

## CLAUSE NOTES

### *Child Safety Reform Implementation Monitor Bill 2024*

#### Part 1

##### Clause 1

#### **Short Title**

This clause provides the short title of the proposed Act – the *Child Safety Reform Implementation Monitor Act 2024*.

##### Clause 2

#### **Commencement**

This clause provides for the Act to commence on a day or days to be proclaimed but, if not all of the provisions of the Act have commenced before 6 months after the day on which it receives Royal Assent, the uncommenced provisions will commence at the end of that 6-month period.

##### Clause 3

#### **Interpretation**

This clause lists the series of terms and their interpretations as they are used throughout the Bill.

##### Clause 4

#### **Act Binds the Crown**

This clause outlines that the Act binds the Crown right of Tasmania.

#### Part 2

##### Clause 5

#### **Establishment of the office of Child Safety Reform Implementation Monitor**

This clause states the office of the Monitor will be established.

##### Clause 6

#### **Child Safety Reform Implementation Monitor is appointed**

This clause outlines the provisions under which the Monitor will be appointed.

Subclause 1: outlines that the Governor will appoint a person to the office of the Implementation Monitor.

Subclause 2: outlines the requirements for the role of the Monitor, including requisite skills, relevant knowledge, and not being a named person or close relation to a named person in a relevant report.

Subclause 3: notes that the requirements in subclause 2 do not apply if the

recommendation of the person has the approval of both Houses of Parliament.

Subclause 4: outlines the Monitor should notify the Minister in a change of circumstances that may contradict the requirements in subclause 3.

Subclause 5: notes the appointment of the Monitor will be Gazetted.

Subclause 6: specifies that details outlined in Schedule 2 apply to the Monitor and their appointment.

## Clause 7

### **Acting Child Safety Reform Implementation Monitor may be appointed**

Subclause 1: provides that the Implementation Monitor may appoint an acting Monitor for up to 60 days, if the Monitor is absent for reasons other than suspension, provided the person meets the requirements to hold the role outlined in clause 6.

Subclause 2: enables the Governor to appoint an acting Monitor for any period, including if the office is vacant due to suspension, so long as the Monitor has not previously validly appointed an acting Monitor under subclause 1.

Subclause 3: states the appointment of an acting Monitor is to be Gazetted, and outlines the reasons why the appointment of the acting monitor may be revoked, such as if the Monitor returns to the role; a new Monitor is appointed; or of the acting Monitor would meet grounds for removal under schedule 2.

Subclause 4: adds an avoidance of doubt clause regarding the appointment of the Implementation Monitor, in that the person appointed to the role under this Act is 'the Implementation Monitor' .

## Clause 8

### **Independence of the Implementation Monitor**

Subclause 1: specifies that the Independent Monitor is not under the direction of any Minister, has discretion regarding the content of their reports and is not subject to the *State Service Act 2000* when exercising their powers.

Subclause 2: clarifies that nothing in subclause 1 prevents the Minister for requesting relevant advice from the Implementation Monitor

Subclause 3: stipulates that if a request is made under subclause 2, the Monitor must address the request in its next report, or publish the request and the reasons it cannot be addressed.

Clause 9                    **Staff and facilities**

Subclause 1: specifies that the Monitor and a Departmental Secretary may arrange for the availability of State Service staff to assist in the Monitor's duties, and that the Department may provide required facilities and goods to the Monitor.

Subclause 2: clarifies that staff available under subclause 1 or employed under subclause 1 may serve the Monitor in conjunction with their State Service employment.

Clause 10                 **Delegation**

This clause provides the Monitor may delegate any of their functions and powers under this Act, with the exception of the power of delegation.

**Part 3**

Clause 11                 **Objectives of the Implementation Monitor**

Subclause 1 provides the objectives of the Monitor:

- (a) Outlines the Monitor is responsible for ensuring accountability and transparency in the implementation of monitored recommendations. The inclusion of 'as far as possible' is intended to protect the privacy of individuals, including young persons and victim-survivors, to prevent the disclosure of certain personal information for transparency.
- (b) States the requirements for consultation with children and young people, and victim-survivors.
- (c) Specifies that the Monitor will report on the impact and effectiveness of actions in the areas of:
  - i. prevention of abuse of children in state institutions,
  - ii. Institutional responses to abuse of children in state institutions; and
  - iii. the support of children who experience such abuse.

Clause 12                 **Functions and powers of the Implementation Monitor**

Subclause 1 provides the functions of the Monitor:

- (a) to Monitor the implementation of recommendations in:
  - i. the Col
  - ii. the final report of the Independent Inquiry into the Tasmanian Department of Education's Responses to Child Sexual Abuse

- iii. the report submitted in December 2022 on the review of child safety and governance in the Launceston General Hospital; and
  - iv. any other commission, inquiry or review that relates to child safety in state-run institutions and is referred to the Monitor.
- (b) The Monitor is also to monitor the implementation of recommendations in the National Royal Commission into Institutional Responses to Child Sexual Abuse from the report presented in 2017 that:
- i. were accepted by the Tasmanian Government in the response in June 2018
  - ii. in the opinion of the Monitor, have not been implemented.
- (c) Specifies the Monitor is required to evaluate the effectiveness and impact of actions on the safety and wellbeing of children who may be impacted by child sexual abuse.
- (d) Stipulates the Monitor is required to report to Parliament on both the monitoring of recommendations and the effectiveness of the measures implemented in response to said recommendations.

