

Commission For Children And Young People Bill 2004

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Western Australia

LEGISLATIVE ASSEMBLY

(Introduced by the Hon. C. J. Barnett MLA)

**Commission For Children And Young People
Bill 2004**

A Bill for

An Act to —

- **establish a Commission For Children And Young People in Western Australia to promote and advocate the welfare and special interests of children and young people;**
- **enable the Commission For Children And Young People to perform its functions consistently with, and promote voluntary compliance by public and private sector agencies with the principles of international agreements so far as they relate to children and young people.**

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Commission For Children And Young People Act 2004*.

5 **2. Commencement**

This Act comes into operation on a day fixed by proclamation or the day that is 6 months from the date of Royal Assent, whichever is the sooner.

3. Interpretation

10 (1) In this Act unless the context otherwise requires —

“**Commission**” means the Commission For Children And Young People established by section 4;

15 “**Commissioner**” means the Commissioner For Children And Young People appointed under section 5 and includes a person qualified for appointment who is appointed as the Acting Commissioner where that office is vacant or the Commissioner is temporarily unable to perform the functions of office;

“**employee**” is a person employed or seconded under section 7.

20 (2) In this Act a reference to children and young people is to a person or persons under the age of 18.

Part 2 — Commission For Children And Young People

4. Commission established

- (1) A Commission For Children And Young People is established.
- 5 (2) The Commission is a body corporate with perpetual succession, a common seal, and is capable of doing and suffering those things that a body corporate may lawfully do and suffer.
- (3) The Commission consists of the Commissioner.

5. Commissioner For Children And Young People

- 10 (1) The office of Commissioner For Children And Young People is established.
- (2) The Commissioner is appointed by the Governor and holds office for a term of 5 years or a lesser period specified in the instrument of appointment, and is eligible to be reappointed but no person is to hold office for a period that exceeds 10 years in the aggregate. Subject to subsection (5), the terms and conditions of office are to be determined by the Governor and included in the instrument of appointment.
- 15 (3) The Governor is to remove the Commissioner on an address by both Houses of Parliament for incapacity or inability to perform, or for conduct that is incompatible with, the functions of the office and may suspend the Commissioner pending a determination of the question for an address by each House.
- 20 (4) A person holding a public office by election or appointment, or who is employed in the service of the State, whether or not for remuneration, vacates that office or ceases that employment on appointment as the Commissioner without prejudice to, or loss of, any entitlements that may have accrued at the time of appointment.
- 25 (5) The Commissioner's remuneration is to be fixed by the Salaries and Allowances Tribunal under the *Salaries and Allowances Act 1975*.
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- 5 (6) The Commissioner is not to engage in any employment or act in any capacity, whether or not for reward, at any time during tenure and cannot be appointed to a public office or be employed by the Crown, its servants or agents, within 12 months of ceasing to be the Commissioner.

6. Qualifications for appointment

- 10 (1) A person is not to be appointed as the Commissioner who is unable to demonstrate knowledge or experience or dealings with children and young people to an extent that will assist or inform the person in performing the Commissioner's functions.
- (2) Except where a person secures appointment by fraudulent means, the appointment of a person as the Commissioner is conclusive of the fact for any purpose that the person satisfies the requirements of subsection (1).

15 **7. Commission staff**

- (1) The Commission may employ, or take on secondment from any State agency or instrumentality, suitably qualified persons to assist it in the performance of its functions.
- 20 (2) In cases not otherwise provided for, the terms and conditions of employment by the Commission are determined by the Commission acting with the advice of the Minister administering the *Public Sector Management Act 1994*.

8. Commission funds

- 25 (1) The funds of the Commission consist of moneys appropriated by Parliament, revenue from fees and charges, and any moneys received by way of gift, donation, bequest or any lawful means and is to be credited to an account or accounts as may be directed by the Treasurer from time to time.
- 30 (2) The Commission is a statutory authority for the purposes of the *Financial Administration and Audit Act 1985* and Schedule 1 of that Act is amended by inserting after "Workers' Compensation

and Rehabilitation Commission” the item “Commission For Children And Young People”.

Part 3 — Functions of Commission

9. Functions

- 5 (1) The functions of the Commission are to protect and promote by any lawful means the interests and welfare of children and young people whether as individuals or as members of the community.
- 10 (2) Where relevant and appropriate, the Commission is to perform its functions so as to give effect, or cause others to give effect, to any international agreement with respect to children and young people that has been acceded to by the Government of the Commonwealth of Australia.
- (3) Subsection (2) does not enact any international agreement as a law of the State.

10. Guiding principles

- 15 (1) The Commission is required to act consistently with the following principles —
- 20 (a) the contribution made by children and young people to the community has value and merits recognition;
- (b) children and young people have an inalienable right to live in a caring and nurturing environment and to be protected from harm or exploitation;
- (c) parents should be supported in their primary role of nurturing and caring for their children;
- 25 (d) there is no assumption that any legal incapacity of children or young people means that they have no entitlement to privacy or to be treated with dignity;
- 30 (e) proper consideration should be given to children and young peoples' expressions of concern or grievance particularly where they relate to the condition of children and young people;

- (f) the interests and welfare of children and young people are best ensured when the community and its members recognize that every person's interests and welfare depend on mutual respect and active support.

