South Australia

# Children and Young People (Oversight and Advocacy Bodies) Act 2016

An Act to establish the Commissioner for Children and Young People; to establish the Commissioner for Aboriginal Children and Young People; to continue the Guardian for Children and Young People, the Child Death and Serious Injury Review Committee; to establish the Child Development Council; and for other purposes.

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Legislative history

**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) Act 2016*.

## 3—Interpretation

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

***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;

***Child Death and Serious Injury Review Committee*** or ***Committee*** means the Child Death and Serious Injury Review Committee continued under section 30;

***Child Development Council*** or ***Council*** means the Child Development Council established under Part 6;

***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;

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

***Guardian for Children and Young People*** or ***Guardian*** means the person for the time being holding or acting in the office of Guardian for Children and Young People under Part 3;

***Outcomes Framework for Children and Young People*** or ***Outcomes Framework*** means the Outcomes Framework for Children and Young People prepared in accordance with section 57, as in force from time to time;

***State authority*** means—

(a) a person who holds an office established by an Act; or

(b) a public sector agency; or

(c) South Australia Police; or

(d) a local council constituted under the *Local Government Act 1999*; 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 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

(f) any other person or body declared by the regulations to be a State authority,

but does not include a person or body declared by the regulations to be excluded from the ambit of this definition;

***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;

***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.

(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

(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 the *United Nations Declaration on the Rights of Indigenous Peoples* and rights set out in any other relevant international human rights instruments.

(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, cultural, 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—

(a) the care, development, education, physical and mental health and safety of each individual from birth through to adulthood; and

(b) the cultural identity, safety and wellbeing of children and young people.

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

Each State authority must, in carrying out its functions or exercising its powers, protect, respect and seek to give effect to the rights set out from time to time in the *United Nations Convention on the Rights of the Child*, the *United Nations Declaration on the Rights of Indigenous Peoples* and any other relevant international human rights instruments affecting children and young people.

### 6—Act to bind, and impose criminal liability on, the Crown

(1) This Act binds the Crown in right of this jurisdiction and, in so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

(2) The Crown is liable for an offence against this Act.

(3) If the Crown is guilty of an offence against this Act, the penalty that may be imposed on the Crown is the penalty that may be imposed on a body corporate.

# Part 2—Commissioner for Children and Young People

## Division 1—Commissioner for Children and Young People

### 7—Commissioner for Children and Young People

(1) There is to be a Commissioner for Children and Young People.

(2) The CCYP is independent of direction or control by the Crown or any Minister or officer of the Crown.

### 8—Appointment of CCYP

(1) The CCYP 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 CCYP is, at the end of a term of appointment, eligible for reappointment but cannot hold office for terms (including any term as acting CCYP) that exceed 10 years in total.

(3) The Governor may, by regulation, establish a scheme for the recruitment of the CCYP (and recruitment of the CCYP must comply with that scheme).

(4) A person may only be appointed to be the CCYP 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.

(5) 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 (4) except to the extent allowed by the Minister (but this subsection does not derogate from section 15I(2) of the *Parliamentary Committees Act 1991*).

(6) If the CCYP was, immediately before their appointment, employed in the Public Service, the CCYP retains existing and accruing rights in respect of leave.

(7) The CCYP must not, without the consent of the Minister, engage in any remunerated employment or activity apart from official duties.

(8) The Governor may, on the address of both Houses of Parliament, remove the CCYP from office.

(9) The Governor may suspend the CCYP 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 CCYP into disrepute; or

(c) failure or incapacity to carry out official duties satisfactorily.

(10) If the Governor suspends the CCYP 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.

(11) 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 CCYP to be restored to office, the CCYP is removed from office.

(12) If within 20 sitting days after the statement is laid before Parliament either House of Parliament presents an address to the Governor requiring the CCYP to be restored to office, the CCYP is restored to office.

(13) The office of CCYP becomes vacant if the holder—

(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

(e) becomes an insolvent under administration within the meaning of the *Corporations Act 2001* of the Commonwealth; or

(f) is convicted of—

(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

(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

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

(h) is removed from office by the Governor under this section.

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

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

## 9—Appointment of acting CCYP

(1) The Governor may appoint a person (who may be a Public Service employee) to act as the CCYP during any period for which—

(a) no person is for the time being appointed as the CCYP; or

(b) the CCYP is absent from, or unable to discharge, official duties.

(2) The terms and conditions of appointment of the person appointed to act as the CCYP will be determined by the Governor.

(3) A person appointed to act as the CCYP is a senior official for the purposes of the *Public Sector (Honesty and Accountability) Act 1995*.

## 10—Delegation

(1) Subject to this section, the CCYP 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 CCYP'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

(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.

## 11—Staff and resources

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

## 12—Employees

(1) The CCYP may engage employees on terms and conditions determined by the CCYP.

(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 CCYP.

### 13—Use of staff etc of Public Service

The CCYP 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.

### 13A—Reporting obligations

(1) The CCYP must, on or before 31 October in each year, report to the Minister on the performance of the CCYP's functions during the preceding financial year.

(2) The Minister must, within 6 sitting days after receiving a report from the CCYP, have copies of the report laid before both Houses of Parliament.

## Division 2—Functions and powers of CCYP

### 14—General functions of CCYP

(1) The functions of the CCYP are—

(a) to promote and advocate for the rights and interests of all children and young people, or a particular group of children and young people, in South Australia; and

(b) to promote the participation by 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 children and young people at a systemic level; and

(d) to inquire under section 15 into matters related to the rights, development and wellbeing of 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 children and young people; and

(f) to undertake or commission research into topics related to children and young people; and

(g) to prepare and publish reports on matters related to the rights, development and wellbeing of children and young people at a systemic level; and

(h) such other functions as may be conferred on the CCYP by or under this or any other Act.

(2) Without limiting any other provision of this Act, the CCYP should consult with and engage children and young people in the performance of the CCYP's 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.

## 14A—Collaboration between CCYP and CACYP

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

(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

(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.

(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).

(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).

## 15—CCYP may inquire into matters affecting children and young people at systemic level

(1) Subject to this Act, but otherwise in the CCYP's absolute discretion, the CCYP 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 children and young people generally, or a particular group of children and young people; and

(b) any other matter declared by the regulations to fall within the ambit of this subsection.

(2) However, the CCYP may only conduct an inquiry under this section if the CCYP suspects that—

(a) the matter raises an issue of particular significance to children and young people; and

(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.

(3) To avoid doubt, and without limiting any other provision of this section, the CCYP—

(a) may, in the course of conducting an inquiry into matters of a systemic nature, consider a matter affecting a particular 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 child or young person.

(4) The CCYP 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.

