

Commissioner for Children and Young People Bill 2006

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Western Australia

LEGISLATIVE ASSEMBLY

(As amended in Committee)

**Commissioner for Children and Young People
Bill 2006**

A Bill for

**An Act to establish the office of Commissioner for Children and
Young People, to make consequential amendments to various Acts,
and for related purposes.**

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Commissioner for Children and Young People Act 2006*.

5 **2. Commencement**

- (1) This Act comes into operation on a day fixed by proclamation.
- (2) Different days may be fixed under subsection (1) for different provisions.

10 **3. Principle that best interests of children and young people paramount**

In performing a function under this Act the Commissioner or any other person must regard the best interests of children and young people as the paramount consideration.

4. Guiding principles

15 In the administration of this Act the following principles must be observed —

- (a) children and young people are entitled to live in a caring and nurturing environment and to be protected from harm and exploitation;
- 20 (b) the contributions made by children and young people to the community should be recognised for their value and merit;
- (c) the views of children and young people on all matters affecting them should be given serious consideration and taken into account;
- 25 (d) parents, families and communities have the primary role in safeguarding and promoting the wellbeing of their children and young people and should be supported in carrying out their role.

5. Terms used in this Act

In this Act, unless the contrary intention appears —

“authorised person” means a person designated as an authorised person under section 18;

5 **“children and young people”** means people under 18 years of age, and **“child or young person”** has a corresponding meaning;

10 **“Commissioner”** means the person holding the office of Commissioner for Children and Young People established by this Act or acting in that office for a reason mentioned in section 14(1)(a) or (b);

“government agency” means —

- (a) a department of the Public Service;
- (b) a State agency;
- 15 (c) a local government or regional local government; or
- (d) a body, whether incorporated or not, or the holder of an office, post or position, that is established or continued for a public purpose under a written law;

“hearing” means a hearing referred to in section 32;

20 **“non-government agency”** means a person or body other than a government agency;

“staff member” means —

- (a) a public service officer referred to in section 16;
- (b) an officer or employee referred to in section 17; or
- 25 (c) a person engaged or appointed under the *Public Sector Management Act 1994* section 100 for the purposes of this Act;

“Standing Committee” means the committee referred to in section 51;

30 **“wellbeing”** of children and young people includes the care, development, education, health and safety of children and young people.

Part 2 — Office of Commissioner for Children and Young People

Division 1 — Office of Commissioner for Children and Young People

5 **6. Office of Commissioner for Children and Young People established**

- (1) An office called the Commissioner for Children and Young People is established.
- (2) The office is not an office in the Public Service.
- 10 (3) The office is not, and is not to become, an SES organisation under the *Public Sector Management Act 1994*.

7. Appointment and selection of Commissioner

- (1) A person is to be appointed to the office of Commissioner for Children and Young People by the Governor by commission under the Public Seal of the State on the recommendation of the Premier.
- 15 (2) Before making a recommendation under subsection (1) the Premier shall —
- 20 (a) advertise throughout Australia for expressions of interest from people with professional qualifications and substantive experience in matters affecting children;
- (b) consult with the leader of any political party with at least 2 members in either House.
- (3) Children and young people must be involved in the selection process.
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8. Removal or suspension of Commissioner

- (1) The Commissioner may, at any time, be suspended or removed from his office by the Governor on addresses from both Houses of Parliament.

- (2) Where the Governor is satisfied that the Commissioner —
- (a) is incapable of properly performing the duties of his office;
 - (b) has shown himself incompetent properly to perform, or has neglected, those duties;
 - (c) has applied to take, or has taken, advantage of any law relating to bankruptcy, or has compounded, or entered into any arrangement, with his creditors; or
 - (d) has been guilty of misconduct,

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he may suspend the Commissioner from his office.

- (3) When the Commissioner has been suspended from his office under subsection (2) he shall be restored to office unless —
- (a) a statement of the grounds of his suspension is laid before each House of Parliament during the 7 sitting days of that House following the suspension; and
 - (b) each House of Parliament, during the session in which the statement is so laid, and within 30 sitting days of that statement being so laid, passes an address praying for his removal.

