

House of Assembly—No 34

As received from the Legislative Council and read a first time, 7 August 2014

South Australia

Commissioner for Children and Young People Bill 2014

A BILL FOR

An Act to establish a Commissioner for Children and Young People; to make related amendments to the *Freedom of Information Act 1991*; and for other purposes.

Contents

Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Interpretation
- 4 Interaction with other Acts

Part 2—Declaration, objects, principles and statutory duties

- 5 Declaration
- 6 Objects
- 7 Principles
- 8 Statutory duties in respect of children and young people

Part 3—Commissioner for Children and Young People

Division 1—Commissioner for Children and Young People

- 9 Establishment of Commissioner for Children and Young People
- 10 Independence of Commissioner
- 11 Appointment of Commissioner
- 12 Removal etc of Commissioner
- 13 Appointment of acting Commissioner
- 14 Assistant Commissioners
- 15 Functions of Commissioner
- 16 Delegation
- 17 Annual report

Division 2—Other staff

- 18 Employees
- 19 Use of staff etc of Public Service

Part 4—Commissioner may inquire into matters at systemic level

- 20 Commissioner may inquire into matters affecting children and young people at systemic level
- 21 Recommendations
- 22 Report of inquiry

Part 5—Investigation of complaints

Division 1—Preliminary

- 23 Matters that may be investigated under Part
- 24 Investigations where proceedings before judicial body or inquiry agency
- 25 Commissioner may require Commissioner of Police etc to provide report

Division 2—Complaints

- 26 Complaints
- 27 Other action that may be taken on receipt of complaint

Division 3—Investigations

- 28 Principles and procedures

- 29 Powers of Commissioner for purposes of investigations
- 30 Limiting action by certain State authorities
- 31 Injunction to refrain from conduct pending investigation
- 32 Recommendations—State authorities
- 33 Recommendations—other persons or bodies
- 34 Report of investigation

Part 6—Offences

- 35 Offence to refuse etc to comply with requirement
- 36 Obstruction
- 37 False or misleading statements in complaint or report etc

Part 7—Investigators

- 38 Investigators
- 39 Powers of investigators
- 40 Guidelines for investigators

Part 8—Miscellaneous

- 41 Provision relating to mandatory notification under Children's Protection Act
- 42 Protections, privileges and immunities
- 43 Confidentiality
- 44 Victimisation
- 45 Service
- 46 Evidentiary provision
- 47 Review of Act
- 48 Regulations

Schedule 1—Related amendments

Part 1—Preliminary

- 1 Amendment provisions

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

- 2 Amendment of Schedule 2—Exempt agencies
-

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Commissioner for Children and Young People Act 2014*.

2—Commencement

- 5 This Act will come into operation 3 months after the day on which this Act is assented to by the Governor.

3—Interpretation

(1) In this Act—

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

inquiry agency means—

- (a) the Ombudsman; or
- (b) the State Coroner; or
- (c) the Police Ombudsman; or
- (d) the Commissioner for Public Sector Employment; or
- (e) the Independent Commissioner Against Corruption; or
- (f) the Health and Community Services Complaints Commissioner; or
- (g) the Child Death and Serious Injury Committee established under the *Children's Protection Act 1993*; or
- (h) any other person or body declared by the regulations to be an inquiry agency for the purposes of this Act;

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

State authority means—

- (a) a person who holds an office established by an Act; or
- (b) an administrative unit of the Public Service; or
- (c) South Australia Police; or
- (d) a local council; or
- (e) any incorporated or unincorporated body—
 - (i) established for a public purpose by an Act; or
 - (ii) established for a public purpose under an Act (other than an Act 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—
 - (g) a school established by an Act for a public purpose; or
 - (h) any other person or body declared by the regulations to be excluded from the ambit of this definition.

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

4—Interaction with other Acts

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

Part 2—Declaration, objects, principles and statutory duties

5—Declaration

5 The Parliament of South Australia—

- (a) recognises the competencies and rights of children and young people in our community; and
- (b) commits to protecting, respecting and promoting the rights of children and young people.

10 6—Objects

The objects of this Act include—

- (a) establishing the Commissioner for Children and Young People to provide an authoritative voice and to hold decision makers to account on a systemic level; and
- 15 (b) establishing a legislative framework to ensure that—
 - (i) the rights, development and wellbeing of children and young people are considered in relation to government policies; and
 - (ii) State authorities consider the consequences for children and young people of policies developed or implemented by the State authority;
- 20 (c) strengthening and improving outcomes for children and young people of all cultures; and
- (d) building the capacity of the community to provide environments conducive to the development and wellbeing of children, young people and their families.