(5) Subject to this Act, the CCYP may conduct an inquiry under this section in such manner as the CCYP thinks fit.

(6) A State authority must assist the CCYP in the conduct of an inquiry under this section as requested by the CCYP.

(7) The CCYP 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.

## 16—Powers of CCYP

(1) For the purposes of an inquiry under section 15, the CCYP has the powers of a commission as defined in the *Royal Commissions Act 1917* and that Act applies as if—

(a) the CCYP 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 CCYP has such powers as may be necessary or expedient for the performance of that function.

## 17—Recommendations

(1) The CCYP may, on completing an inquiry under section 15, or in response to issues observed by the CCYP in the course of such an inquiry, by notice in writing recommend to a State authority that the State authority—

(a) change practices, policies or procedures in a specified way or review practices, policies or procedures to achieve specified outcomes; or

(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 CCYP.

(2) The responsible authority for a State authority must, in relation to a recommendation under subsection (1), provide to the CCYP 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 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—

(a) a State authority proposes to implement a recommendation; and

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

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

(4) The CCYP may submit a copy of a report under subsection (3) to the Minister setting out the views of the CCYP 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 CCYP'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 CCYP'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 CCYP'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 CCYP's report under subsection (4) to be laid before both Houses of Parliament.

## Division 3—Reporting

### 18—Report of inquiry under section 15

(1) The CCYP must, on completing an inquiry under section 15, 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 CCYP'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 CCYP'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 CCYP'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.

### 19—CCYP may provide other reports

(1) The CCYP 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 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.

### 20—CCYP may publish reports

The CCYP 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 CCYP thinks fit.

# 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

(1) There is to be a Commissioner for Aboriginal Children and Young People.

(2) The CACYP is independent of direction or control by the Crown or any Minister or officer of the Crown.

### 20B—Appointment of CACYP

(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.

(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.

(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—

(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

(e) becomes an insolvent under administration within the meaning of the *Corporations Act 2001* of the Commonwealth; or

(f) is convicted of—

(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

(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

(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.

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

## 20C—Appointment of acting CACYP

(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.

(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

(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.

(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.

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

## 20E—Staff and resources

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

(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.

(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.

(3) Without limiting any other provision of this Act, the CACYP will 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 will 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.

(4) In this section—

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

(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.

## 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.

## 20K—Referral of matters to CCYP

(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.

## 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.

(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).

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

(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.

(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

(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.

(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.

(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.

(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.

## 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—

(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 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 response to issues observed by the CACYP in the course of such an inquiry, by notice in writing recommend to a State authority that the State authority—

(a) change practices, policies or procedures in a specified way or review practices, policies or procedures to achieve specified outcomes; or

(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 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 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—

(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.

# Part 3—Guardian for Children and Young People

### 21—Guardian for Children and Young People

(1) There is to be a Guardian for Children and Young People.

(2) The Guardian is independent of direction or control by the Crown or any Minister or officer of the Crown.

## 22—Terms and conditions of appointment

(1) The Guardian will be appointed by the Governor on the nomination of the Minister on conditions, and for a term (not exceeding 5 years), determined by the Governor and specified in the instrument of appointment and is, at the expiration of a term of office, eligible for reappointment.

(2) The Minister must, before nominating a person for appointment as Guardian, call for expressions of interest in accordance with a scheme determined by the Minister.

(3) The Guardian is not a Public Service employee.

(4) If the Guardian was, immediately before their appointment, employed in the Public Service, the Guardian retains existing and accruing rights in respect of leave.

(5) The office of Guardian becomes vacant if the holder—

(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 convicted of—

(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

(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

(e) is sentenced to imprisonment for an offence (whether against a law of this State or another jurisdiction); or

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

(g) is removed from office by the Governor under subsection (6).

(6) The appointment of the Guardian may be terminated by the Governor on the ground that the Guardian—

(a) has been guilty of misconduct; or

(b) has become bankrupt or has applied to take the benefit of a law for the relief of insolvent debtors; or

(c) has been disqualified from managing corporations under Chapter 2D Part 2D.6 of the *Corporations Act 2001* of the Commonwealth; or

(d) has, because of mental or physical incapacity, failed to carry out duties of the position satisfactorily; or

(e) is incompetent or has neglected the duties of the position.

## 23—Delegation

(1) The Guardian 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

(b) may be absolute or conditional; and

(c) does not derogate from the ability of the Guardian 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.

## 24—Staff and resources

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

## 25—Use of staff etc of Public Service

The Guardian 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.

## 26—Functions and powers of Guardian

(1) The functions of the Guardian are—

(a) to promote the best interests of children under the guardianship, or in the custody, of the Chief Executive, and in particular those in alternative care; and

(b) to act as an advocate for the interests of children under the guardianship, or in the custody, of the Chief Executive and, in particular, for any such child who has suffered, or is alleged to have suffered, sexual abuse; and

(c) to monitor the circumstances of children under the guardianship, or in the custody, of the Chief Executive; and

(d) to provide advice to the Minister on the quality of the provision of care for children under the guardianship, or in the custody of, the Chief Executive and on whether the children's needs are being met; and

(e) to inquire into, and provide advice to the Minister in relation to, systemic reform necessary to improve the quality of care provided for children in alternative care; and

(f) to investigate and report to the Minister on matters referred to the Guardian by the Minister; and

(g) such other functions as may be conferred on the Guardian by or under this or any other Act.

(2) In carrying out functions under this section, the Guardian must—

(a) encourage children who are affected by issues that the Guardian has under consideration to express their own views and give proper weight to those views; and

(b) pay particular attention to the needs of children under the guardianship, or in the custody, of the Chief Executive who have a physical, psychological or intellectual disability; and

(c) receive and consider information, reports and materials relevant to carrying out the Guardian's functions.

(3) Subject to this Act, the Guardian has such powers as may be necessary or expedient for the performance of the Guardian's functions.

(4) In this section—

***alternative care*** means care provided for a child on a residential basis—

(a) by or through a government or non-government agency; or

(b) in a foster home (including a foster home provided by a member of the child's family),

and includes care provided in a detention facility for a child who is held there in lawful detention and care provided under independent living arrangements made for a child under the Chief Executive's guardianship;

***Chief Executive*** means the Chief Executive within the meaning of the *Children and Young People (Safety) Act 2017*.

## 27—Participation of children and young people in development of practices etc

The Guardian must establish and maintain processes to ensure the participation of children and young people in strategic, policy or systemic practice development or review processes.

## 28—Reporting obligations

(1) The Guardian must, at the request of the Minister, provide a report to the Minister on the performance of the Guardian's functions or on any other matter specified by the Minister.