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9. Tenure of office

- (1) The term for which a person is appointed to the office of Commissioner is to be fixed in the instrument of appointment and is to be not longer than 5 years.
- (2) A person who has been appointed to the office of Commissioner is eligible for reappointment once.

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10. Terms of appointment

- (1) The Commissioner is to be appointed on a full-time basis.
- (2) The Commissioner must not, except in so far as authorised to do so by the Governor, hold any office of profit or trust (other than

office as Commissioner) or engage in paid employment outside the duties of the office of Commissioner.

11. Remuneration and conditions of service

- 5 (1) The remuneration and allowances of the Commissioner are to be determined by the Governor.
- (2) Subsection (1) has effect subject to the *Salaries and Allowances Act 1975* if that Act applies to the Commissioner.
- 10 (3) The Governor may determine the leave of absence to which the Commissioner is entitled and any other conditions of service as the Commissioner.
- (4) The remuneration, allowances and conditions of service referred to in this section must not be changed while the Commissioner is in office so as to become less favourable to the Commissioner.

15 **12. Casual vacancy**

- (1) The Commissioner may at any time resign from office by notice in writing delivered to the Governor.
- 20 (2) If, before the Commissioner's term of office expires, the Commissioner dies, resigns, or is removed from office, the office becomes vacant.

13. Appointment of public service officer

- 25 (1) If a public service officer is appointed to the office of Commissioner, that person is entitled to retain all his or her accruing and existing rights, including any rights under the *Superannuation and Family Benefits Act 1938*, as if service in the office of Commissioner were a continuation of service as a public service officer.
- 30 (2) If a person ceases to hold the office of Commissioner and becomes a public service officer, the service in the office of Commissioner is to be regarded as service in the Public Service

for the purpose of determining that person's rights as a public service officer and, if applicable, for the purposes of the *Superannuation and Family Benefits Act 1938*.

(3) If —

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(a) the Commissioner immediately before his or her appointment to the office of Commissioner occupied an office under the *Public Sector Management Act 1994* Part 3; and

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(b) his or her term of office expires by effluxion of time and he or she is not reappointed as Commissioner,

that person is entitled to be appointed to an office under the *Public Sector Management Act 1994* of at least the equivalent level of classification as the office that person occupied immediately prior to appointment as Commissioner.

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14. Acting Commissioner

(1) The Governor may appoint a person to act in the office of Commissioner —

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(a) during a vacancy in that office; or

(b) during any period or during all periods when the person holding that office, or appointed to act in that office under this section, is unable to perform the functions of that office or is absent from the State.

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(2) An appointment under this section —

(a) may be made at any time and may be terminated at any time by the Governor; and

(b) may be expressed to have effect only in the circumstances specified in the instrument of appointment.

(3) The validity of anything done by or in relation to a person purporting to act under this section is not to be called into question on the ground that —

- 5
- (a) the occasion for an appointment under this section had not arisen;
 - (b) there is a defect or irregularity in the appointment;
 - (c) the appointment had ceased to have effect; or
 - (d) the occasion for the person to act had not arisen or had ceased.

10 **15. Oath or affirmation of office**

(1) Before beginning to perform the functions of the office of Commissioner a person must take an oath or make an affirmation that he or she —

- 15
- (a) will faithfully and impartially perform the functions of the office; and
 - (b) will not, except in accordance with this Act, disclose any information received under this Act.

(2) The oath or affirmation is to be administered by the Governor.

Division 2 — Staff and related provisions

20 **16. Staff**

Staff are to be appointed or made available under the *Public Sector Management Act 1994* Part 3 to enable the Commissioner to perform his or her functions.

17. Use of government staff and facilities

25 (1) The Commissioner may by arrangement with the relevant employer make use, either full-time or part-time, of the services of any officer or employee employed —

- (a) in the Public Service;
- (b) in a State agency; or

(c) otherwise in the service of the State.

(2) The Commissioner may by arrangement with —

(a) a department of the Public Service; or

(b) a State agency,

5 make use of any facilities of the department or agency.

(3) An arrangement under subsection (1) or (2) is to be made on terms agreed to by the parties.