25 7—Principles

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

- (a) children and young people are valued citizens;
- (b) the first 5 years of a child’s development are of particular importance;
- 30 (c) it is the responsibility of each member of the community to ensure every child and young person is supported to play, learn, and develop to be the best that they can at every stage of life and to participate and be responsible citizens in our society;
- 35 (d) parents and carers have the primary role in the development and wellbeing of the children and young people in their care, and governments and others who provide services to children and young people should work in partnership with them;
- (e) children and young people, and their parents, carers and families—

- 5
- (i) are best able to shape their own lives and are not simply passive recipients of services; and
 - (ii) have differing needs; and
 - (iii) should be consulted and provided with opportunities to be involved in decision-making processes that affect their lives;
- (f) the diverse cultural and linguistic nature of our society is to be recognised and valued;
- 10 (g) South Australia’s Aboriginal peoples are part of the oldest continuing cultures in human history and the cultural and linguistic heritage of Aboriginal children and young people must be honoured, celebrated and respected;
- (h) the role of non-government organisations, services and programs within the community can strengthen and improve outcomes for the development and wellbeing of children and young people;
- 15 (i) the rights set out from time to time in the *United Nations Convention on the Rights of the Child* and any other relevant international human rights instruments are to be protected, respected and promoted.

8—Statutory duties in respect of children and young people

- 20 (1) Every State authority, in carrying out its functions or exercising its powers—
- (a) must, as far as is reasonably practicable, further the objects of this Act; and
 - (b) must have regard to the principles set out in section 7; and
 - (c) must consider the impact that any decisions will have on children and young people.
- 25 (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 3—Commissioner for Children and Young People

30 Division 1—Commissioner for Children and Young People

9—Establishment of Commissioner for Children and Young People

- 35 (1) There will be a Commissioner for Children and Young People.
- (2) The Commissioner is not a Public Service employee.
- (3) If the Commissioner was, immediately before his or her appointment, employed in the Public Service, the Commissioner retains existing and accruing rights in respect of leave.
- (4) The Commissioner is a senior official for the purposes of the *Public Sector (Honesty and Accountability) Act 1995*.

10—Independence of Commissioner

The Commissioner is independent of direction or control by the Crown or any Minister or officer of the Crown.

11—Appointment of Commissioner

- 5 (1) The Commissioner will be appointed by the Governor on the recommendation of the selection panel for a term not exceeding 5 years and on conditions determined by the Governor.
- (2) The Commissioner is, at the end of a term of appointment, eligible for reappointment but cannot hold office for terms (including any term as acting Commissioner) that
10 exceed 7 years in total.
- (3) The Minister must, in respect of each appointment of the Commissioner (other than a reappointment), establish a panel (the *selection panel*) consisting of such number of persons as the Minister thinks fit and who, in the Minister's opinion, collectively have sufficient qualifications or experience to enable the panel to choose an suitable person to be appointed as the Commissioner.
15
- (4) The selection panel established in respect of a particular appointment is responsible for—
- (a) advertising the position of Commissioner; and
 - (b) assessing the applications received for the position; and
20
 - (c) recommending to the Governor 1 or more of the applicants for appointment to the position.
- (5) Subject to this Act, the selection panel may determine its own procedures.
- (6) The regulations may make further provisions in relation to the selection panel.

12—Removal etc of Commissioner

- 25 (1) The Governor may, on the address of both Houses of Parliament, remove the Commissioner from office.
- (2) The Governor may suspend the Commissioner from office for—
- (a) contravention of a condition of appointment; or
 - (b) misconduct; or
30
 - (c) failure or incapacity to carry out official duties satisfactorily.
- (3) If the Governor suspends the Commissioner 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.
- 35 (4) 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 Commissioner to be restored to office, the Commissioner is removed from office.
- (5) If within 20 sitting days after the statement is laid before Parliament either House of Parliament presents an address to the Governor requiring the Commissioner to be
40 restored to office, the Commissioner is restored to office.