5 **11. When Commission to be consulted**

- (1) The Commission is to be notified by the relevant authority of its intention to formulate new policy, or alter or modify existing policy, where that new policy will, or the existing policy does, deal with or relate to the interests or welfare of children and young people whether as individuals or as a group or class.
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- (2) The notification required under subsection (1) is to be given at a time that will enable the Commission to give proper consideration to the proposal before responding.
- (3) A relevant authority must inform the Commission of any amendment to the policy proposal resulting from the Commission's response.
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- (4) In this section "**relevant authority**" is the agency or instrumentality of the State responsible for administering public policy of a like nature to that made subject to subsection (1).

20 **12. Commission may conduct inquiries**

- (1) The Commission may conduct inquiries on any matter of interest or relevance to children and young people and refer its findings and recommendations resulting from its inquiries to any public or private sector person or body for their information or consideration or action.
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- (2) Any inquiry is to be conducted with as little formality as the circumstances permit and so as to encourage the active participation of children and young people.

13. Answering of questions and production of documents

- 30 (1) Where a person who, having been required by written notice, fails to attend before the Commission or, being in attendance,

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refuses to answer any question or produce any document or provide information, the Commission may apply *ex parte* to the Supreme Court or a Judge for an order requiring that person to comply with the terms of the notice.

- 5 (2) On being satisfied that the Commission's inquiry would be assisted by compliance with the terms of the notice, the Court or Judge may order the person named in the notice to comply. Non-compliance without reasonable excuse is a contempt of court and the person may be dealt with accordingly.
- 10 (3) The Commission is not to make application for an order under this section unless it has the reasonable belief that the information known to the person or documents in his or her possession or control are not otherwise readily accessible or available from another person or source.

15 **14. Complaints to the Commission**

- (1) Where a complaint is made to the Commission that alleges that a young person has been, or is being, subjected to conduct or dealing that is improper, corrupt or criminal in nature, the Commission is to refer the complaint to an appropriate person or body for investigation and inform the complainant of the referral. A referral is not to be made if the Commission has reason to believe that the complaint is a fabrication and either mischievous or made with malice.
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- (2) Except to an extent necessary to determine that a complaint has been made in good faith, or where subsection (4) applies, the Commission is not to conduct any inquiry or investigation of a complaint under subsection (1) but may, when referring it, require the person or body to report to the Commission the result of its investigation and, if the complaint is substantiated, any action taken or that will be taken.
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- 30 (3) In subsection (1), conduct or dealing may have one or more of the characteristics described with respect to a young person

despite their not having those characteristics when similar conduct or dealing occurs between adult persons.

- 5 (4) Where, after making a referral under subsection (2), the Commission concludes that any inquiry or investigation relating to the complaint is inadequate or is, or has been subject to inordinate delay in its completion, or the findings (if any) are inconclusive or inconsistent with the known circumstances or facts giving rise to the complaint, the Commission may require the person or body to provide a final report within a specified time or cancel the referral and undertake its own inquiry or investigation.
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- (5) Where the Commission cancels a referral under subsection (4), the relevant person or body is required to provide such assistance to the Commission as may be necessary for the Commission to complete its own inquiry or investigation.
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- (6) For the purposes of this section the Commission has, and may exercise, powers of a like nature to those conferred by section 16.

15. Commission advisory bodies

- 20 (1) At least one third of the members of any committee or other group of persons however described that is appointed by the Commission to provide information and advice with respect to the performance of the Commission's functions must be children and young people.
- 25 (2) The Commission has a continuing duty to invite nominations and maintain lists of children and young people who are available for appointment under subsection (1).

16. Relationship between Commission and bodies responsible for policymaking

- 30 (1) Without limiting the means employed in performing its functions, the Commission, through the dissemination of information, the preparation and publication of guidelines and

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- 5 other materials, and its participation in the development of policies and practices, is to bring to notice those matters of relevance to children and young people and the likely effects that a policy or practice will have on children and young people to whom it will apply.
- (2) The Commission may require any person or body to supply copies of documents with respect to the treatment of children and young people by that person or body for any purpose.
- 10 (3) Where the Commission is of the opinion that a document provided under subsection (2) discloses policies or practices that are unfairly discriminatory against children and young people by reason only of that status, the Commission may recommend appropriate alterations to, or the abandonment of, those policies or practices.
- 15 (4) In a case where the person or body following receipt of the Commission's recommendations or following a period of discussion or negotiation with respect to the adoption of those recommendations or adoption with agreed modifications, refuses to alter or abandon the relevant policies or practices, the
20 Commission may apply to the Supreme Court or the Industrial Relations Commission as the case requires for an order to give effect to the Commission's recommendations.
- (5) Proceedings under subsection (4) are not to be commenced without the approval of the Attorney General and any
25 proceedings are to be conducted in the name of the Attorney General.
- (6) The Supreme Court or the Industrial Relations Commission may make the order sought with alterations (if any) made in the course of proceedings and it does not matter that the impugned
30 policy or practice is, or may be, or is not, unlawful under a law of the State or the Commonwealth.

17. Delegations

- 5 (1) The Commission may perform its functions itself and may delegate the performance of specified functions to an employee of the Commission either generally or in a particular case and for a period not exceeding 12 months. A delegation may be renewed any number of times.
- (2) The Commission's power of delegation cannot be delegated.

18. Exclusion of liability

10 The Commission, its employees and agents, and any person to whom this Act applies does not incur any criminal or civil liability for anything done, or not done, in good faith for a purpose, or in accordance with the requirements of this Act.

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