18. Authorised persons

10 The Commissioner may, in writing, designate a staff member as an authorised person for the purposes of Part 5.

Part 3 — Functions of the Commissioner

19. Functions

The Commissioner has the following functions —

- (a) to advocate for children and young people;
- 5 (b) to promote the participation of children and young people in the making of decisions that affect their lives and to encourage government and non-government agencies to seek the participation of children and young people appropriate to their age and maturity;
- 10 (c) to promote and monitor the wellbeing of children and young people generally;
- (d) to monitor the way in which a government agency investigates or otherwise deals with a complaint made by a child or young person and the outcome of the
15 complaint;
- (e) to monitor the trends in complaints made by children and young people to government agencies;
- (f) to initiate and conduct inquiries into any matter,
20 including any written law or any practice, procedure or service, affecting the wellbeing of children and young people;
- (g) to monitor and review written laws, draft laws, policies, practices and services affecting the wellbeing of children and young people;
- 25 (h) to promote public awareness and understanding of matters relating to the wellbeing of children and young people;
- (i) to conduct, coordinate, sponsor, participate in and promote research into matters relating to the wellbeing
30 of children and young people;
- (j) to conduct special inquiries under Part 5;

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- (k) on the Commissioner's own initiative or at the request of the Minister or the Standing Committee, to advise the Minister on any matter relating to the wellbeing of children and young people;
 - (l) to consider, and make recommendations in relation to, any written laws, draft laws, reports, policies, practices, procedures or other matters relating to the wellbeing of children and young people that are referred to the Commissioner by the Minister or the Standing Committee;
 - (m) to perform any other function conferred on the Commissioner by or under this Act or any other written law;
 - (n) to consult with children and young people from a broad range of socio-economic backgrounds and age groups throughout Western Australia each year;
 - (o) to do anything which the Commissioner considers is necessary or convenient to further the principle in section 3 or any of the guiding principles in section 4.

20 **20. Matters relevant to performance of functions**

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- 30
- (1) In performing the Commissioner's functions, the Commissioner must —
 - (a) give priority to, and have special regard to, the interests and needs of —
 - (i) Aboriginal children and young people and Torres Strait Islander children and young people; and
 - (ii) children and young people who are vulnerable or disadvantaged for any reason;
 - (b) have regard to the United Nations Convention on the Rights of the Child;
 - (c) develop means of consulting with children and young people that are appropriate to their age and maturity;

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- (d) develop guidelines for government agencies and non-government agencies regarding the participation by children and young people in decisions which affect them;
- 5 (e) adopt work practices that —
- (i) ensure the Commissioner is accessible to children and young people; and
- (ii) encourage the participation of children and young people in decision-making by the Commissioner;
- 10 (f) work in cooperation with, and consult with, other government agencies and non-government agencies; and
- (g) take reasonable steps to avoid the duplication of functions performed by other government agencies.
- 15 (2) In subsection (1)(a)(i) —
- “Aboriginal children and young people”** means children and young people who are descendants of the Aboriginal people of Australia;
- “Torres Strait Islander children and young people”** means children and young people who are descendants of the indigenous inhabitants of the Torres Strait Islands.
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21. Powers

- (1) The Commissioner has power to do all things necessary or convenient to be done for or in connection with the performance of the Commissioner’s functions.
- 25 (2) Without limiting subsection (1), the Commissioner may produce and publish information on matters relating to the Commissioner’s functions.

22. Request for information

(1) In this section —

“**relevant information**” means information that, in the opinion of the Commissioner, is, or is likely to be, relevant to the performance of the Commissioner’s functions;

“**service provider**” means a person or body who or which provides services for, or on behalf of, a government agency under a contract or other arrangement.

(2) The Commissioner may ask a government agency or service provider to disclose to the Commissioner relevant information.

(3) A government agency or service provider, or an officer or employee of a government agency or service provider, must disclose relevant information in response to a request under subsection (2) unless such disclosure contravenes a prescribed written enactment relating to secrecy or confidentiality.

(4) If information is disclosed, in good faith, under subsection (3) —

(a) no civil or criminal liability is incurred in respect of the disclosure; and

(b) the disclosure is not to be regarded as a breach of professional ethics or standards or as unprofessional conduct.

23. Commissioner not to deal with individual cases

(1) It is not a function of the Commissioner to investigate or otherwise deal with a complaint made by, or any other matter relating to, a particular child or young person.