Commissioner for Children and Young People Bill 2014

Part 3—Commissioner for Children and Young People

Division 1—Commissioner for Children and Young People

- (6) The office of Commissioner 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
 - 5 (d) becomes an insolvent under administration within the meaning of the *Corporations Act 2001* of the Commonwealth; or
 - (e) is convicted of—
 - (i) an indictable offence against the law of this State; or
 - 10 (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
 - (f) is sentenced to imprisonment for an offence (whether against a law of this State or another jurisdiction); or
 - 15 (g) is removed from office by the Governor under this section.
- (7) Except as is provided by this section, the Commissioner may not be removed or suspended from office, nor will the office of the Commissioner become vacant.

13—Appointment of acting Commissioner

- 20 (1) The Minister may appoint a person (who may be a Public Service employee) to act as the Commissioner during any period for which—
- (a) no person is for the time being appointed as the Commissioner; or
 - (b) the Commissioner is absent from, or unable to discharge, official duties.
- 25 (2) The terms and conditions of appointment of the person appointed to act as the Commissioner will be determined by the Minister.
- (3) A person acting as the Commissioner is a senior official for the purposes of the *Public Sector (Honesty and Accountability) Act 1995*.

14—Assistant Commissioners

- 30 (1) The Commissioner may appoint as many Assistant Commissioners as the Commissioner thinks necessary.
- (2) The terms and conditions of appointment of an Assistant Commissioner will be determined by the Minister after consultation with the Commissioner.
- (3) An Assistant Commissioner is a senior official for the purposes of the *Public Sector (Honesty and Accountability) Act 1995*.

15—Functions of Commissioner

- 35 (1) It is a function of the Commissioner to inquire into, report on and keep under review matters related to the rights, development and wellbeing of children and young people at a systemic level.
- (2) It is a function of the Commissioner to investigate matters under Part 5.

(3) The Commissioner also has the following functions:

- (a) to promote and advocate for the rights and interests of children and young people in South Australia;
- (b) to promote the participation of children and young people in the making of decisions that affect their lives;
- (c) to advise, and make recommendations to, Ministers, State authorities and other bodies on matters related to the rights, development and wellbeing of children and young people;
- (d) to assist in ensuring that the State, as part of the Commonwealth, satisfies its international obligations in respect of children and young people;
- (e) to develop and publish a community engagement plan in accordance with the regulations;
- (f) such other functions as may be conferred on the Commissioner by or under this or any other Act or by the Minister.

(4) Without limiting any other provision of this Act, the Commissioner must, as far as is reasonably practicable, engage with (in this order of priority)—

- (a) children and young people; and
- (b) the parents, families and carers of children and young people; and
- (c) any relevant peak bodies and non-government organisations,

in the performance of his or her functions under this Act (other than in relation to an investigation under Part 5).

16—Delegation

(1) Subject to this section, the Commissioner may delegate a function or power under this Act (other than a prescribed function or power) to an Assistant Commissioner, or any other person or body of persons that is, in the Commissioner's opinion, competent to perform or exercise the relevant function or power.

(2) A delegation under this section—

- (a) must be in writing; and
- (b) may be conditional or unconditional; and
- (c) is revocable at will; and
- (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.

17—Annual report

(1) The Commissioner must, on or before 30 September in each year, prepare and deliver to the Minister a report on the operations of the Commissioner during the previous financial year.

(2) The report must contain the following information:

- (a) the number and general nature of complaints received by the Commissioner;

- 5
- (b) the number and general nature of matters investigated by the Commissioner;
 - (c) the number and general nature of matters referred to South Australia Police, a State authority or an inquiry agency under this Act;
 - (d) the extent to which investigations have resulted in prosecutions or disciplinary action;
 - (e) the number and general nature of occasions on which public statements have been made by the Commissioner;
 - (f) the number and general nature of recommendations made by the Commissioner;
 - 10 (g) any information required by the regulations in respect of the community engagement plan referred to in section 15(3)(e);
 - (h) any other information required by the regulations.

- (3) The Minister must, within 12 sitting days after receiving a report under this section, cause a copy of the report to be laid before both Houses of Parliament.

