

House of Assembly—No 108A

As reported with amendments, report agreed to and passed remaining stages,
8 June 2021

South Australia

**Children and Young People (Oversight and
Advocacy Bodies) (Commissioner for Aboriginal
Children and Young People) Amendment Bill 2020**

A BILL FOR

An Act to amend the *Children and Young People (Oversight and Advocacy Bodies)
Act 2016*, and to make related amendments to various other Acts.

Contents

Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Amendment provisions

Part 2—Amendment of *Children and Young People (Oversight and Advocacy Bodies) Act 2016*

- 4 Amendment of long title
- 5 Amendment of section 3—Interpretation
- 6 Amendment of section 4—Meaning of rights, development and wellbeing
- 7 Amendment of section 5—State authorities to seek to give effect to *United Nations Convention on the Rights of the Child* etc
- 8 Amendment of section 7—Commissioner for Children and Young People
- 9 Amendment of section 8—Appointment of CCYP
- 10 Amendment of section 9—Appointment of acting CCYP
- 11 Amendment of section 10—Delegation
- 12 Amendment of section 11—Staff and resources
- 13 Amendment of section 12—Employees
- 14 Amendment of section 13—Use of staff etc of Public Service
- 15 Amendment of section 13A—Reporting obligations
- 16 Amendment of heading to Part 2 Division 2
- 17 Amendment of section 14—General functions of CCYP
- 18 Insertion of sections 14A to 14C
 - 14A Collaboration between CCYP and CACYP
 - 14B Referral of matters to CACYP
 - 14C Jurisdictional disputes
- 19 Amendment of section 15—CCYP may inquire into matters affecting children and young people at systemic level
- 20 Amendment of section 16—Powers of CCYP
- 21 Amendment of section 17—Recommendations
- 22 Amendment of section 18—Report of inquiry under section 15
- 23 Amendment of section 19—CCYP may provide other reports
- 24 Amendment of section 20—CCYP may publish reports
- 25 Insertion of Part 2A

Part 2A—Commissioner for Aboriginal Children and Young People

Division 1—Commissioner for Aboriginal Children and Young People

- 20A Commissioner for Aboriginal Children and Young People
- 20B Appointment of CACYP
- 20C Appointment of acting CACYP
- 20D Delegation
- 20E Staff and resources
- 20F Employees
- 20G Use of staff etc of Public Service
- 20H Reporting obligations

Division 2—Functions and powers of CACYP

- 20I General functions of CACYP
- 20J Collaboration between CACYP and CCYP
- 20K Referral of matters to CCYP
- 20L Jurisdictional disputes
- 20M CACYP may inquire into matters affecting Aboriginal children and young people at systemic level

| | |
|----------------------|---|
| 20N | Powers of CACYP |
| 20O | Recommendations |
| Division 3—Reporting | |
| 20P | Report of inquiry under section 20M |
| 20Q | CACYP may provide other reports |
| 20R | CACYP may publish reports |
| 26 | Amendment of section 40—Guardian or Committee may refer matter to CCYP or CACYP |
| 27 | Amendment of section 41—CCYP, CACYP, Guardian and Committee may report, and must refer, certain matters to appropriate body |
| 28 | Amendment of section 42—CCYP, CACYP and Guardian may make complaints to Ombudsman |
| 29 | Amendment of section 43—CCYP, CACYP and Guardian may make complaints to Health and Community Services Complaints Commissioner |
| 30 | Amendment of section 44—Immediate reports to Parliament |
| 31 | Amendment of section 45—Referral of matters to inquiry agencies etc not affected |
| 32 | Amendment of section 52—CCYP and CACYP or representative may attend meetings of Council |
| 33 | Amendment of section 57—Outcomes Framework for Children and Young People |
| 34 | Amendment of section 59—No obligation to maintain secrecy |
| 35 | Amendment of section 60—CCYP or CACYP may require State authority to provide report |
| 36 | Amendment of section 61—CCYP, CACYP or Guardian may require information |
| 37 | Amendment of section 62—Sharing of information between certain persons and bodies |
| 38 | Amendment of section 64—Obstruction etc |
| 39 | Amendment of section 68—Protections, privileges and immunities |
| 40 | Repeal of section 70 |
| 41 | Amendment of Schedule 1—Transitional provisions |
| 13 | Commissioner for Aboriginal Children and Young People |

Schedule 1—Related amendments

Part 1—Amendment of *Children and Young People (Safety) Act 2017*

1 Amendment of section 152—Sharing of information between certain persons and bodies

Part 2—Amendment of *Freedom of Information Act 1991*

2 Amendment of Schedule 2—Exempt agencies

Part 3—Amendment of *Health and Community Services Complaints Act 2004*

3 Amendment of section 27—Time within which a complaint may be made

Part 4—Amendment of *Ombudsman Act 1972*

4 Amendment of section 13—Matters subject to investigation

5 Amendment of section 15—Persons who may make complaints

6 Amendment of section 16—Time within which complaints may be made

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Children and Young People (Oversight and Advocacy Bodies) (Commissioner for Aboriginal Children and Young People) Amendment Act 2020*.