(2) Subsection (1) does not preclude the Commissioner from —

(a) providing a child or young person or his or her family with information about government and non-government programs and services;

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- (b) referring a child or young person or his or her family to such programs or services; or
- (c) investigating or otherwise dealing with any matter affecting the wellbeing of children and young people generally which is raised through a matter relating to a particular child or young person.

24. Delegation

- (1) The Commissioner may delegate to a staff member any power or duty of the Commissioner under another provision of this Act other than a power or duty under Part 5.
- (2) The delegation must be in writing signed by the Commissioner.
- (3) A person to whom a power or duty is delegated under this section cannot delegate that power or duty.
- (4) A person exercising or performing a power or duty that has been delegated to the person under this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (5) Nothing in this section limits the ability of the Commissioner to perform a function through a staff member or an agent.

Part 4 — Relationship with the Minister

25. Independence of Commissioner

5 Except as provided in this Act, the Commissioner is not subject to direction by the Minister or any other person in the performance of the Commissioner's functions.

26. Minister may give directions

- 10 (1) The Minister may give written directions to the Commissioner as to the general policy to be followed in the performance of the Commissioner's functions.
- (2) A direction must not be given under subsection (1) in respect of a particular matter.
- (3) The Commissioner must comply with a direction under subsection (1) unless, in the Commissioner's opinion, there are reasonable grounds for not complying with the direction.
- 15 (4) If the Commissioner refuses to comply with a direction under subsection (1), the Commissioner must cause the reasons for his or her refusal to be included in the report referred to in section 42.
- (5) The Minister must cause the text of a direction under subsection (1) to be laid before each House of Parliament, or dealt with under section 61, within 14 days after the direction is given.
- 20 (6) The text of a direction under subsection (1) must be included in the report referred to in section 42.

25 27. Minister may request information

- (1) The Minister may request the Commissioner —
- (a) to furnish information in the possession of the Commissioner to the Minister; or
 - (b) to give the Minister access to such information.

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(2) The Commissioner must comply with a request under subsection (1) unless, in the Commissioner's opinion, there are reasonable grounds for not complying with the request.

5 (3) If the Commissioner decides to comply with a request under subsection (1), the Commissioner must make the Commissioner's staff and facilities available to the Minister for the purposes of obtaining the information and furnishing it to the Minister.

(4) In this section —
10 **“information”** means information specified, or of a description specified, by the Minister that relates to the Commissioner's functions.

28. Consultation

15 The Commissioner and the Minister, at the request of either, are to consult together, either directly or through appropriate representatives, in relation to any aspect of the Commissioner's functions.

Part 5 — Special inquiries

29. Establishment of special inquiry

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- (1) The Commissioner, on the Commissioner's own initiative or at the request of the Minister, may conduct a special inquiry into a matter affecting the wellbeing of children and young people.
 - (2) Before conducting a special inquiry the Commissioner must inform the Minister in writing of his or her intention to do so.

30. Notice of special inquiry

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- (1) The Commissioner must cause notice of a special inquiry to be published in a newspaper circulating generally in the State.
 - (2) The Commissioner may cause notice of a special inquiry to be published in any other manner that the Commissioner considers appropriate.
 - (3) A notice under this section must specify —
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 - (a) the matter to which the inquiry relates;
 - (b) the period during which the inquiry is to be held;
 - (c) details of any hearings that are to be held; and
 - (d) the manner in which members of the public may make submissions to the Commissioner.

20 31. General conduct of special inquiry

- 25
- (1) In conducting a special inquiry the Commissioner —
 - (a) must act with as little formality as possible;
 - (b) is not bound by the rules of evidence and may inform himself or herself on any matter in any manner the Commissioner considers appropriate;
 - (c) may receive written or oral submissions;
 - (d) may hold public seminars and establish working groups or task forces; and

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(e) may consult with any person the Commissioner considers appropriate.

5 (2) The Commissioner must conduct a special inquiry in a way that, having regard to its subject matter, promotes the participation of children and young people in, and their understanding of, the inquiry.

(3) Subject to this Part and the regulations, the Commissioner may determine the procedure to be followed at or in connection with a special inquiry.