15 **Division 2—Other staff**

18—Employees

- (1) The Commissioner may engage employees on terms and conditions determined by the Commissioner.
- (2) The employees are not Public Service employees but are to be taken to be public sector employees, employed by the Commissioner, for the purposes of the *Public Sector (Honesty and Accountability) Act 1995*.
- 20

19—Use of staff etc of Public Service

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

25

Part 4—Commissioner may inquire into matters at systemic level

20—Commissioner may inquire into matters affecting children and young people at systemic level

- 30 (1) The Commissioner may conduct an inquiry under this Part into—
- (a) the policies, practices and procedures of a State authority 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.
- 35

- (2) The Commissioner may only conduct an inquiry under this Part if he or she is of the opinion that—
- (a) the matter raises an issue of particular significance to children and young people; and
 - (b) it is in the public interest to conduct the inquiry.
- (3) The Commissioner must not conduct an inquiry into a matter if to do so would be likely to impede an investigation or proposed investigation relating to the matter that is being, or is to be, conducted by South Australia Police or an inquiry agency.
- (4) Subject to this Act, the Commissioner may conduct an inquiry under this Part in such manner as he or she thinks fit.
- (5) The Commissioner must inform the relevant State authority as to the nature and timing of an inquiry under this Part.
- (6) A State authority must assist the Commissioner in the conduct of an inquiry as requested by the Commissioner.

21—Recommendations

- (1) The Commissioner may, on completing an inquiry under this Part, or in response to issues observed by the Commissioner in the course of an inquiry under this Part, 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 specified action as may be specified by the Commissioner.
- (2) If the Commissioner is not satisfied that a State authority has complied with the recommendations of the Commissioner, the Commissioner must inform the State authority of the grounds of the Commissioner's dissatisfaction and give the State authority an opportunity to comment within a specified time.
- (3) If, after considering any comments received from the State authority within the specified time, the Commissioner is still not satisfied, the Commissioner may submit a report to the Minister setting out the grounds of dissatisfaction, together with any comments from the State authority.
- (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 Commissioner'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 Commissioner'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 Commissioner's report relates—the reasons for not taking action; and
 - (d) any other information required by the regulations.

- (5) The Minister must, within 12 sitting days after receiving a report under this section, cause a copy of both the report and the Minister's report under subsection (4) to be laid before both Houses of Parliament.

22—Report of inquiry

- 5 (1) The Commissioner must, on completing an inquiry under this Part, prepare and deliver to the Minister a report on the inquiry (including, if appropriate, details of any recommendations made under section 21 in respect of the inquiry).
- (2) The Minister must, on receiving a report under subsection (1), prepare a report to Parliament setting out—
- 10 (a) the Minister's response to the Commissioner'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 the Commissioner's report—details of that action or proposed action; and
- 15 (c) if no action is to be taken (whether by the Minister, a State authority or any other person or body) in relation to the Commissioner's report—the reasons for not taking action; and
- (d) any other information required by the regulations.
- (3) The Minister must, within 12 sitting days after receiving a report under this section, cause a copy of both the report and the Minister's report under subsection (2) to be laid before both Houses of Parliament.
- 20

Part 5—Investigation of complaints

Division 1—Preliminary

23—Matters that may be investigated under Part

- 25 (1) Subject to this Act, the Commissioner may (on receipt of a complaint under this Part or on his or her own initiative) investigate matters of the following kinds under this Part:
- (a) a matter affecting, or related to, the rights, development and wellbeing of a child or young person or more than 1 child or young person;
- 30 (b) a matter involving an interaction between a State authority and a child or young person, or class of children and young people, or the family of a child or young person;
- (c) a matter referred to the Commissioner by the Minister, a House of Parliament, a committee of a House of Parliament or a joint committee of both Houses of Parliament,
- 35 however, the Commissioner must not investigate a matter unless he or she is satisfied that—
- (d) any procedures for resolving matters of the relevant kind under a specific Act have been used appropriately but without resolution of the matter; and
- 40 (e) the matter raises an issue of particular significance to children and young people; and

(f) it is in the public interest to conduct the investigation.

(2) The Commissioner must not investigate—

(a) an allegation that a specified person has, or may have, committed a criminal offence; or

(b) a matter that could be, but has not yet been, the subject of an inquest under the *Coroners Act 2003* (unless the State Coroner has determined not to hold an inquest into the matter); or

(c) any other matter, or class of matters, declared by the regulations to fall within the ambit of this subsection.

(3) Without limiting subsection (2), the Commissioner must not investigate a matter if to do so would be likely to impede an investigation or proposed investigation relating to the matter that is being, or is to be, conducted by South Australia Police or an inquiry agency.

24—Investigations where proceedings before judicial body or inquiry agency

The Commissioner or an investigator may perform functions or exercise powers in respect of a particular investigation despite proceedings that may be before a court or inquiry agency but, in that case, the Commissioner or investigator must endeavour to avoid, as far as practicable, prejudice to any person affected by the proceedings.