2—Commencement

This Act comes into operation on a day to be fixed by proclamation.

3—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 *Children and Young People (Oversight and Advocacy Bodies) Act 2016*

4—Amendment of long title

Long title—after "Commissioner for Children and Young People;" insert:

to establish the Commissioner for Aboriginal Children and Young People;

5—Amendment of section 3—Interpretation

- (1) Section 3(1)—before the definition of *Child Death and Serious Injury Review Committee* insert:

Aboriginal child or young person means a child or young person who—

- (a) is of Australian Aboriginal descent; and
- (b) regards themselves as Aboriginal, or is regarded as Aboriginal by at least 1 of their parents or the relevant Aboriginal community,

and includes, for the purposes of this Act, a Torres Strait Islander child or young person and a reference to *Aboriginal children and young people* is to be construed accordingly;

Aboriginal person means a person who—

- (a) is of Australian Aboriginal descent; and
- (b) regards themselves as Aboriginal; and
- (c) is accepted as an Aboriginal person by the relevant Aboriginal community,

and includes, for the purposes of this Act, a Torres Strait Islander person;

(2) Section 3(1)—after the definition of *Child Development Council* insert:

Commissioner for Aboriginal Children and Young People or **CACYP** means the person for the time being holding or acting in the office of Commissioner for Aboriginal Children and Young People under Part 2A;

5 (3) Section 3(1), definition of **Commissioner for Children and Young People**—delete "or **Commissioner**" and substitute:

or **CCYP**

(4) Section 3(1)—after the definition of *State authority* insert:

10 **Torres Strait Islander child or young person** means a child or young person who—

- (a) is of Torres Strait Islander descent; and
- (b) regards themselves as Torres Strait Islander, or is regarded as Torres Strait Islander by at least 1 of their parents or the relevant Torres Strait Islander community.

15 **Torres Strait Islander person** means a person who—

- (a) is of Torres Strait Islander descent; and
- (b) regards themselves as Torres Strait Islander; and
- (c) is accepted as a Torres Strait Islander person by the relevant Torres Strait Islander community.

20 **6—Amendment of section 4—Meaning of rights, development and wellbeing**

(1) Section 4(1)—after "*Child*" insert:

and the *United Nations Declaration on the Rights of Indigenous Peoples*

(2) Section 4(2)—after "physical," insert:

cultural,

25 (3) Section 4(3)(b)—delete "welfare" and substitute:

identity, safety

7—Amendment of section 5—State authorities to seek to give effect to *United Nations Convention on the Rights of the Child* etc

Section 5—after "*Child*" insert:

30 , the *United Nations Declaration on the Rights of Indigenous Peoples*

8—Amendment of section 7—Commissioner for Children and Young People

Section 7(2)—delete "Commissioner" and substitute:

CCYP

9—Amendment of section 8—Appointment of CCYP

35 (1) Section 8—delete "Commissioner" wherever occurring and substitute in each case:

CCYP

(2) Section 8(13)—after paragraph (g) insert:

(ga) becomes a prohibited person within the meaning of the *Child Safety (Prohibited Persons) Act 2016*; or

10—Amendment of section 9—Appointment of acting CCYP

5 Section 9—delete "Commissioner" wherever occurring and substitute in each case:
CCYP

11—Amendment of section 10—Delegation

(1) Section 10(1)—delete "Commissioner" and substitute:

CCYP

10 (2) Section 10(1)—delete "Commissioner's" and substitute:

CCYP's

12—Amendment of section 11—Staff and resources

(1) Section 11—delete "Commissioner" wherever occurring and substitute in each case:

CCYP

15 (2) Section 11—delete "Commissioner's" and substitute:

CCYP's

13—Amendment of section 12—Employees

Section 12—delete "Commissioner" wherever occurring and substitute in each case:

CCYP

14—Amendment of section 13—Use of staff etc of Public Service

20 Section 13—delete "Commissioner" and substitute:

CCYP

15—Amendment of section 13A—Reporting obligations

(1) Section 13A—delete "Commissioner" wherever occurring and substitute in each case:

25 CCYP

(2) Section 13A(1)—delete "Commissioner's" and substitute:

CCYP's

16—Amendment of heading to Part 2 Division 2

Heading to Part 2 Division 2—delete "Commissioner" and substitute:

30 CCYP

17—Amendment of section 14—General functions of CCYP

(1) Section 14—delete "Commissioner" wherever occurring and substitute in each case:

CCYP

(2) Section 14(1)(a)—after "people" insert:
 , or a particular group of children and young people,

(3) Section 14(2)—delete "Commissioner's" and substitute:
 CCYP's

5 **18—Insertion of sections 14A to 14C**

After section 14 insert:

14A—Collaboration between CCYP and CACYP

10 The CCYP should, in the performance of their functions, collaborate on matters of common interest with the CACYP to such extent as is reasonably practicable.

14B—Referral of matters to CACYP

- 15 (1) If, in the course of performing functions under this Act, the CCYP becomes aware of a matter that, in the opinion of the CCYP, should be referred to the CACYP for action under this Act, then the CCYP may refer the matter to the CACYP.
- (2) Nothing in subsection (1) prevents the CCYP from reporting or referring the matter under any other provision of this Act or any other Act.

14C—Jurisdictional disputes

- 20 (1) If the CCYP becomes aware that the CACYP is inquiring into a matter under section 20M that appears to the CCYP to fall within the CCYP's jurisdiction, the CCYP must raise the matter with the CACYP and attempt to resolve which Commissioner should inquire into the matter.
- 25 (2) If the CCYP and CACYP are unable to resolve which Commissioner should inquire into the matter, the CCYP must refer the matter to the Minister.
- (3) The Minister must determine whether the CCYP or the CACYP should inquire into the matter referred under subsection (2).
- 30 (4) If the Minister determines that the CACYP should inquire into the matter, the CCYP may not inquire into the matter (unless the Minister subsequently determines otherwise).

19—Amendment of section 15—CCYP may inquire into matters affecting children and young people at systemic level

35 (1) Section 15(1)—delete "The Commissioner may, in the Commissioner's absolute discretion," and substitute:

Subject to this Act, but otherwise in the CCYP's absolute discretion, the CCYP may

(2) Section 15—delete "Commissioner" wherever occurring and substitute in each case:
40 CCYP

20—Amendment of section 16—Powers of CCYP

Section 16—delete "Commissioner" wherever occurring and substitute in each case:
CCYP

21—Amendment of section 17—Recommendations

- 5 (1) Section 17—delete "Commissioner" wherever occurring and substitute in each case:
CCYP
- (2) Section 17—delete "Commissioner's" wherever occurring and substitute in each case:
CCYP's

22—Amendment of section 18—Report of inquiry under section 15

- 10 (1) Section 18(1)—delete "Commissioner" and substitute:
CCYP
- (2) Section 18(3)—delete "Commissioner's" wherever occurring and substitute in each case:
CCYP's

15 **23—Amendment of section 19—CCYP may provide other reports**

Section 19(1)—delete "Commissioner" and substitute:
CCYP

24—Amendment of section 20—CCYP may publish reports

- Section 20—delete "Commissioner" wherever occurring and substitute in each case:
20 CCYP

25—Insertion of Part 2A

After Part 2 insert:

Part 2A—Commissioner for Aboriginal Children and Young People

25 **Division 1—Commissioner for Aboriginal Children and Young People**

20A—Commissioner for Aboriginal Children and Young People

- (1) There is to be a Commissioner for Aboriginal Children and Young People.
- 30 (2) The CACYP is independent of direction or control by the Crown or any Minister or officer of the Crown.