10 **32. Hearings**

(1) The Commissioner may hold hearings for the purposes of a special inquiry.

(2) Except as provided in subsection (3), hearings are to be held in public.

15 (3) The Commissioner may direct that a hearing, or any part of a hearing, be held in private if the Commissioner is satisfied that it is desirable to do so because of the confidential nature of any evidence or matter or for any other reason.

20 (4) The Commissioner has a discretion as to whether any person may appear at a hearing in person or be represented by another person.

33. Powers relevant to special inquiry

The Commissioner may, for the purposes of a special inquiry —

25 (a) by notice in writing require the attendance of any person at a place and time specified in the notice;

(b) by notice in writing require any person to produce at a place and time specified in the notice any document that is in the possession or under the control of that person;

30 (c) inspect any document produced and retain it for such reasonable period as the Commissioner thinks fit, and make copies of it or any of its contents;

(d) require any person to take an oath or make an affirmation and may administer an oath or affirmation to any person; and

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(e) require any person to answer any question put to that person.

34. Failure to comply with notice

(1) A person must not, without lawful excuse, refuse or fail —

(a) to attend; or

(b) to produce a document,

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as required by a notice under section 33.

Penalty: a fine of \$12 000 and imprisonment for 12 months.

(2) A person must not, without lawful excuse, refuse or fail —

(a) to be sworn or make an affirmation; or

(b) to answer a question,

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when required to do so under section 33.

Penalty: a fine of \$12 000 and imprisonment for 12 months.

35. Incriminating answers or documents

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(1) It is not a lawful excuse for the purposes of section 34 for a person to refuse to answer a question or produce a document on the ground that the answer or the document might tend to incriminate the person or make the person liable to a penalty.

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(2) Despite subsection (1), an answer given or a document produced by a person in compliance with a requirement under section 33 is not admissible in evidence in any proceedings against the person other than proceedings for an offence under section 40.

36. Legal professional privilege

(1) Subject to subsection (2), nothing in this Part prevents a person from refusing to give an answer or produce a document because

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the answer would relate to, or the document contains, information in respect of which the person claims legal professional privilege.

- 5 (2) A government agency, or an employee or officer of a government agency, may not refuse to answer a question or produce a document on the ground that the answer or the document is subject to legal professional privilege.
- 10 (3) If a government agency, or an employee or officer of a government agency, answers a question or produces a document which is claimed to be subject to legal professional privilege the Commissioner may not include the answer or document or the substance of the answer or document, in any report to Parliament but may report the answer or document confidentially to the Standing Committee.
- 15 (4) If the Commissioner reports an answer or document confidentially to the Standing Committee under subsection (3) the Standing Committee must consider in private session whether the answer or question should be reported to Parliament, and, if the Standing Committee considers it
20 appropriate, the Standing Committee may report the answer or document to the Parliament.

37. Power of entry

- (1) An authorised person may, for the purposes of a special inquiry, enter and inspect any place.
- 25 (2) The power of entry conferred by subsection (1) may only be exercised —
- (a) with the consent of the owner or occupier of the place; or
 - (b) under the authority of a warrant issued under section 38.
- 30 (3) Entry under this section may be made with any assistants or equipment that the authorised person considers necessary.

- (4) A person who enters or who has entered any place under this section must give particulars of the purpose of, and the authority for, that entry on being requested to do so.

38. Warrants

- 5 (1) A magistrate of the Children's Court may, on an application made by an authorised person, issue a warrant authorising the entry of a place specified in the warrant.
- (2) A warrant may be issued if the magistrate is satisfied that the entry is reasonably required for the purposes of a special inquiry.
- 10 (3) A warrant may be executed by any authorised person.
- (4) A person executing a warrant may use any force reasonably necessary.
- (5) A warrant continues to have effect until the purpose for which it was issued has been satisfied.
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39. Disruption of special inquiry

A person must not —

- (a) wilfully insult the Commissioner when conducting a special inquiry; or
- 20 (b) wilfully interrupt or obstruct the conduct of a special inquiry.

Penalty: a fine of \$12 000 and imprisonment for 12 months.

40. False information

25 During a special inquiry a person must not give an answer or other information to the Commissioner if the person knows that the answer or information is false or misleading in a material particular.