(2) The Guardian must, on or before 31 October in each year, report to the Minister on the performance of the Guardian's functions during the preceding financial year.

(3) The Minister must, within 6 sitting days after receiving a report from the Guardian, have copies of the report laid before both Houses of Parliament.

## 29—Guardian may provide other reports

(1) The Guardian may prepare and provide to the Minister, or to another Minister responsible for a particular area, reports on matters related to the Guardian's functions.

(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.

# Part 4—Child Death and Serious Injury Review Committee

## 30—Continuation of Child Death and Serious Injury Review Committee

(1) The Child Death and Serious Injury Review Committee established under the *Children's Protection Act 1993* continues in existence.

(2) The Committee consists of up to 20 members appointed by the Minister.

(3) The Committee is to be subject to direction by the Minister but—

(a) the Committee cannot be directed to make a particular finding or recommendation; and

(b) a direction must be published in the annual report of the Committee relating to the period in which the direction was given.

## 31—Terms and conditions of members

(1) Subject to this section, a member of the Committee holds office on conditions, and for a term (not exceeding 2 years), determined by the Minister and specified in the instrument of appointment and is, at the expiration of a term of office, eligible for reappointment.

(2) The office of a member becomes vacant if the member—

(a) dies; or

(b) completes a term of office and is not reappointed; or

(c) resigns by written notice to the Minister; or

(d) is convicted of—

(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

(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

(e) is sentenced to imprisonment for an offence (whether against a law of this State or another jurisdiction); or

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

(g) is removed from office by the Minister under subsection (3).

(3) The Minister may remove a member from office—

(a) for misconduct or conduct that brings the Committee into disrepute; or

(b) for breach of, or non-compliance with, a condition of appointment; or

(c) if the member has become bankrupt or has applied to take the benefit of a law for the relief of insolvent debtors; or

(d) if the member has been disqualified from managing corporations under Chapter 2D Part 2D.6 of the *Corporations Act 2001* of the Commonwealth; or

(e) if the member has, because of mental or physical incapacity, failed to carry out duties of the position satisfactorily; or

(f) for incompetence or neglecting the duties of the position; or

(g) any other reason the Minister thinks fit.

## 32—Presiding member

The Minister must appoint a member of the Committee as the presiding member of the Committee.

## 33—Procedures of the Committee

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

(2) The Committee must meet at least 5 times in each year.

(3) The presiding member will preside at a meeting of the Committee and, in the absence of that person, a member chosen by the members present at the meeting will preside.

(4) A question arising for decision at a meeting of the Committee will be decided by a majority of the votes cast by the members present at the meeting.

(5) Each member present at a meeting of the Committee will be entitled to 1 vote on any question arising for decision at the meeting and, if the votes are equal, the person presiding will have a casting vote.

(6) Subject to this Act and any directions of the Minister, the Committee may determine its own procedures.

## 34—Delegation

(1) The Committee may delegate to a member, or a sub-committee of its members, any of its powers or functions under this Act.

(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 Committee 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—Staff and resources

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

## 36—Use of staff and facilities etc

(1) The Committee 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.

(2) The Committee may, with the Minister's approval, engage an expert to assist it in the review of a particular case or in carrying out any other aspect of its functions.

## 37—Functions of the Committee

(1) The functions of the Committee are—

(a) to review cases in which children die or suffer serious injury with a view to identifying legislative or administrative means of preventing similar cases of death or serious injury in the future; and

(b) to make, and monitor the implementation of, recommendations for avoiding preventable child death or serious injury; and

(c) to maintain a database of child deaths and serious injuries and their circumstances and causes.

(2) A review may be carried out if—

(a) the incident resulting in the child's death or serious injury occurred in the State; or

(b) the child was, at the time of the death or serious injury, ordinarily resident in the State.

(3) The Committee should review a case of child death or serious injury if—

(a) there are grounds to suspect that the death or serious injury may be due to abuse or neglect; or

(b) there are grounds to believe that the death or serious injury might have been prevented by some kind of systemic change; or

(c) there had been, within 3 years before the incident resulting in the death or serious injury, a notification to the Department of suspected abuse or neglect of the child, or a member of the child's family; or

(d) the child was, at the time of death or serious injury, under the guardianship, or in the custody, of the Chief Executive (within the meaning of the *Children and Young People (Safety) Act 2017*) or was in custody or detention or in the care of a government agency; or

(e) the case has been referred to the Committee by the State Coroner; or

(f) the case has been referred to the Committee by the Minister.

(4) The Committee may review a case of child death or serious injury that is the subject of an ongoing inquest or inquiry under the *Coroners Act 2003* or an ongoing criminal investigation if—

(a) the Committee consults, in accordance with any requirements set out in the regulations, with—

(i) if the case is the subject of an inquest or inquiry—the State Coroner; or

(ii) if the case is the subject of a criminal investigation—the Commissioner of Police; and

(b) the Committee, in carrying out the review, takes all reasonable steps to avoid compromising the inquest, inquiry or investigation (as the case may be).

(5) The State Coroner or the Commissioner of Police (as the case may be) may, by notice in writing, direct that the Committee does, or refrains from doing, a particular thing in the course of a review if the Coroner or Commissioner (as the case may be) is of the opinion that such a direction is necessary to avoid compromise to an inquest, inquiry or investigation.

(5a) If the Committee contravenes a direction given under subsection (5), the State Coroner or the Commissioner of Police (as the case may be) may report the contravention to the Minister.

(5b) However, a contravention of a direction given under subsection (5) does not affect the validity of a review carried out by, or a recommendation made by, the Committee.

(6) Without limiting the ways in which the Committee may conduct a review, a review may be carried out by examination of coronial and other records and reports relevant to the case under review.

(7) The Committee must not make a finding about civil or criminal liability.

(8) The database maintained by the Committee may only be inspected in accordance with the regulations.

## 38—Powers of Committee

(1) Subject to this section, but without limiting any other provision of this Act, the Committee may, for the purposes of a review of a case of child death or serious injury, require a specified person (whether or not the person is a State authority, or an officer or employee of a State authority) to provide to the Committee such information or documents as may be specified in the notice (being information or documents in the possession of the person that the Committee reasonably requires for the review).

(2) A person must not refuse or fail to comply with a requirement under subsection (1).

Maximum penalty: $10 000.

(3) Subsection (2) does not apply to a prescribed person in relation to a child who is the subject of the review.

(4) The Committee cannot require a person to disclose or allow access to information or documents subject to the operation of Part 7 or 8 of the *Health Care Act 2008*.

(5) If a State authority refuses or fails to comply with a requirement under subsection (1), the Committee may, after consultation with the State authority—

(a) report the refusal or failure to the Minister and to the Minister responsible for the State authority (if any); and

(b) include details of the refusal or failure in the annual report of the Committee.

