that was to be carried out, the reasons for not carrying it out; and
 - (iii) if, during the relevant year, a decision has been made to carry out a recommendation of the Commissioner that was not to be carried out, the reasons for the decision and the manner in which the recommendation will be carried out; and
- (d) a copy of each response must be laid before each House of Parliament within 3 sitting days after it is made.

8—Amendment of heading to Schedule 1

Heading to Schedule 1—delete the heading and substitute:

Schedule 1—Terms of reference—children in State care

9—Amendment of Schedule 1

Schedule 1, clause 2—after subclause (4) insert:

- (4a) The inquiry may relate to a matter that has been the subject of the commission of inquiry under section 4A.

10—Insertion of Schedule 2

After Schedule 1 insert:

Schedule 2—Terms of reference—children on APY lands

1—Interpretation

In this Schedule—

APY community means a community resident on the APY Lands;

APY lands means the lands vested in Anangu Pitjantjatjara Yankunytjatjara under the *Anangu Pitjantjatjara Yankunytjatjara Land Rights Act 1981*;

child on the APY lands means a child who is a member of an APY community and resident on the APY lands;

sexual abuse means conduct which would, if proven, constitute a sexual offence.

2—Terms of reference

- (1) The terms of reference are to inquire into the incidence of sexual abuse of persons who, at the time of the abuse, were children on the APY lands.
- (2) The purposes of the inquiry are—
- (a) to select APY communities to form the focus of the inquiry; and
 - (b) to examine allegations of sexual abuse of children on the APY lands; and
 - (c) to assess and report on the nature and extent of sexual abuse of children on the APY lands; and
 - (d) to identify and report on the consequences of the abuse for the APY communities; and
 - (e) to report on any measures that should be implemented—
 - (i) to prevent sexual abuse of children on the APY lands; and
 - (ii) to address the identified consequences of the abuse for the APY communities,(to the extent that these matters are not being addressed through existing programs or initiatives).

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- (3) The inquiry is to relate (and only to relate) to sexual abuse occurring before the commencement of this Schedule.
- (4) The inquiry need not (but may, if relevant) relate to a matter that has been the subject of the Review within the meaning of the *Child Protection Review (Powers and Immunities) Act 2002*.
- (5) The inquiry may relate to a matter that has been the subject of the commission of inquiry under section 4.
- (6) The person conducting the inquiry must not purport to make a finding of criminal or civil liability.