Penalty: a fine of \$12 000 and imprisonment for 12 months.

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41. Protection for certain persons

5 A person is not liable in any way for any loss or damage suffered by another person because the first-mentioned person has given information or produced a document, in good faith, to the Commissioner for the purposes of a special inquiry.

Part 6 — Reporting

Division 1 — Reports

42. Annual reports

5 (1) The Commissioner must, within 3 months after 30 June in each year, prepare a report as to the Commissioner's general activities during the financial year ending on that day.

(2) The report required under this section may be prepared and dealt with in conjunction with any report required under the *Financial Administration and Audit Act 1985* in respect of the Commissioner.

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43. Reports on special inquiries

The Commissioner must, as soon as practicable after the conclusion of a special inquiry under Part 5, prepare a report on the findings of the inquiry.

15 44. Reports on other matters

The Commissioner may from time to time prepare a report on —

- 20 (a) any inquiry, review or research conducted in the performance of the Commissioner's functions; or
- (b) any other matter arising in the performance of those functions.

Division 2 — General provisions

45. Meaning of “report”

In this Division —

25 “report” means a report prepared under Division 1.

46. Recommendations

5 A report may include recommendations for changes to any written law, draft law, policy, practice or procedure, or for the taking of other action, that the Commissioner considers appropriate to safeguard and promote the wellbeing of children and young people.

47. Adverse matters in report

10 Before including in a report any matters adverse to a person or body, the Commissioner must give the person or body a reasonable opportunity to make representations to the Commissioner concerning those matters.

48. Minister to be provided with draft reports

- 15 (1) The Commissioner must give the Minister a draft of each report.
- (2) The Minister may issue written comments to the Commissioner on a draft report.
- (3) The Minister may, in writing, request the Commissioner to consult with any person in relation to a draft report.
- (4) The Commissioner is not required to —
- 20 (a) undertake consultation in response to a request under subsection (3); or
- (b) make changes to a draft report as a result of any comments issued under subsection (2) or consultation undertaken in response to a request under subsection (3).
- 25 (5) A report must include a copy of any comments issued under subsection (2).

49. Reports to be laid before Parliament

- (1) The Commissioner must cause a copy of a report to be laid before each House of Parliament, or dealt with under section 61, within 21 days after finalisation of the report.

- (2) Subsection (1) does not apply in relation to a report prepared under section 42 if the report is prepared and dealt with as provided for in subsection (2) of that section.

50. Publication of reports

- 5 (1) After the Commissioner has complied with section 49 in relation to a report, the Commissioner —
- (a) must publish a version of the report in a form suitable for children and young people unless the Commissioner considers that it is not appropriate to do so; and
- 10 (b) may publish the report (including the version referred to in paragraph (a)) in any way the Commissioner considers appropriate.
- (2) The version referred to in subsection (1)(a) may consist of the whole report or such parts of the report as the Commissioner
- 15 considers appropriate.

Part 7 — Standing Committee

51. Standing Committee of Houses of Parliament

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- (1) The Houses of Parliament are to establish a joint standing committee comprising an equal number of members appointed by each House.
 - (2) The functions and powers of the Standing Committee are determined by agreement between the Houses and are not justiciable.

Part 8 — Advisory committees

52. Establishment of advisory committees

- 5 (1) Subject to subsection (2), the Commissioner may establish advisory committees and reference groups to assist in the performance of the Commissioner's functions.
- 10 (2) The Commissioner must establish advisory committees consisting of children and young people, who the Commissioner considers are from a broad range of socio-economic and cultural backgrounds and age groups, to assist in the performance of the Commissioner's functions. These committees should be established in regional areas as well as the metropolitan area.
- (3) The membership of advisory committees and reference groups should include representatives of non-government agencies concerned with the rights, interests and wellbeing of children.
- 15 (4) The Commissioner may discharge, alter or reconstitute an advisory committee.
- (5) Subject to subsection (2), an advisory committee is to consist of such people as the Commissioner determines.