(6) In this section—

***prescribed person***, in relation to a child, means a parent, step-parent, foster parent, brother, sister, uncle, aunt, grandfather or grandmother of the child.

## 38A—Provisions relating to information

(1) Without limiting any other provision of this Act, or any other Act or law, the Committee, South Australia Police and the State Coroner may, in accordance with any requirements prescribed by the regulations, provide information to one another for the purposes of—

(a) determining whether a review of a case of child death or serious injury should be carried out by the Committee under this Act; or

(b) carrying out such a review.

(2) Information that has been provided under subsection (1) for the purposes set out in that subsection must not be used for any other purpose by—

(a) the person to whom the information was disclosed; or

(b) any other person who gains access to the information as a result of that disclosure.

Maximum penalty: $10 000.

(3) A person cannot be compelled to do any of the following:

(a) give evidence of matters becoming known to them as a member or staff of the Committee through the performance of functions under this Act;

(b) produce a document that was prepared or made in the course of, or for the purposes of, a review of a case of child death or serious injury;

(c) provide information that became known in the course of a review of a case of child death or serious injury.

(4) For the purposes of the *Freedom of Information Act 1991*, a document prepared by the Committee under this Act will be taken to be an exempt document under that Act (including where the document is held by or in the possession of an agency other than the Committee).

(5) For the purposes of this section, a reference to staff of the Committee includes any staff or an expert contemplated by section 36.

## 39—Reporting obligations

(1) The Committee must, at the request of the Minister, provide a report to the Minister on the performance of its functions or on any other matter specified by the Minister.

(2) The Committee must, on or before 31 October in each year, report to the Minister on the performance of its functions during the preceding financial year.

(3) The Minister must, within 6 sitting days after receiving a report under subsection (2), have copies of the report laid before both Houses of Parliament.

# Part 5—Referral of matters

## 40—Guardian or Committee may refer matter to CCYP or CACYP

(1) If, in the course of performing functions under this Act, the Guardian or the Committee becomes aware of a matter that, in the opinion of the Guardian or Committee, should be referred to the CCYP for action under Part 2 or to the CACYP for action under Part 2A, then the Guardian or Committee (as the case requires) may, in a manner and form determined by the CCYP or CACYP, refer the matter to the CCYP or CACYP (as the case requires).

(2) Subsection (1) applies whether or not the Guardian or the Committee is reviewing, or has reviewed, an incident to which the matter relates.

(3) Nothing in subsection (1) prevents the Guardian or the Committee from reporting or referring the matter under any other provision of this Act or any other Act.

## 41—CCYP, CACYP, Guardian and Committee may report, and must refer, certain matters to appropriate body

(1) If, in the course of performing functions under this Act, the CCYP, the CACYP, the Guardian or the Committee becomes aware of a matter that raises the possibility of professional misconduct or unprofessional conduct, or corruption, misconduct or maladministration in public administration, then the CCYP, CACYP, Guardian or Committee (as the case requires)—

(a) in the case of professional misconduct or unprofessional conduct—may report the matter to the relevant regulatory body for that profession; or

(b) in the case of corruption in public administration—must refer the matter to the Independent Commission Against Corruption under the *Independent Commission Against Corruption Act 2012*; or

(c) in the case of misconduct or maladministration in public administration—must refer the matter to the Ombudsman under the *Ombudsman Act 1972*.

(2) The CCYP, the CACYP, the Guardian or the Committee (as the case requires) must comply with any reasonable request of the relevant regulatory body for further information in relation to the subject matter of a report under subsection (1)(a).

(3) In this section—

***corruption in public administration*** means corruption in public administration within the meaning of the *Independent Commission Against Corruption Act 2012*;

***misconduct or maladministration in public administration*** means misconduct in public administration or maladministration in public administration, within the meaning of the *Ombudsman Act 1972*.

## 42—CCYP, CACYP and Guardian may make complaints to Ombudsman

(1) Despite a provision of the *Ombudsman Act 1972*, the CCYP, the CACYP or the Guardian may, on behalf of a child or young person, or a class of children or young people—

(a) make a complaint to the Ombudsman in respect of an administrative act; or

(b) make a prescribed child protection complaint to the Ombudsman,

and, for the purposes of the *Ombudsman Act 1972*, such a complaint will be taken to be a complaint made under that Act.

(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.

(2) Without limiting a provision of the *Ombudsman Act 1972*, the Ombudsman, in respect of a complaint referred to in subsection (1)(b), has the same jurisdiction and any additional powers that the Health and Community Services Complaints Commissioner would have under the *Health and Community Services Complaints Act 2004* in respect of such a complaint.

(3) In this section—

***administrative act*** has the same meaning as in the *Ombudsman Act 1972*;

***prescribed child protection complaint*** has the same meaning as in section 28A of the *Health and Community Services Complaints Act 2004*.

## 43—CCYP, CACYP and Guardian may make complaints to Health and Community Services Complaints Commissioner

(1) Subject to this section, but despite a provision of the *Health and Community Services Complaints Act 2004*, the CCYP, the CACYP or the Guardian may make a complaint to the Health and Community Services Complaints Commissioner on behalf of a child or young person, or a class of children or young people, in respect of a ground referred to in section 25 of that Act (and such a complaint will be taken to be a complaint made under that Act).

(2) In determining whether to make a complaint under subsection (1), the CCYP, the CACYP or the Guardian (as the case requires)—

(a) must have regard to the fact that a prescribed child protection complaint should, unless it is a complaint of a kind identified in an administrative arrangement under section 28A of the *Health and Community Services Complaints Act 2004*, be made to the Ombudsman; and

(b) must consider whether a complaint should instead be made under section 42.

(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.

(3) Nothing in this section limits the operation of section 28A of the *Health and Community Services Complaints Act 2004*.

(4) In this section—

***prescribed child protection complaint*** has the same meaning as in section 28A of the *Health and Community Services Complaints Act 2004*.

### 44—Immediate reports to Parliament

(1) The CCYP, the CACYP, the Guardian or the Committee may make a report to the Parliament on any matter related to their functions under this Act if satisfied that the matter raises issues of such importance to the safety or wellbeing of children and young people that the Parliament should be made aware of the matter as a matter of urgency.

(2) A copy of the report must be delivered to the President of the Legislative Council and the Speaker of the House of Assembly.

(3) The President of the Legislative Council and the Speaker of the House of Assembly must, on the first sitting day after receiving a report, lay it before their respective Houses.

(4) The CCYP, the CACYP, the Guardian or the Committee (as the case requires) must also give a copy of the report to the Minister.