20B—Appointment of CACYP

- 5
- 10
- 15
- 20
- 25
- 30
- 35
- 40
- (1) The CACYP will be appointed by the Governor on conditions, and for a term (not exceeding 7 years), determined by the Governor and specified in the instrument of appointment.
 - (2) A person appointed to be the CACYP is, at the end of a term of appointment, eligible for reappointment but cannot hold office for terms (including any term as Acting CACYP) that exceed 10 years in total.
 - (3) Despite a provision of the *Equal Opportunity Act 1984* or any other Act or law, a person appointed to be the CACYP must be an Aboriginal person.
 - (4) The Governor may, by regulation, establish a scheme for the recruitment of the CACYP (and recruitment of the CACYP must comply with that scheme).
 - (5) A person may only be appointed to be the CACYP if, following referral by the Minister of the proposed appointment to the Statutory Officers Committee established under the *Parliamentary Committees Act 1991*—
 - (a) the appointment has been approved by the Committee; or
 - (b) the Committee has not, within 7 days of the referral, or such longer period as is allowed by the Minister, notified the Minister in writing that it does not approve the appointment.
 - (6) Despite the *Parliamentary Committees Act 1991*, the Statutory Officers Committee must not report on, or publish material in relation to, matters referred to the Committee under subsection (5) except to the extent allowed by the Minister (but this subsection does not derogate from section 15I(2) of the *Parliamentary Committees Act 1991*).
 - (7) If the CACYP was, immediately before their appointment, employed in the Public Service, the CACYP retains existing and accruing rights in respect of leave.
 - (8) The CACYP must not, without the consent of the Minister, engage in any remunerated employment or activity apart from official duties.
 - (9) The Governor may, on the address of both Houses of Parliament, remove the CACYP from office.
 - (10) The Governor may suspend the CACYP from office (with, or without, pay) for—
 - (a) contravention of a condition of appointment; or
 - (b) misconduct or conduct that may bring the office of CACYP into disrepute; or
 - (c) failure or incapacity to carry out official duties satisfactorily.

- 5
- (11) If the Governor suspends the CACYP from office, a full statement of the reason for the suspension must be laid before both Houses of Parliament within 7 days after the suspension if Parliament is then in session or, if not, within 7 days after the commencement of the next session of Parliament.
- (12) If, at the end of 20 sitting days after the statement is laid before Parliament, neither House of Parliament has presented an address to the Governor requiring the CACYP to be restored to office, the CACYP is removed from office.
- 10
- (13) If within 20 sitting days after the statement is laid before Parliament either House of Parliament presents an address to the Governor requiring the CACYP to be restored to office, the CACYP is restored to office.
- (14) The office of CACYP becomes vacant if the holder—
- 15
- (a) dies; or
 - (b) completes a term of office and is not reappointed; or
 - (c) resigns by written notice to the Governor; or
 - (d) is nominated for election as a member of an Australian Parliament; or

20

 - (e) becomes an insolvent under administration within the meaning of the *Corporations Act 2001* of the Commonwealth; or
 - (f) is convicted of—

25

 - (i) an indictable offence against the law of this State; or
 - (ii) an offence against the law of this State that is punishable by imprisonment for a term of at least 12 months; or

30

 - (iii) an offence against the law of another jurisdiction that, if committed in this State, would be an offence of a kind referred to in a preceding paragraph; or
 - (g) is sentenced to imprisonment for an offence (whether against a law of this State or another jurisdiction); or

35

 - (h) becomes a prohibited person within the meaning of the *Child Safety (Prohibited Persons) Act 2016*; or
 - (i) is removed from office by the Governor under this section.

(15) Except as is provided by this section, the CACYP may not be removed or suspended from office, nor will the office of the CACYP become vacant.

40

(16) The CACYP is a senior official for the purposes of the *Public Sector (Honesty and Accountability) Act 1995*.

20C—Appointment of acting CACYP

- 5
- (1) The Governor may appoint a person (who may be a Public Service employee) to act as the CACYP during any period for which—
 - (a) no person is for the time being appointed as the CACYP; or
 - (b) the CACYP is absent from, or unable to discharge, official duties.
 - (2) Despite a provision of the *Equal Opportunity Act 1984* or any other Act or law, a person appointed to act as the CACYP must be an Aboriginal person.
 - 10 (3) The terms and conditions of appointment of the person appointed to act as the CACYP will be determined by the Governor.
 - (4) A person appointed to act as the CACYP is a senior official for the purposes of the *Public Sector (Honesty and Accountability) Act 1995*.

20D—Delegation

- 15
- (1) Subject to this section, the CACYP may delegate a function or power under this Act (other than a prescribed function or power) to any person or body that is, in the CACYP's opinion, competent to perform or exercise the relevant function or power.
 - 20 (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
 - (d) does not prevent the delegator from acting in any matter.
 - 25 (3) A function or power delegated under this section may, if the instrument of delegation so provides, be further delegated.

20E—Staff and resources

30 The Minister must provide the CACYP with the staff and other resources that the CACYP reasonably needs for carrying out the CACYP's functions.