53. Membership

- 20 (1) An advisory committee is to consist of such people as the Commissioner determines.
- (2) The Commissioner must not appoint a person as a member of an expert advisory committee unless the Commissioner is satisfied that the person has extensive experience in a field that the Commissioner considers relevant to the wellbeing of children and young people.
- 25

54. Functions

- (1) Subject to section 52(2), the Commissioner is to determine the functions of an advisory committee.

s. 55

- (2) An advisory committee must comply with any direction given to the committee by the Commissioner in relation to the performance of its functions.

55. Procedures

5 Subject to any direction of the Commissioner, an advisory committee may determine its own procedures.

56. Remuneration and allowances

10 A member of an advisory committee is entitled to any remuneration and allowances determined in respect of the member by the Minister on the recommendation of the Minister for Public Sector Management.

Part 9 — Miscellaneous

57. Recommendations by the Standing Committee

5 In the determination of the budget for the Commissioner for a financial year regard is to be had to any recommendation as to that budget made to the Treasurer by the Standing Committee.

58. Obstruction

- (1) A person must not obstruct or hinder a person who is performing or attempting to perform a function under this Act. Penalty: a fine of \$12 000 and imprisonment for 12 months.
- 10 (2) A refusal to given consent for the purposes of section 37(2) does not amount to obstruction or hindering.

59. Protection from liability for wrongdoing

- 15 (1) An action in tort does not lie against a person for anything that the person has done, in good faith, in the performance or purported performance of a function under this Act.
- (2) The State is also relieved of any liability that it might otherwise have had for a person having done anything as described in subsection (1).
- 20 (3) The protection given by this section applies even though the thing done as described in subsection (1) may have been capable of being done whether or not this Act had been enacted.
- (4) In this section, a reference to the doing of anything includes a reference to an omission to do anything.

60. Confidentiality of information

- 5 (1) A person who is or has been engaged in the performance of functions under this Act must not, directly or indirectly, record, disclose or make use of information obtained in the course of performing those functions except —
- 10 (a) for the purpose of, or in connection with, performing functions under this Act;
- (b) for the purpose of the investigation of a suspected offence under this Act or the conduct of proceedings against a person for an offence under this Act;
- 15 (c) as required or allowed under this Act, the *Public Interest Disclosure Act 2003* or another written law;
- (d) with the written consent of the Minister or the person to whom the information relates; or
- (e) in prescribed circumstances.

Penalty: a fine of \$12 000 and imprisonment for 12 months.

- 20 (2) Subsection (1) is not to be taken to prevent the disclosure of statistical or other information that could not reasonably be expected to lead to the identification of any person to whom it relates.
- (3) If information is lawfully disclosed under this section, this section does not prevent the further disclosure of the information, or the recording or use of the information, for the purpose for which the disclosure was made.

25 **61. Supplementary provision for laying document before Parliament**

- (1) If —
- 30 (a) at the commencement of a period referred to in section 26(5) in respect of a document a House of Parliament is not sitting; and
- (b) the Minister is of the opinion that that House will not sit during that period,

the Minister must transmit a copy of the document to the Clerk of that House.

(2) If —

5

(a) at the commencement of a period referred to in section 49(1) in respect of a document a House of Parliament is not sitting; and

(b) the Commissioner is of the opinion that that House will not sit during that period,

10

the Commissioner must transmit a copy of the document to the Clerk of that House.

(3) A copy of a document transmitted to the Clerk of a House is to be taken to have been laid before that House.

15

(4) The laying of a copy of a document that is taken to have occurred under subsection (3) is to be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after the receipt of the copy by the Clerk.

62. Protection for proceedings in Cabinet

(1) A person must not be required or authorised under this Act —

20

(a) to furnish any information or answer any question that relates to proceedings of Cabinet or of any committee of Cabinet; or

(b) to produce or inspect any document, or any part of a document, that relates to such proceedings.

25

(2) For the purposes of this section a certificate issued by the chief executive officer of the Department of the Premier and Cabinet, with the approval of the Premier of the State, certifying that any information or question, or any document or part of a document, relates to proceedings referred to in subsection (1) is conclusive of the fact so certified.

s. 63

63. Regulations

- 5 (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.
- (2) Without limiting subsection (1), the regulations may —
- 10 (a) make provision for and in relation to the conduct of hearings;
- (b) provide for the prohibition or restriction of the publication or disclosure of evidence given at hearings;
- (c) create offences and provide, in respect of an offence so created, for the imposition of a penalty not exceeding \$6 000.