### 45—Referral of matters to inquiry agencies etc not affected

(1) Nothing in this Act prevents a matter from being referred to an inquiry agency or any other appropriate person or body at any time (whether or not an inquiry or other proceedings are being or have been undertaken under this Act).

(2) The referral of a matter does not prevent the CCYP, the CACYP, the Guardian or the Committee from performing functions or exercising powers in respect of the matter (but in such a case the CCYP, CACYP, Guardian or Committee must endeavour to avoid, as far as practicable, prejudice to any person affected by the referral).

(3) In this section—

***inquiry agency*** means—

(a) South Australia Police; or

(b) the Ombudsman; or

(c) the State Coroner; or

(d) the Independent Commission Against Corruption; or

(e) the Commissioner for Public Sector Employment; or

(f) the Health and Community Services Complaints Commissioner; or

(g) the Guardian.

# Part 6—Child Development Council

## Division 1—Child Development Council

### 46—Establishment of Child Development Council

(1) The *Child Development Council* is established.

(2) The Council consists of up to 12 members appointed by the Minister, being persons who collectively have, in the opinion of the Minister, the knowledge, skills and experience necessary to enable the Council to carry out its functions effectively.

(3) The Minister must, before appointing a member to the Council, call for expressions of interest under a scheme determined by the Minister for the purposes of this section.

(4) The Minister may appoint a person to be the deputy of a member of the Council.

(5) 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.

## 47—Terms and conditions of membership

(1) Subject to this section, a member of the Council will hold office on conditions, and for a term (not exceeding 2 years), determined by the Minister and specified in the instrument of appointment and is, at the expiration of a term of office, eligible for reappointment.

(2) The office of a member becomes vacant if the member—

(a) dies; or

(b) completes a term of office and is not reappointed; or

(c) resigns by written notice to the Minister; or

(d) is convicted of—

(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

(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

(e) is sentenced to imprisonment for an offence (whether against a law of this State or another jurisdiction); or

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

(g) is removed from office by the Minister under subsection (3).

(3) The Minister may remove a member from office—

(a) for misconduct or conduct that may bring the Council into disrepute; or

(b) for breach of, or non-compliance with, a condition of appointment; or

(c) if the member has become bankrupt or has applied to take the benefit of a law for the relief of insolvent debtors; or

(d) if the member has been disqualified from managing corporations under Chapter 2D Part 2D.6 of the *Corporations Act 2001* of the Commonwealth; or

(e) if the member has, because of mental or physical incapacity, failed to carry out duties of the position satisfactorily; or

(f) for incompetence or neglecting the duties of the position; or

(g) any other reason the Minister thinks fit.

(4) 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.

## 48—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.

## 49—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.

## 50—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.

## 51—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) The presiding member will preside at a meeting of the Council and, in the absence of that person, or, in that member's 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).

(6) The Council must have accurate minutes kept of its meetings.

(7) Subject to this Act and any direction of the Minister, the Council may determine its own procedures.

## 52—CCYP and CACYP or representative may attend meetings of Council

The CCYP and the CACYP, or a person authorised in writing by the CCYP or the CACYP—

(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,

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

## 53—Staff and resources

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

## 54—Use of staff etc of Public Service

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.

## 55—Functions and powers of Council

(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 promote the implementation of the Outcomes Framework in respect of matters affecting children and young people under the laws of the State;

(c) 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.

(4) Subject to this Act, the Council has such powers as may be necessary or expedient for the performance of the Council's functions.

### 56—Reporting obligations

(1) The Council must, at the request of the Minister, provide a report to the Minister on the performance of its functions or on any other matter specified by the Minister.

(2) The Council must, on or before 31 October in each year, report to the Minister on the performance of its functions during the preceding financial year.

(3) The Minister must, within 6 sitting days after receiving a report under subsection (2), have copies of the report laid before both Houses of Parliament.

## Division 2—Outcomes Framework for Children and Young People

### 57—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.

(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 CCYP and the CACYP; 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.

(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) 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,

including provisions limiting a matter referred to in a preceding paragraph.

(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—

(a) cause the Outcomes Framework or variation to be published in the Gazette; and

(b) cause the Outcomes Framework to be published on a website determined by the Minister.

## 58—Statutory duty of State authorities in respect of Outcomes Framework

(1) Every State authority must, in carrying out its functions or exercising its powers, have regard to, and seek to give effect to, the Outcomes Framework.

(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.

(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.

# Part 7—Information gathering and sharing

## 59—No obligation to maintain secrecy

No obligation to maintain secrecy or other restriction on the disclosure of information applies in relation to the disclosure of information to the CCYP, the CACYP, the Guardian or the Committee under this Act, except an obligation or restriction designed to keep the identity of an informant or notifier secret.

## 60—CCYP or CACYP may require State authority to provide report

(1) The CCYP or the CACYP may, if the CCYP or CACYP is of the opinion that it is necessary or would otherwise assist the CCYP or CACYP in the performance of functions under this Act, require a State authority to prepare and provide a report to the CCYP or CACYP (as the case requires) in relation to the matters, and in accordance with any requirements, specified in the notice.

(2) If a State authority has not complied with a requirement under subsection (1), the CCYP or CACYP may require the State authority to provide to the CCYP or CACYP (as the case requires) within a specified period a report setting out the reasons for non-compliance.

(3) The CCYP or CACYP may, on receiving a report under subsection (2), submit a copy of the report to the Minister setting out the views of the CCYP or CACYP (as the case requires) in respect of the State authority's non-compliance.

(4) The Minister must, on receiving a report under subsection (3), prepare a report to Parliament setting out—

(a) the Minister's response to the CCYP's or CACYP's report; and

(b) any other information required by the regulations.

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

## 61—CCYP, CACYP or Guardian may require information

(1) The CCYP, the CACYP or the Guardian may, by notice in writing, require a specified person (whether or not the person is a State authority, or an officer or employee of a State authority) to provide to them such information, or such documents, as may be specified in the notice (being information or documents in the possession of the person or body that the CCYP, CACYP or Guardian reasonably requires for the performance of functions under this Act).

(2) A person of whom a requirement is made under subsection (1) must give the specified information or documents to the CCYP, CACYP or Guardian (as the case requires) within the period specified in the notice.

(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.

(3) A person who refuses or fails to comply with a notice under subsection (1) is guilty of an offence.

Maximum penalty: $10 000.

(4) If a State authority refuses or fails to comply with a notice under subsection (1), the CCYP, CACYP or Guardian (as the case requires) may, after consultation with the State authority—

(a) report the refusal or failure to the Minister and to the Minister responsible for the State authority (if any); and

(b) include details of the refusal or failure in the annual report of the CCYP, CACYP or Guardian.

(5) 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.