20F—Employees

- 35
- (1) The CACYP may engage employees on terms and conditions determined by the CACYP.
 - (2) The employees are not Public Service employees but will, for the purposes of the *Public Sector (Honesty and Accountability) Act 1995*, be taken to be public sector employees employed by the CACYP.

20G—Use of staff etc of Public Service

The CACYP 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.

20H—Reporting obligations

- (1) The CACYP must, on or before 31 October in each year, report to the Minister on the performance of the CACYP's functions during the preceding financial year.
- (2) The Minister must, within 6 sitting days after receiving a report from the CACYP, have copies of the report laid before both Houses of Parliament.

Division 2—Functions and powers of CACYP

20I—General functions of CACYP

- (1) The functions of the CACYP are—
 - (a) to promote and advocate for the rights and interests of all Aboriginal children and young people, or a particular group of Aboriginal children and young people, in South Australia; and
 - (b) to promote the participation by Aboriginal children and young people in the making of decisions that affect their lives; and
 - (c) to advise, and make recommendations to, Ministers, State authorities and other bodies (including non-Government bodies) on matters related to the rights, development and wellbeing of Aboriginal children and young people at a systemic level; and
 - (d) to inquire under section 20M into matters related to the rights, development and wellbeing of Aboriginal children and young people at a systemic level (whether a Governmental system or otherwise); and
 - (e) to assist in ensuring that the State, as part of the Commonwealth, satisfies its international obligations in respect of Aboriginal children and young people; and
 - (f) to undertake or commission research into topics related to Aboriginal children and young people; and
 - (g) to prepare and publish reports on matters related to the rights, development and wellbeing of Aboriginal children and young people at a systemic level; and
 - (h) such other functions as may be conferred on the CACYP by or under this or any other Act.

5 (2) The CACYP may perform a function in respect of an Aboriginal child or young person, or a particular group of Aboriginal children and young people, if, at the time the CACYP is performing the function, the CACYP believes on reasonable grounds that the child or young person is an Aboriginal child or young person, or the group of children and young people is a group of Aboriginal children and young people.

10 (3) Without limiting any other provision of this Act, the CACYP should consult with and engage Aboriginal children and young people, and their families and communities, in the performance of the CACYP's functions under this Act, and in particular should seek to engage those groups of Aboriginal children and young people, and their families and communities, whose ability to make their views known is limited for any reason.

15 (4) In this section—

family, in relation to an Aboriginal child or young person or a Torres Strait Islander child or young person, includes—

- 20 (a) the child or young person's extended family; and
(b) members of the child or young person's family who are not biologically related to the child or young person; and
(c) any person related to the child or young person in accordance with Aboriginal or Torres Strait Islander traditional practice or custom (as the case requires),

and *families* has a corresponding meaning.

25 **20J—Collaboration between CACYP and CCYP**

The CACYP should, in the performance of their functions, collaborate on matters of common interest with the CCYP to such extent as is reasonably practicable.

30 **20K—Referral of matters to CCYP**

- 35 (1) If, in the course of performing functions under this Act, the CACYP becomes aware of a matter that, in the opinion of the CACYP, should be referred to the CCYP for action under this Act, then the CACYP may refer the matter to the CCYP.
(2) Nothing in subsection (1) prevents the CACYP from reporting or referring the matter under any other provision of this Act or any other Act.

40 **20L—Jurisdictional disputes**

- (1) If the CACYP becomes aware that the CCYP is inquiring into a matter under section 15 that appears to the CACYP to fall within the CACYP's jurisdiction, the CACYP must raise the matter with the CCYP and attempt to resolve which Commissioner should inquire into the matter.

- 5
- (2) If the CACYP and CCYP are unable to resolve which Commissioner should inquire into the matter, the CACYP must refer the matter to the Minister.
 - (3) The Minister must determine whether the CACYP or the CCYP should inquire into the matter referred under subsection (2).
 - (4) If the Minister determines that the CCYP should inquire into the matter, the CACYP may not inquire into the matter (unless the Minister subsequently determines otherwise).