25—Commissioner may require Commissioner of Police etc to provide report

(1) The Commissioner of Police must, so far as it is practicable to do so, comply with a written request from the Commissioner to provide a report on the investigation of a matter that is related to a complaint under this Part.

(2) An inquiry agency must, so far as it is practicable to do so, comply with a written request from the Commissioner to provide a report on the investigation of a matter by the inquiry agency that is related to a complaint under this Part.

Division 2—Complaints

26—Complaints

(1) A complaint for the purposes of this Part—

(a) must relate to a matter that can be investigated by the Commissioner under this Part; and

(b) must be made in a manner and form determined by the Commissioner; and

(c) must be accompanied by such information as may be required by the Commissioner.

(2) The Commissioner may refuse to accept or investigate a complaint if the Commissioner is of the opinion that the complaint is frivolous, vexatious, misconceived or lacking in substance or involves a trivial matter.

(3) The Commissioner must take reasonable steps to ensure that a complainant receives an acknowledgement of the complaint and is informed as to the action, if any, taken in respect of the complaint.

27—Other action that may be taken on receipt of complaint

- (1) On receiving a complaint under this Part, the Commissioner may do 1 or more of the following:
- (a) if the Commissioner is of the opinion that the matter could be the subject of a prosecution—refer the matter to South Australia Police for further investigation;
 - (b) if the Commissioner is of the opinion that the matter could result in disciplinary action against a public officer for whom a State authority is responsible—refer the matter to the State authority for further investigation and potential disciplinary action (and, if the Commissioner considers it appropriate, the Commissioner may give directions or guidance to the State authority in respect of the matter);
 - (c) refer the matter to an inquiry agency for further investigation.
- (2) The Commissioner may refer a matter whether or not he or she has commenced or completed an investigation under this Part.
- (3) The Commissioner must, before referring a matter to a State authority or inquiry agency, take reasonable steps to obtain the views of the agency or authority as to the referral.
- (4) The Commissioner may disclose to the South Australia Police, a State authority or an inquiry agency (as the case requires) any information that the Commissioner has in respect of a matter referred under this section.
- (5) Subject to this Act, the referral of a matter under this section does not, of itself, prevent the Commissioner from performing his or her functions in relation to a child to whom the matter relates.
- (6) Nothing in this section prevents a matter from being referred to South Australia Police, an inquiry agency or any other person or body at any time (whether by the Commissioner or any other person).
- (7) In this section—
- public officer** means—
- (a) a person appointed to an office by the Governor; or
 - (b) a person who constitutes a statutory authority or who is a statutory office holder; or
 - (c) a person who is a member of the governing body of a statutory authority; or
 - (d) an officer or employee of a statutory authority or statutory office holder or a Public Service employee assigned to assist the statutory authority or statutory office holder; or
 - (e) the chief executive of an administrative unit of the Public Service; or
 - (f) a Public Service employee (other than a chief executive); or
 - (g) a police officer; or
 - (h) an officer or employee appointed by the employing authority under the *Education Act 1972*; or

- 5
- (i) an officer or employee of a local government body; or
 - (j) any other public sector employee; or
 - (k) a person performing contract work for a State authority or the Crown; or
 - (l) any other person declared by regulation to be a public officer for the purposes of this Act.

Division 3—Investigations

28—Principles and procedures

- 10
- (1) Subject to this Act, in conducting an investigation under this Part—
 - (a) the Commissioner is not bound by the rules of evidence and may inform himself or herself as he or she thinks fit; and
 - (b) the Commissioner must act according to equity, good conscience and the substantial merits of the case and without regard to legal technicalities and forms.
 - (2) The regulations may make further provision in respect of an investigation under this Part (including, to avoid doubt, by limiting the powers of the Commissioner or an investigator).
 - 15 (3) Subject to this Act, the Commissioner may conduct an investigation under this Part in such manner as he or she thinks fit.