(6) An exemption—

(a) may be conditional or unconditional; and

(b) may be varied or revoked by the Minister by further notice in writing.

## 62—Sharing of information between certain persons and bodies

(1) This section applies to the following persons and bodies:

(a) the CCYP;

(ab) the CACYP;

(b) the Guardian;

(c) the Committee;

(d) the Council;

(e) a State authority;

(f) any other person or body declared by the regulations to be included in the ambit of this subsection.

(2) Despite any other Act or law, a person or body to whom this section applies (the ***provider***) may, in accordance with any requirement set out in the regulations, provide prescribed information and documents to another person or body to whom this section applies (the ***recipient***) if the provider reasonably believes that the provision of the information or documents would assist the recipient—

(a) to perform official functions relating to the health, safety, welfare or wellbeing of a child or young person or class of children or young people; or

(b) to manage any risk to a child or young person or class of children or young people that might arise in the recipient's capacity as an employer or provider of services.

(3) Despite any other Act or law, information or documents that do not directly or indirectly disclose the identity of any person may be provided by one person or body to whom this section applies to another without restriction.

(4) Subsection (3) applies—

(a) whether or not the information or documents consist of or include prescribed information and documents; and

(b) whether the information or document ever disclosed the identity of a person, or has been redacted so as to de-identify it.

(5) Information may be provided under this section regardless of whether the provider has been requested to provide the information.

(6) In this section—

***prescribed information and documents*** means—

(a) information or documents relating to the health, safety, welfare or wellbeing of a particular child or young person or class of children or young people; or

(b) any other information or document of a kind prescribed by the regulations for the purposes of this definition.

### 63—Interaction with *Public Sector (Data Sharing) Act 2016*

Nothing in this Act affects the operation of the *Public Sector (Data Sharing) Act 2016*.

## Part 8—Miscellaneous

### 64—Obstruction etc

A person must not, without reasonable excuse, obstruct, hinder, resist or improperly influence, or attempt to obstruct, hinder, resist or improperly influence, the CCYP, the CACYP, the Guardian, the Committee or the Council in the performance or exercise of a function or power under this Act.

Maximum penalty: $10 000.

### 65—False or misleading statements

A person must not make a statement knowing that it is false or misleading in a material particular (whether by reason of the inclusion or omission of a particular) in information provided under this Act.

Maximum penalty: $10 000.

## 66—Confidentiality

(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

(c) in connection with the administration or enforcement of this or any other Act; or

(d) for the purposes of referring the matter to a law enforcement agency, or a person or agency exercising official duties under an Act relating to the care or protection of children; or

(e) 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; or

(f) if the disclosure is reasonably necessary for the protection of the lawful interests of that person.

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—

(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 obtained in the course of the administration of this Act.

## 67—Victimisation

(1) A person who causes detriment to another on the ground, or substantially on the ground, that the other person or a third person has provided, or intends to provide, information under this Act commits an act of victimisation.

(2) Causing detriment on the ground that a person—

(a) has made a false allegation; or

(b) has not acted in good faith,

does not constitute an act of victimisation.

(3) An act of victimisation under this Act may be dealt with—

(a) as a tort; or

(b) as if it were an act of victimisation under the *Equal Opportunity Act 1984*,

but, if the victim commences proceedings in a court seeking a remedy in tort, the victim cannot subsequently lodge a complaint under the *Equal Opportunity Act 1984* and, conversely, if the victim lodges a complaint under that Act, the victim cannot subsequently commence proceedings in a court seeking a remedy in tort.

(4) If a complaint alleging an act of victimisation under this Act has been lodged with the Commissioner for Equal Opportunity and the Commissioner is of the opinion that the subject matter of the complaint has already been adequately dealt with by a competent authority, the Commissioner may decline to act on the complaint or to proceed further with action on the complaint.

(5) In proceedings against a person seeking a remedy in tort for an act of victimisation committed by an employee or agent of the person, it is a defence to prove that the person exercised all reasonable diligence to ensure that the employee or agent would not commit an act of victimisation.

(6) A person who personally commits an act of victimisation under this Act is guilty of an offence.

Maximum penalty: $10 000.

(7) Proceedings for an offence against subsection (6) may only be commenced by a police officer or a person approved by either the Commissioner of Police or the Director of Public Prosecutions.

(8) In this section—

***detriment*** includes—

(a) injury, damage or loss; or

(b) intimidation or harassment; or

(c) discrimination, disadvantage or adverse treatment in relation to a person's employment; or

(d) threats of reprisal.

## 68—Protections, privileges and immunities

(1) No liability attaches to the CCYP, the CACYP, the Guardian, a member of the Committee, a member of the Council or any other person for any act or omission in good faith in the exercise or purported exercise of powers or functions under this or any other Act.

(2) Nothing in this Act affects the privileges, immunities or powers of the Legislative Council or House of Assembly or their committees or members.

(3) Nothing in this Act affects any rule or principle of law relating to—

(a) legal professional privilege; or

(b) "without prejudice" privilege; or

(c) public interest immunity.

(4) A person is excused from answering a question or producing a document or other material in connection with an inquiry if the person could not be compelled to answer the question or produce the document or material in proceedings in the Supreme Court.

(5) The CCYP has, in connection with an inquiry under section 15, and the CACYP has, in connection with an inquiry under section 20M, the same protection, privileges and immunities as a Judge of the Supreme Court.

(6) A person who provides information or a document to an inquiry under this Act has the same protection, privileges and immunities as a witness in proceedings before the Supreme Court.

(7) A legal practitioner who represents a person in connection with an inquiry under this Act has the same protection, privileges, immunities and obligations as counsel involved in proceedings before the Supreme Court.

(8) A person who does anything in accordance with this Act, or as required or authorised by or under this Act, cannot by so doing be held to have breached any code of professional etiquette or ethics, or to have departed from any acceptable form of professional conduct.

## 69—Service

(1) Subject to this Act, a notice or document required or authorised to be given to a person for the purposes of this Act may—

(a) be given to the person personally; or

(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.

## 71—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 the generality of subsection (1), the regulations may provide for—

(a) the exemption of a person, or a class of persons, from the operation of a specified provision or provisions of this Act; and

(b) fees in respect of any matter under this Act and their payment, recovery or waiver; and

(c) fines, not exceeding $10 000, for offences against the regulations; and

(d) facilitation of proof of the commission of offences against the regulations.

(3) The regulations may—

(a) be of general or limited application; and

(b) make different provision according to the matters or circumstances to which they are expressed to apply; and

(c) make provisions of a saving or transitional nature; and

(d) provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of a specified person or body; and

(e) apply or incorporate, wholly or partially and with or without modification, a code, standard, policy or other document prepared or published by the Minister or another specified person or body.