10

20M—CACYP may inquire into matters affecting Aboriginal children and young people at systemic level

- 15
- (1) Subject to this Act, but otherwise in the CACYP's absolute discretion, the CACYP may conduct an inquiry into—
 - (a) the policies, practices and procedures of a State authority or authorities as they relate to the rights, development and wellbeing of Aboriginal children and young people generally, or a particular group of Aboriginal children and young people; and
 - (b) any other matter declared by the regulations to fall within the ambit of this subsection.
 - 20 (2) However, the CACYP may only conduct an inquiry under this section if the CACYP suspects that—
 - (a) the matter raises an issue of particular significance to Aboriginal children and young people; and
 - 25 (b) the matter is of a systemic nature rather than being limited to an isolated incident; and
 - (c) it is in the public interest to conduct the inquiry.
 - 30 (3) To avoid doubt, and without limiting any other provision of this section, the CACYP—
 - (a) may, in the course of conducting an inquiry into matters of a systemic nature, consider a matter affecting a particular Aboriginal child or young person; and
 - (b) may conduct an inquiry under this section as a consequence of becoming aware of a matter affecting a particular Aboriginal child or young person.
 - 35 (4) The CACYP must not conduct an inquiry under this section if to do so would be likely to impede an investigation or proposed investigation relating to a matter that is being, or is to be, conducted by an inquiry agency.
 - 40 (5) Subject to this Act, the CACYP may conduct an inquiry under this section in such manner as the CACYP thinks fit.
 - (6) A State authority must assist the CACYP in the conduct of an inquiry under this section as requested by the CACYP.

- (7) The CACYP must inform each relevant State authority as to the nature and timing of an inquiry under this section.
- (8) In this section—
inquiry agency has the same meaning as in section 45.

5 **20N—Powers of CACYP**

- (1) For the purposes of an inquiry under section 20M, the CACYP has the powers of a commission as defined in the *Royal Commissions Act 1917* and that Act applies as if—
 - 10 (a) the CACYP were a commission as so defined; and
 - (b) the subject matter of the inquiry were set out in a commission of inquiry issued by the Governor under that Act.
- (2) For the purposes of any other function under this Act, the CACYP
15 has such powers as may be necessary or expedient for the performance of that function.

20O—Recommendations

- (1) The CACYP may, on completing an inquiry under section 20M, or in
20 response to issues observed by the CACYP in the course of such an inquiry, by notice in writing recommend to a State authority—
 - (a) change practices, policies or procedures in a specified way or review practices, policies or procedures to achieve specified outcomes; or
 - 25 (b) conduct, or participate in, specified educational programs or educational programs designed to achieve specified outcomes; or
 - (c) take such other action as may be specified by the CACYP.
- (2) The responsible authority for a State authority must, in relation to a
30 recommendation under subsection (1), provide to the CACYP a report setting out—
 - (a) whether the State authority proposes, or does not propose, to implement the recommendation; and
 - (b) if the State authority proposes to implement the recommendation—details of how the implementation is to
35 be recommended; and
 - (c) if the State authority does not propose to implement the recommendation—an explanation as to why the recommendation is not to be implemented.
- (3) If—
40
 - (a) a State authority proposes to implement a recommendation; and

- (b) the CACYP is of the opinion that a State authority has failed or refused to do so,

the CACYP may require the State authority to provide to the CACYP within a specified period a report setting out the reasons for the failure or refusal.

- (4) The CACYP may submit a copy of a report under subsection (3) to the Minister setting out the views of the CACYP in respect of the State authority's failure or refusal to implement a recommendation.

- (5) The Minister must, on receiving a report under subsection (4), prepare a report to Parliament setting out—

- (a) the Minister's response to the CACYP's report; and
- (b) if any action has been taken, or is proposed to be taken, (whether by the Minister, a State authority or any other person or body) in relation to a recommendation to which the CACYP's report relates—details of that action or proposed action; and
- (c) if no action is to be taken (whether by the Minister, a State authority or any other person or body) in relation to a recommendation to which the CACYP's report relates—the reasons for not taking action; and
- (d) any other information required by the regulations.

- (6) The Minister must, within 6 sitting days after completing a report under subsection (5), cause a copy of both the report and the CACYP's report under subsection (4) to be laid before both Houses of Parliament.

Division 3—Reporting

20P—Report of inquiry under section 20M

- (1) The CACYP must, on completing an inquiry under section 20M, prepare and deliver to the Minister a report on the inquiry (including details of any recommendations made in respect of the inquiry).
- (2) The Minister must, within 6 sitting days after receiving a report under subsection (1), cause a copy of the report to be laid before both Houses of Parliament.