29—Powers of Commissioner for purposes of investigations

- 20
- (1) The Commissioner may, for the purposes of an investigation under this Part, by notice in writing, require a specified person to appear before the Commissioner to give evidence relating to the investigation.
 - (2) The Commissioner may, for the purposes of an investigation under this Part, by notice in writing, require a specified person—
 - 25 (a) to produce a specified document or other thing that is relevant to an investigation for examination; or
 - (b) to give the Commissioner such information in his or her possession as the Commissioner may reasonably require.
 - (3) The Commissioner may enter any land or building and carry out any inspection that the Commissioner considers relevant to an investigation under this Part.
 - 30 (4) The Commissioner may, for the purposes of an investigation under this Part, take evidence on oath or affirmation and for that purpose require a person to make an oath or affirmation (which may be administered by the Commissioner or a person authorised by the Commissioner for the purpose) to answer truthfully any questions put by the Commissioner.
 - 35 (5) The Commissioner may retain any document or thing produced for such reasonable period as he or she thinks fit, and may make copies of any document.
 - (6) The Commissioner may require a person to produce a document or other thing for the purpose of determining whether or not it is a document or thing that the Commissioner has power to compel the person to produce.

40

- (7) A notice under this section must comply with any requirements set out in the regulations in respect of a notice of the relevant kind.
- (8) Without limiting this section, the Commissioner has such other powers as may be necessary, expedient or incidental to performing the functions of the Commissioner under this Part.

30—Limiting action by certain State authorities

- (1) The Commissioner may, by written notice, require a State authority (other than a prescribed State authority) to refrain from taking specified action for a specified period in respect of a particular matter being investigated by the Commissioner under this Part or to conduct a joint investigation with the Commissioner in respect of a particular matter (and the State authority must comply with the requirement even if the State authority is otherwise required or authorised to take action under another Act).

- (2) The Commissioner must consider any comments of the State authority with respect to the terms of the notice.

- (3) In this section—

prescribed State authority means—

- (a) South Australia Police; and
- (b) a State authority that is an inquiry agency; and
- (c) any other State authority prescribed by the regulations for the purposes of this paragraph.

31—Injunction to refrain from conduct pending investigation

- (1) The Supreme Court may, on application made by the Commissioner, grant an injunction restraining a person from engaging in conduct that is the subject of, or affects the subject matter of, an investigation or proposed investigation by the Commissioner under this Part.

- (2) The Supreme Court must not grant an injunction under this section unless it is satisfied—

- (a) that the conduct sought to be restrained is likely to impede the investigation or proposed investigation; or
- (b) that it is necessary in the public interest to do so.

32—Recommendations—State authorities

- (1) The Commissioner may, on completing an investigation under this Part, 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 specified action as may be specified by the Commissioner.

- (2) A recommendation under subsection (1) may relate to the subject matter of the investigation or any other matter related to children and young people arising out of the investigation.
- 5 (3) If the Commissioner is not satisfied that a State authority has complied with the recommendations of the Commissioner, the Commissioner must inform the State authority of the grounds of the Commissioner's dissatisfaction and give the State authority an opportunity to comment within a specified time.
- 10 (4) If, after considering any comments received from the State authority within the specified time, the Commissioner is still not satisfied, the Commissioner may submit a report to the Minister setting out the grounds of dissatisfaction, together with any comments from the State authority.
- (5) The Minister must, on receiving a report under subsection (4), prepare a report to Parliament setting out—
- 15 (a) the Minister's response to the Commissioner'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 Commissioner's report relates—details of that action or proposed action; and
- 20 (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 Commissioner's report relates—the reasons for taking no action; and
- (d) any other information required by the regulations.
- (6) The Minister must, within 12 sitting days after receiving a report under this section, cause a copy of both the report and the Minister's report under subsection (5) to be laid before both Houses of Parliament.
- 25

33—Recommendations—other persons or bodies

- (1) The Commissioner may, on completing an investigation under this Part, recommend to a person or body that the person or body change practices, policies or procedures in a specified way or review practices, policies or procedures to achieve specified outcomes.
- 30 (2) A recommendation under subsection (1) may relate to the subject matter of the investigation or any other matter related to children and young people arising out of the investigation.

34—Report of investigation

- 35 (1) The Commissioner may, on completing an investigation under this Part, if he or she considers it appropriate, prepare and deliver to the Minister a report on the investigation (including, if appropriate, details of any recommendations made under section 32 or 33 in respect of the investigation).
- (2) The Minister must, on receiving a report under subsection (1), prepare a report to Parliament setting out—
- 40 (a) the Minister's response to the Commissioner's report; and

- 5
- (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 the Commissioner's report—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 the Commissioner's report—the reasons for taking no action; and
 - (d) any other information required by the regulations.
- 10 (3) The Minister must, within 12 sitting days after receiving a report under this section, cause a copy of both the report and the Minister's report under subsection (2) to be laid before both Houses of Parliament.