(4) 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—Transitional provisions

# Part 6—Transitional provisions

## 12—Guardian for Children and Young People

(1) The person who, immediately before the commencement of clause 2 of this Schedule, was the Guardian for Children and Young Persons under the *Children's Protection Act 1993* will continue as the Guardian for Children and Young People as if he or she were appointed under Part 3 of this Act.

(2) The appointment will be taken to be subject to any terms, conditions or limitations applicable to the Guardian for Children and Young Persons immediately before the commencement of clause 2 of this Schedule.

## 13—Commissioner for Aboriginal Children and Young People

(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*—

(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.

(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.

(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*.

# Legislative history

## Notes

- Amendments of this version that are uncommenced are not incorporated into the text.
- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

## Legislation amended by principal Act

The *Children and Young People (Oversight and Advocacy Bodies) Act 2016* amended the following:

*Children's Protection Act 1993*

*Freedom of Information Act 1991*

*Health and Community Services Complaints Act 2004*

*Ombudsman Act 1972*

## Principal Act and amendments

New entries appear in bold.

| Year | No | Title | Assent | Commencement |
|---|---|---|---|---|
| 2016 | 48 | *Children and Young People (Oversight and Advocacy Bodies) Act 2016* | 27.10.2016 | 10.11.2016 (*Gazette 10.11.2016 p4391*) except ss 4, 5, Pt 2 Divs 2 & 3, Pts 3—7, ss 64, 65, 67, 69, 70 & Sch 1—18.12.2017 (*Gazette 5.12.2017 p4840*) |
| 2017 | 64 | *Children's Protection Law Reform (Transitional Arrangements and Related Amendments) Act 2017* | 12.12.2017 | Pt 3 (ss 18 to 21) & Pt 9 (s 46)—19.12.2017; Pt 9 (ss 47, 48)—22.10.2018 (*Gazette 19.12.2017 p5119*) |
| 2021 | 35 | *Children and Young People (Oversight and Advocacy Bodies) (Commissioner for Aboriginal Children and Young People) Amendment Act 2021* | 30.9.2021 | Pt 2 (ss 4 to 41)—21.10.2021 (*Gazette 21.10.2021 p3788*) |
| 2021 | 38 | *Independent Commissioner Against Corruption (CPIPC Recommendations) Amendment Act 2021* | 7.10.2021 | Sch 1 (cll 6, 7 & 76)—7.10.2021: s 2 |

| | | | | |
|---|---|---|---|---|
| **2024** | **60** | ***Children and Young People (Oversight and Advocacy Bodies) (Child Death and Serious Injury Review Committee) Amendment Act 2024*** | **5.12.2024** | **5.6.2025 (*Gazette 5.6.2025 p1384*)** |
| 2025 | 25 | *Children and Young People (Safety and Support) Act 2025* | 12.6.2025 | Sch 2 (cll 6 & 7)—uncommenced |

## Provisions amended

New entries appear in bold.

| Provision | How varied | Commencement |
|---|---|---|
| Long title | amended by 35/2021 s 4 | 21.10.2021 |
| Pt 1 | | |
| *s 2* | *omitted under Legislation Revision and Publication Act 2002* | *19.12.2017* |
| s 3 | | |
| s 3(1) | | |
| Aboriginal child or young person | inserted by 35/2021 s 5(1) | 21.10.2021 |
| Aboriginal person | inserted by 35/2021 s 5(1) | 21.10.2021 |
| Commissioner for Aboriginal Children and Young People or CACYP | inserted by 35/2021 s 5(2) | 21.10.2021 |
| Commissioner for Children and Young People or CCYP | Commissioner for Children and Young People or Commissioner amended to read Commissioner for Children and Young People or CCYP by 35/2021 s 5(3) | 21.10.2021 |
| Torres Strait Islander child or young person | inserted by 35/2021 s 5(4) | 21.10.2021 |
| Torres Strait Islander person | inserted by 35/2021 s 5(4) | 21.10.2021 |
| s 4 | | |
| s 4(1) | amended by 35/2021 s 6(1) | 21.10.2021 |
| s 4(2) | amended by 35/2021 s 6(2) | 21.10.2021 |
| s 4(3) | amended by 35/2021 s 6(3) | 21.10.2021 |
| s 5 | amended by 35/2021 s 7 | 21.10.2021 |
| Pt 2 | | |
| Pt 2 Div 1 | | |
| s 7 | | |
| s 7(2) | amended by 35/2021 s 8 | 21.10.2021 |
| s 8 | | |
| s 8(1)—(4) | amended by 35/2021 s 9(1) | 21.10.2021 |
| s 8(6)—(12) | amended by 35/2021 s 9(1) | 21.10.2021 |
| s 8(13) | amended by 35/2021 s 9(1), (2) | 21.10.2021 |

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|---|---|---|
| s 8(14) and (15) | amended by 35/2021 s 9(1) | 21.10.2021 |
| s 9 | | |
| s 9(1)—(3) | amended by 35/2021 s 10 | 21.10.2021 |
| s 10 | | |
| s 10(1) | amended by 35/2021 s 11(1), (2) | 21.10.2021 |
| s 11 | amended by 35/2021 s 12(1), (2) | 21.10.2021 |
| s 12 | | |
| s 12(1) and (2) | amended by 35/2021 s 13 | 21.10.2021 |
| s 13 | amended by 35/2021 s 14 | 21.10.2021 |
| s 13A | inserted by 64/2017 s 46 | 19.12.2017 |
| s 13A(1) | amended by 35/2021 s 15(1), (2) | 21.10.2021 |
| s 13A(2) | amended by 35/2021 s 15(1) | 21.10.2021 |
| Pt 2 Div 2 | | |
| heading | amended by 35/2021 s 16 | 21.10.2021 |
| s 14 | | |
| s 14(1) | amended by 35/2021 s 17(1), (2) | 21.10.2021 |
| s 14(2) | amended by 35/2021 s 17(1), (3) | 21.10.2021 |
| ss 14A—14C | inserted by 35/2021 s 18 | 21.10.2021 |
| s 15 | | |
| s 15(1) | amended by 35/2021 s 19(1) | 21.10.2021 |
| s 15(2)—(7) | amended by 35/2021 s 19(2) | 21.10.2021 |
| s 16 | | |
| s 16(1) and (2) | amended by 35/2021 s 20 | 21.10.2021 |
| s 17 | | |
| s 17(1)—(4) | amended by 35/2021 s 21(1) | 21.10.2021 |
| s 17(5) and (6) | amended by 35/2021 s 21(2) | 21.10.2021 |
| Pt 2 Div 3 | | |
| s 18 | | |
| s 18(1) | amended by 35/2021 s 22(1) | 21.10.2021 |
| s 18(3) | amended by 35/2021 s 22(2) | 21.10.2021 |
| s 19 | | |
| s 19(1) | amended by 35/2021 s 23 | 21.10.2021 |
| s 20 | amended by 35/2021 s 24 | 21.10.2021 |
| Pt 2A | inserted by 35/2021 s 25 | 21.10.2021 |
| Pt 3 | | |
| s 26 | | |
| s 26(1) | amended by 64/2017 s 47(1)—(4) | 22.10.2018 |
| s 26(2) | amended by 64/2017 s 47(5) | 22.10.2018 |
| s 26(4) | | |
| alternative care | amended by 64/2017 s 47(6) | 22.10.2018 |
| Chief Executive | inserted by 64/2017 s 47(7) | 22.10.2018 |
| Pt 4 | | |
| s 37 | | |