- (3) The Minister must, on receiving a report under subsection (1)—

- (a) provide a copy of the report to the Minister responsible for each area identified in the report; and
- (b) prepare a report setting out—
- (i) the Minister's response to the CACYP's report; and

(ii) if any action has been taken, or is proposed to be taken, (whether by a Minister, a State authority or any other person or body) in relation to the CACYP's report—details of that action or proposed action; and

(iii) if no action is to be taken (whether by a Minister, a State authority or any other person or body) in relation to the CACYP's report—the reasons for not taking action; and

(iv) any other information required by the regulations.

(4) The Minister must, within 6 sitting days after completing a report under subsection (3), cause a copy of the report to be laid before both Houses of Parliament.

20Q—CACYP may provide other reports

(1) The CACYP may prepare and provide to the Minister, or to another Minister responsible for a particular area, reports on matters related to the rights, development and wellbeing of Aboriginal children and young people at a systemic level.

(2) The Minister to whom a report is provided under subsection (1) must, within 6 sitting days after receiving the report, cause a copy of the report to be laid before both Houses of Parliament.

20R—CACYP may publish reports

The CACYP may, once a report under this Part has been laid before each House of Parliament and after consultation with the Minister, publish all or part of the report as the CACYP thinks fit.

26—Amendment of section 40—Guardian or Committee may refer matter to CCYP or CACYP

(1) Section 40(1)—delete "to the Commissioner for action under Part 2" and substitute:
to the CCYP for action under Part 2 or to the CACYP for action under Part 2A

(2) Section 40(1)—delete "by the Commissioner, refer the matter to the Commissioner" and substitute:
by the CCYP or CACYP, refer the matter to the CCYP or CACYP (as the case requires)

27—Amendment of section 41—CCYP, CACYP, Guardian and Committee may report, and must refer, certain matters to appropriate body

(1) Section 41(1)—delete "the Commissioner," first occurring and substitute:
the CCYP, the CACYP,

(2) Section 41(1)—delete "the Commissioner," second occurring and substitute:
the CCYP, CACYP,

- (3) Section 41(2)—delete "The Commissioner," and substitute:

The CCYP, the CACYP,

28—Amendment of section 42—CCYP, CACYP and Guardian may make complaints to Ombudsman

- (1) Section 42(1)—delete "the Commissioner" and substitute:

the CCYP, the CACYP

- (2) Section 42—after subsection (1) insert:

(1a) The CACYP may only make a complaint under this section on behalf of an Aboriginal child or young person, a group of Aboriginal children and young people, or Aboriginal children and young people generally.

29—Amendment of section 43—CCYP, CACYP and Guardian may make complaints to Health and Community Services Complaints Commissioner

- (1) Section 43—delete "the Commissioner" wherever occurring and substitute in each case:

the CCYP, the CACYP

- (2) Section 43—after subsection (2) insert:

(2a) The CACYP may only make a complaint under this section on behalf of an Aboriginal child or young person, a group of Aboriginal children and young people, or Aboriginal children and young people generally.

30—Amendment of section 44—Immediate reports to Parliament

Section 44—delete "The Commissioner," wherever occurring and substitute in each case:

The CCYP, the CACYP,

31—Amendment of section 45—Referral of matters to inquiry agencies etc not affected

- (1) Section 45(2)—delete "the Commissioner," first occurring and substitute:

the CCYP, the CACYP,

- (2) Section 45(2)—delete "the Commissioner," second occurring and substitute:

the CCYP, CACYP,

32—Amendment of section 52—CCYP and CACYP or representative may attend meetings of Council

- (1) Section 52—delete "The Commissioner" and substitute:

The CCYP and the CACYP

- (2) Section 52—delete "the Commissioner" and substitute:

the CCYP or the CACYP

33—Amendment of section 57—Outcomes Framework for Children and Young People

Section 57(4)(b)(i)—delete "the Commissioner" and substitute:
the CCYP and the CACYP

5 **34—Amendment of section 59—No obligation to maintain secrecy**

Section 59—delete "the Commissioner," and substitute:
the CCYP, the CACYP,

35—Amendment of section 60—CCYP or CACYP may require State authority to provide report

10 (1) Section 60(1)—delete "The Commissioner" and substitute:
The CCYP or the CACYP

(2) Section 60(1)—delete "the Commissioner" first and second occurring and substitute:
the CCYP or CACYP

(3) Section 60(1)—delete "the Commissioner" third occurring and substitute:
15 the CCYP or CACYP (as the case requires)

(4) Section 60(2)—delete "the Commissioner" first occurring and substitute:
the CCYP or CACYP

(5) Section 60(2)—delete "the Commissioner" second occurring and substitute:
the CCYP or CACYP (as the case requires)