Part 6—Offences

35—Offence to refuse etc to comply with requirement

A person who is required under this Act to give evidence before, or to produce a document or other thing to, the Commissioner or an investigator and—

- 15
- (a) refuses or fails without reasonable excuse to do so; or
 - (b) refuses or fails to make an oath or affirmation when required to do so under this section; or
 - (c) refuses or fails without reasonable excuse to answer any question put to the person by the Commissioner or an investigator, or as may otherwise be required under this Act; or
 - (d) gives false or misleading evidence to the Commissioner or an investigator; or
 - (e) misbehaves before, or wilfully insults, the Commissioner or an investigator in the exercise of official duties,
- 20

is guilty of an offence.

25 Maximum penalty: \$25 000 or imprisonment for 1 year.

36—Obstruction

A person who—

- 30
- (a) alters, destroys, conceals or fabricates a document or other thing knowing that it is or is likely to be required by the Commissioner or an investigator for the purposes of this Act; or
 - (b) otherwise hinders or obstructs the Commissioner, an investigator or a person assisting the Commissioner or an investigator in the performance of a function or exercise of a power under this Act,

is guilty of an offence.

35 Maximum penalty: \$25 000 or imprisonment for 1 year.

37—False or misleading statements in complaint or report etc

A person must not—

- (a) make a statement for the purposes of this Act knowing that it is false or misleading in a material particular (whether by reason of the inclusion or omission of a particular); or
- (b) make a complaint under this Act knowing that there are no grounds for the making of the complaint.

Maximum penalty: \$25 000 or imprisonment for 1 year.

Part 7—Investigators

38—Investigators

- (1) The Commissioner may appoint suitable persons to be investigators for the purposes of this Act.
- (2) An appointment may be made subject to conditions specified in the instrument of appointment.
- (3) The Commissioner may, at any time, revoke an appointment of a person or vary or revoke a condition of appointment or impose a further condition of appointment.
- (4) An investigator must be issued with an identity card—
 - (a) containing the person's name and a photograph of the person; and
 - (b) stating that the person is an investigator under this Act.
- (5) If the powers of an investigator have been limited by conditions, the identity card issued to the investigator must indicate those limitations.
- (6) An investigator must, at the request of a person in relation to whom the investigator intends to exercise powers under this Act, produce his or her identity card for the inspection of the person.

39—Powers of investigators

- (1) Subject to this Act, an investigator may, in connection with the administration, operation or enforcement of this Act and at any reasonable time, do 1 or more of the following:
 - (a) enter and remain in and search any premises or place owned or occupied by a State authority;
 - (b) seize any item that the investigator believes on reasonable grounds may afford evidence relevant to the investigation;
 - (c) take photographs or videos;
 - (d) require a State authority—
 - (i) to produce a specified document or other thing that is relevant to an investigation for examination; or
 - (ii) to give the investigator such information in his or her possession as the investigator may reasonably require;

(e) require a person who may be in a position to furnish information relevant to the investigation to answer any question put by the investigator to the best of that person's knowledge, information or belief.

5 (2) An investigator may be accompanied by such police officers or other persons while exercising powers under this section as may be necessary or desirable in the circumstances.

40—Guidelines for investigators

10 (1) The Commissioner must prepare guidelines governing the exercise of powers by investigators for the purposes of this Act.

(2) The Commissioner may vary or substitute the guidelines from time to time.

(3) The guidelines must—

15 (a) include provisions designed to ensure that persons in relation to whom powers are to be exercised under this Act are provided with appropriate information about their rights, obligations and liabilities under this Act; and

(b) be made available free of charge on the Internet, and at premises established for the receipt of complaints by the Commissioner, for inspection by members of the public.

20 (4) Contravention of the guidelines constitutes a ground for suspending, dismissing or taking other disciplinary action against the investigator (but the validity of the exercise of a power cannot be questioned on the ground of contravention of the guidelines).

Part 8—Miscellaneous

41—Provision relating to mandatory notification under Children's Protection Act

25 (1) For the purposes of section 11 of the *Children's Protection Act 1993*, a person will not be taken to have notified the Department (within the meaning of that section) merely because he or she gave evidence, documents or other things to the Commissioner or an investigator under this Act.

30 (2) Section 13 of the *Children's Protection Act 1993* does not apply to the Commissioner or an investigator in the exercise of his or her powers and functions under this Act (however the Commissioner or investigator must take reasonable steps to avoid disclosing the identity of a notifier (within the meaning of that section)).