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|---|---|---|
| s 37(3) | amended by 64/2017 s 48 | 22.10.2018 |
| | **amended by 60/2024 s 3(1)** | **5.6.2025** |
| **s 37(4) and (5)** | **substituted by 60/2024 s 3(2)** | **5.6.2025** |
| **s 37(5a) and (5b)** | **inserted by 60/2024 s 3(2)** | **5.6.2025** |
| **s 38A** | **inserted by 60/2024 s 4** | **5.6.2025** |
| Pt 5 | | |
| s 40 | | |
| s 40(1) | amended by 35/2021 s 26(1), (2) | 21.10.2021 |
| s 41 | | |
| s 41(1) | amended by 38/2021 Sch 1 cl 6(1) | 7.10.2021 |
| | amended by 35/2021 s 27(1), (2) | 21.10.2021 |
| s 41(2) | amended by 35/2021 s 27(3) | 21.10.2021 |
| s 41(3) | amended by 38/2021 Sch 1 cl 6(2) | 7.10.2021 |
| s 42 | | |
| s 42(1) | amended by 35/2021 s 28(1) | 21.10.2021 |
| s 42(1a) | inserted by 35/2021 s 28(2) | 21.10.2021 |
| s 43 | | |
| s 43(1) and (2) | amended by 35/2021 s 29(1) | 21.10.2021 |
| s 43(2a) | inserted by 35/2021 s 29(2) | 21.10.2021 |
| s 44 | | |
| s 44(1) and (4) | amended by 35/2021 s 30 | 21.10.2021 |
| s 45 | | |
| s 45(2) | amended by 35/2021 s 31(1), (2) | 21.10.2021 |
| s 45(3) | | |
| inquiry agency | amended by 38/2021 Sch 1 cl 7 | 7.10.2021 |
| Pt 6 | | |
| s 52 | amended by 35/2021 s 32(1), (2) | 21.10.2021 |
| s 57 | | |
| s 57(4) | amended by 35/2021 s 33 | 21.10.2021 |
| Pt 7 | | |
| s 59 | amended by 35/2021 s 34 | 21.10.2021 |
| s 60 | | |
| s 60(1) | amended by 35/2021 s 35(1)—(3) | 21.10.2021 |
| s 60(2) | amended by 35/2021 s 35(4), (5) | 21.10.2021 |
| s 60(3) | amended by 35/2021 s 35(6), (7) | 21.10.2021 |
| s 60(4) | amended by 35/2021 s 35(8) | 21.10.2021 |
| s 60(5) | amended by 35/2021 s 35(9) | 21.10.2021 |
| s 61 | | |
| s 61(1) | amended by 35/2021 s 36(1), (2) | 21.10.2021 |
| s 61(2) | amended by 35/2021 s 36(3) | 21.10.2021 |
| s 61(2a) | inserted by 35/2021 s 36(4) | 21.10.2021 |
| s 61(4) | amended by 35/2021 s 36(5) | 21.10.2021 |
| s 62 | | |

| | | |
|---|---|---|
| s 62(1) | amended by 35/2021 s 37 | 21.10.2021 |
| **s 63** | **amended by 60/2024 s 5** | **5.6.2025** |
| Pt 8 | | |
| s 64 | amended by 35/2021 s 38 | 21.10.2021 |
| s 68 | | |
| s 68(1) | amended by 35/2021 s 39(1) | 21.10.2021 |
| s 68(5) | amended by 35/2021 s 39(2), (3) | 21.10.2021 |
| *s 70* | *deleted by 35/2021 s 40* | *21.10.2021* |
| Sch 1 | | |
| *Pts 1—5* | *omitted under Legislation Revision and Publication Act 2002* | *19.12.2017* |
| cl 13 | inserted by 35/2021 s 41 | 21.10.2021 |

## Transitional etc provisions associated with Act or amendments

### *Children's Protection Law Reform (Transitional Arrangements and Related Amendments) Act 2017, Pt 3—Transitional provisions relating to Children and Young People (Oversight and Advocacy Bodies) Act 2016*

### 18—Interpretation

Unless the contrary intention appears, a term or phrase used in this Part that is defined in the *Children and Young People (Oversight and Advocacy Bodies) Act 2016* has the same meaning as in that Act.

### 19—Expiry of Part

This Part will expire on the day that the transitional period ends.

### 20—Continuation of members of Child Death and Serious Injury Review Committee

(1) Subject to the *Children and Young People (Oversight and Advocacy Bodies) Act 2016*, the appointment of a member of the Child Death and Serious Injury Review Committee under the *Children's Protection Act 1993* holding office immediately before the commencement of this section will continue for the remainder of their term of office (and the appointment will, for the purposes of the *Children and Young People (Oversight and Advocacy Bodies) Act 2016*, be taken to be an appointment by the Minister under section 30 of that Act).

(2) An appointment continued under this section will be taken to be subject to any terms, conditions or limitations applicable to the appointment immediately before the commencement of this section.

### 21—Continuation of chair as presiding member

The member of the Child Death and Serious Injury Review Committee who was, immediately before the commencement of this section, the chair of the Committee will continue as the presiding member of the Committee (and will, for the purposes of the *Children and Young People (Oversight and Advocacy Bodies) Act 2016*, be taken to have been appointed by the Minister under section 32 of that Act).

### *Independent Commissioner Against Corruption (CPIPC Recommendations) Amendment Act 2021, Sch 1 Pt 21*

#### 76—Savings and transitional regulations

Regulations may be made under any Act amended by this Act (including under the *Independent Commission Against Corruption Act 2012* as in force after the commencement of this Act) to make provisions of a saving or transitional nature consequent on the enactment of this Act or on the commencement of specified provisions of this Act.

## Historical versions

19.12.2017

22.10.2018

7.10.2021

21.10.2021