64. Review of Act

- 15 (1) The Minister must carry out a review of the operation and effectiveness of this Act as soon as is practicable after the expiry of 5 years from the commencement of this section.
- (2) The Minister must prepare a report based on the review and, as soon as is practicable after the report is prepared, must cause it to be laid before each House of Parliament.
- 20

65. Consequential amendments

The Acts mentioned in Schedule 1 are amended as set out in that Schedule.

Schedule 1 — Consequential amendments

[s. 65]

1. Constitution Acts Amendment Act 1899 amended

- 5 (1) The amendment in this clause is to the *Constitution Acts Amendment Act 1899**.

[* *Reprint 13 as at 18 March 2005.*

For subsequent amendments see Act Nos. 59 and 70 of 2004 and 1 and 2 of 2005.]

- 10 (2) Schedule V Part 1 Division 2 is amended by inserting after the item relating to the Commissioner appointed under the *Corruption and Crime Commission Act 2003* the following item —

“

15 Commissioner for Children and Young People appointed under the *Commissioner for Children and Young People Act 2006*.

”

2. Financial Administration and Audit Act 1985 amended

- (1) The amendments in this clause are to the *Financial Administration and Audit Act 1985**.

20 [* *Reprint 8 as at 9 July 2004.*

For subsequent amendments see Western Australian Legislation Information Tables for 2004, Table 1, p. 165 and Gazette 4 February 2005 p. 623-4.]

- (2) Section 3(2) is amended as follows:

- 25 (a) by deleting “and” after paragraph (f);
(b) by deleting the comma after paragraph (g) and inserting instead —

“

; and

- 30 (h) the Commissioner for Children and Young People,

”

cl. 3

**3. *Working with Children (Criminal Record Checking) Act 2004*
amended**

- (1) The amendments in this clause are to the *Working with Children (Criminal Record Checking) Act 2004**.

5 [* Act No. 65 of 2004.]

- (2) Section 4 is amended as follows:

- (a) by deleting the definition of “CEO”;
- (b) by deleting the definition of “Commissioner” and inserting instead —

10

“

“**Commissioner**” means the person holding or acting in the office of Commissioner for Children and Young People under the *Commissioner for Children and Young People Act 2006*;

15

”;

- (c) by inserting in the appropriate alphabetical position —

“

“**Commissioner for Police**” means the person holding or acting in the office of Commissioner for Police under the *Police Act 1892*;

20

”.

- (3) The heading to Part 2 Division 3 is amended by deleting “CEO” and inserting instead —

“ Commissioner ”.

25

- (4) Section 17(1) is amended by inserting after “Commissioner” in both places where it occurs —

“ of Police ”.

- (5) Section 17(2) is amended by inserting after “Commissioner” —

“ of Police ”.

- (6) Section 34(1) is amended in paragraph (b) of the definition of “authorised person” by inserting after “Commissioner” —
“ of Police ”.
- 5 (7) Section 34(3) is amended by inserting after “Commissioner” in both places where it occurs —
“ of Police ”.
- (8) The provisions mentioned in the Table to this subclause are amended by deleting “CEO” in each place where it occurs and inserting instead —
10 “ Commissioner ”.

Table

s. 3	s. 26(1) and (2)
s. 4 (definitions of “approved”, “assessment notice”, “criminal record check”, “interim negative notice”, “negative notice”)	s. 28(1) and (2)
s. 6(1)(b)	s. 29(2)
s. 9(1) and (4)	s. 30
s. 10(1) and (4)	s. 32(1)
s. 11(2) and (3)	s. 34(2), (3), (4) and (5)
s. 12(1) to (10)	s. 35(b)
s. 13(1) to (7)	s. 36
s. 16(1), (2) and (3)	s. 37(1), (2) and (3)
s. 17(1) and (3)	s. 38(2), (3) and (4)
s. 18(1) and (2)	s. 42(2)
s. 19(1), (9) and (10)	s. 44(3), (4) and (5)
s. 20(2), (3), (5) and (6)	s. 45(1), (3), (4) and (6)