20 (6) Section 60(3)—delete "The Commissioner" and substitute:
The CCYP or CACYP

(7) Section 60(3)—delete "the Commissioner" and substitute:
the CCYP or CACYP (as the case requires)

(8) Section 60(4)(a)—delete "the Commissioner's" and substitute:
25 the CCYP's or CACYP's

(9) Section 60(5)—delete "the Commissioner's" and substitute:
the CCYP's or CACYP's

36—Amendment of section 61—CCYP, CACYP or Guardian may require information

30 (1) Section 61(1)—delete "The Commissioner" and substitute:
The CCYP, the CACYP

(2) Section 61(1)—delete "the Commissioner" and substitute:
the CCYP, CACYP

(3) Section 61(2)—delete "the Commissioner" and substitute:
35 the CCYP, CACYP

(4) Section 61—after subsection (2) insert:

(2a) If a service of a State authority is provided by a third party and the information or documents required by the CCYP, CACYP or Guardian are held by the third party, the person to whom a requirement is made under subsection (1) must take reasonable steps to—

- (a) obtain from the third party the information or documents that are the subject of the requirement; or
- (b) facilitate the provision by the third party to the CCYP, CACYP or Guardian (as the case requires) of the information or documents that are the subject of the requirement.

(5) Section 61(4)—delete "the Commissioner" wherever occurring and substitute in each case:

the CCYP, CACYP

37—Amendment of section 62—Sharing of information between certain persons and bodies

Section 62(1)(a)—delete paragraph (a) and substitute:

- (a) the CCYP;
- (ab) the CACYP;

38—Amendment of section 64—Obstruction etc

Section 64—delete "the Commissioner," and substitute:
the CCYP, the CACYP,

39—Amendment of section 68—Protections, privileges and immunities

(1) Section 68(1)—delete "the Commissioner," and substitute:
the CCYP, the CACYP,

(2) Section 68(5)—delete "The Commissioner" and substitute:
The CCYP

(3) Section 68(5)—after "section 15," insert:
and the CACYP has, in connection with an inquiry under section 20M,

40—Repeal of section 70

Section 70—delete the section

41—Amendment of Schedule 1—Transitional provisions

Schedule 1—after clause 12 insert:

13—Commissioner for Aboriginal Children and Young People

- 5 (1) The person who, immediately before the commencement of this clause, was the Commissioner for Aboriginal Children and Young People appointed under the *Constitution Act 1934*—
- 10 (a) ceases to hold office on the commencement of this clause and any instrument of appointment or other agreement or arrangement relating to the office is terminated by force of this clause at the same time; and
- (b) will be taken, on the commencement of this clause, to be appointed under Part 2A of this Act for a term ending on 3 December 2021.
- 15 (2) For the purposes of section 20B(2), the term of appointment of the person referred to in subclause (1) is taken to have commenced on 3 December 2018.
- 20 (3) The operation of this clause does not amount to a break in service and the person referred to in subclause (1) retains existing and accruing rights in respect of leave regarding their appointment under the *Constitution Act 1934*.

Schedule 1—Related amendments

Part 1—Amendment of *Children and Young People (Safety) Act 2017*

1—Amendment of section 152—Sharing of information between certain persons and bodies

25 Section 152(1)—after paragraph (b) insert:

- (ba) the Commissioner for Aboriginal Children and Young People;

Part 2—Amendment of *Freedom of Information Act 1991*

2—Amendment of Schedule 2—Exempt agencies

30 Schedule 2—after paragraph (ec) insert:

- (eca) the Commissioner for Aboriginal Children and Young People;

Part 3—Amendment of *Health and Community Services Complaints Act 2004*

3—Amendment of section 27—Time within which a complaint may be made

35 Section 27(4)—after "the Commissioner for Children and Young People" insert:

- , the Commissioner for Aboriginal Children and Young People

Part 4—Amendment of *Ombudsman Act 1972*

4—Amendment of section 13—Matters subject to investigation

Section 13(3c)(a)—after "the Commissioner for Children and Young People" insert:
 , the Commissioner for Aboriginal Children and Young People

5 **5—Amendment of section 15—Persons who may make complaints**

Section 15(3b)—after "the Commissioner for Children and Young People" insert:
 , the Commissioner for Aboriginal Children and Young People

6—Amendment of section 16—Time within which complaints may be made

10 Section 16(3)—after "the Commissioner for Children and Young People" insert:
 , the Commissioner for Aboriginal Children and Young People