42—Protections, privileges and immunities

35 (1) No liability attaches to the Commissioner, an investigator or any member of the Commissioner's staff 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—

40 (a) legal professional privilege; or

(b) "without prejudice" privilege; or

(c) public interest immunity.

- 5 (4) A person is excused from answering a question or producing a document or other material in connection with an inquiry or investigation 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 Commissioner and an investigator have, in connection with an inquiry or investigation under this Act, and in respect of any report prepared as part of an inquiry or investigation under this Act, the same protection, privileges and immunities as a Judge of the Supreme Court.
- 10 (6) A person who provides evidence to an inquiry or investigation 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 or investigation under this Act has the same protection, privileges, immunities and obligations as counsel involved in proceedings before the Supreme Court.
- 15 (8) In this section—
member of the Commissioner's staff includes any person to whom powers or functions have been delegated under this Act.

43—Confidentiality

- 20 (1) An Act or law (other than a prescribed Act or law) requiring a person to keep particular information confidential or in any way restricting the disclosure or publication of information does not prevent a person from providing information in the course of or for the purposes of an inquiry or investigation under this Act.
- 25 (2) 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
 - 30 (c) in connection with the administration or enforcement of this or any other Act; or
 - (d) to an agency or instrumentality of this State, the Commonwealth or another State or a Territory of the Commonwealth for the purposes of the proper performance of its functions.

Maximum penalty: \$10 000.

- 35 (3) Subsection (2) 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.
- (4) Information that has been disclosed under subsection (2) for a particular purpose must not be used for any other purpose by—
- (a) the person to whom the information was disclosed; or
 - 40 (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.

- (5) The regulations may make further provision in respect of the disclosure of information obtained in the course of the administration of this Act.

44—Victimisation

- 5 (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 made or intends to make a complaint under this Act or has provided, or intends to provide, evidence or other assistance to the Commissioner in connection with an inquiry or investigation under this Act commits an act of victimisation.
- 10 (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—
15 (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, he or she cannot subsequently lodge a complaint under the *Equal Opportunity Act 1984* and, conversely, if the victim lodges a complaint under that Act, he or she cannot subsequently commence proceedings in a court seeking a remedy in tort.
- 20 (4) If a complaint alleging an act of victimisation under this Act has been lodged with the Commissioner for Equal Opportunity and he or she is of the opinion that the subject matter of the complaint has already been adequately dealt with by a competent authority, he or she may decline to act on the complaint or to proceed further with action on the complaint.
- 25 (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.
- 30 (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.
- 35 (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
40 employment; or
(d) threats of reprisal.

45—Service

- (1) A notice or document required or authorised to be given or sent to, or served on, a person for the purposes of this Act may—
- (a) be given to the person personally; or
 - 5 (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
 - 10 (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.
- 15

46—Evidentiary provision

- In any legal proceedings, a certificate apparently signed by the Commissioner certifying as to a matter relating to—
- (a) the appointment of an investigator; or
 - (b) a delegation; or
 - (c) a notice; or
 - (d) the receipt or non-receipt of a document or other thing,
- 20
- 25 under this Act constitutes proof, in the absence of proof to the contrary, of the matters so certified.

47—Review of Act

- (1) The Minister must cause a review of the operation of this Act to be conducted, and a report on the results of the review submitted to the Minister, before the fifth anniversary of the commencement of this Act.
- 30
- (2) The Minister must cause a copy of the report submitted under subsection (1) to be laid before both Houses of Parliament within 12 sitting days after receiving the report.

48—Regulations

- (1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.
- 35
- (2) The regulations may—
- (a) be of general application or vary in their application according to prescribed factors;

- 5
- (b) provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Minister, the Commissioner or other specified person or body;
- (c) exempt a specified person or body, or persons or bodies of a specified class, from the operation of a provision of this Act;
- (d) make provisions of a saving or transitional nature.
- 10 (3) The regulations may refer to or incorporate, wholly or partially and with or without modification, a code, standard or other document prepared or published by a specified person or body, either as in force at the time the regulations are made or as in force from time to time.
- (4) If a code, standard or other document is referred to or incorporated in the regulations—
- 15 (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.

20 **Schedule 1—Related amendments**

Part 1—Preliminary

1—Amendment provisions

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

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

2—Amendment of Schedule 2—Exempt agencies

Schedule 2—after paragraph (eb) insert:

- (ec) the Commissioner for Children and Young People;