Subclause 2 outlines further functions of the Monitor:

- (a) States the Monitor is required to develop and publish a framework (outlined in Clause 13)
- (b) Specifies the groups the Monitor is required to consult regarding an action or recommendation:
  - i. Relevant agency
  - ii. The Premier's Youth Advisory Council or relevant subgroup of that Council
  - iii. An advisory group established within an agency relating to monitored recommendations
  - iv. An advisory group or network established by the Government in relation to monitored recommendations
  - v. A person, body or organisations prescribed (in the regulations)
  - vi. Another body, person or organisation the Monitor considers relevant to the action or recommendation.
- (c) Requires the Monitor to produce written reports on their findings and conclusions
- (d) Provides the Monitor may hold other functions, either under this Act or any other Act.

Subclause 3 identifies what the Monitor must do in performing their functions:

- (a) Stipulates the Monitor must have regard to each relevant reform

report; the Implementation Framework; and the Monitored recommendations.

- (b) Provides the Monitor with the ability to require demonstrations of, or participate in processes or systems of an agency, as well as obtain documents, if considered necessary to provide an accurate assessment of how an implementation action is carried out.
- (c) Outlines the Monitor must establish appropriate consultation arrangements to facilitate effective monitoring of actions, or to obtain necessary information.

Subclause 4: Specifies that the Monitor has all the powers necessary to perform the functions of the role.

#### Clause 13

#### **Referral of new matters to the Implementation Monitor**

Subclause 1: Specifies that the Minister, or both Houses of Parliament, have the ability to refer reports from relevant inquiries/commissions relating to child safety to the Monitor.

Subclause 2: stipulates that the referral of a report to the Monitor will be Gazetted.

#### Clause 14

#### **Implementation Framework**

Subclause 1: requires the Monitor to develop and publish a framework, to be used in the role and its functions.

Subclause 2: specifies what is required under the framework in subclause 1:

- (a) Key indicators
- (b) Reporting requirements
- (c) Data collection and publication requirements
- (d) Minimum frequencies for the Monitor to evaluate/assess
- (e) Other appropriate matters

Subclause 3: requires the publication of the framework within the first year of the first Monitor being appointed.

Subclause 4: provides requirements for consultation in relation to the framework, or any amended or substituted framework.

Subclause 5: Stipulates the publishing requirements for any amended or substitute framework.

Subclause 6: clarifies that a framework remains in force unless replaced or revoked by the Monitor, and must remain published while in force.

Subclause 7: provides the Monitor the ability to apply the framework differently from what is specified in the framework.

Subclause 8: Adds an avoidance of doubt clause, to stipulate the Monitor still has all the powers and functions as set out in the Act, when a framework has not been published.

## Part 4

### Clause 15

#### **Power to request information**

Subclause 1: provides the Monitor the power to request, in writing, the information from Agencies that:

- (a) The Monitor is of the opinion is held by an Agency
- (b) The Monitor believes is reasonably necessary to perform the role/functions.

Subclause 2: outlines what is required from an Agency Head

- (a) in responding to an information request from the Monitor:
  - i. the agency must respond in 21 days
  - ii. or sooner, if the Monitor specifies a timeframe and believes it is urgent.
- (b) In order to comply with the request:
  - i. The specified documents must be supplied
  - ii. Evidence demonstrating the information is not held.

### Clause 16

#### **Certain information unable to be requested by the Implementation Monitor**

Subclause 1: stipulates what types of information cannot be requested by the Monitor:

- (a) Information that is subject to lawful claim or privilege
- (b) Information that was disclosed in the course of medical treatment or that relates to individual health
- (c) Information that may incriminate a person in respect of a crime

Subclause 2: clarifies circumstances in which the Monitor is able to disclose information to which subclause 1 applies.

### Clause 17

#### **Power of entry and inspection**

This clause outlines the powers of the Monitor to enter and inspect relevant locations, including what is required in order to do so.

Subclause 1: provides the Monitor with powers to enter and inspect relevant locations, as well as clarifies what the Monitor is able to do in relevant locations.

Subclause 2: provides the conditions for the Monitor to notify an Agency Head in writing if intending to visit a location, or undertake any permitted actions while there, including if authorising another person to do so.

Subclause 3: stipulates that the Monitor provides reasonable notice to enter a relevant location, unless notice would nullify the purpose of the visit, and that entry should be by consent of the occupier of the location.

Clause 18 **Duty to cooperate**

Provides that an Agency must comply with reasonable requests of the Monitor, in the performance of the Monitor's role.

Clause 19 **Compliance notices**

This clause outlines that a compliance notice may be issued if an Agency fails to comply with a reasonable request, and that failure to comply with this notice will result in the reporting of non-compliance in the Monitor's annual report.

Subclause 2 provides the requirements for the agency head to comply with the notice, and stipulates that details are to be provided to the satisfaction of the Monitor if compliance is not possible.

Clause 20 **Constraints of access to information do not apply**

This clause provides that the information requested by the Monitor under clauses 15 and 17 do not apply.

Subclause 2 provides that the Monitor is unable to disclose information ,except in instances such as to the relevant authority for the purposes of further investigation, including in respect of an offence. This clause also specifies the penalty associated with improper disclosure of information.

Subclause 3 provides that the Monitor is able to include any information in a report, except information specified in clause 16 or 25(2).

**Part 5**

Clause 21 **Annual reports**

This clause specifies the annual reporting requirements of the Monitor, and what should be contained in these reports.

Subclause 3 provides the requirements for publishing and tabling annual reports.

Subclause 4 clarifies that the first report is to cover the period of the relevant calendar year for which the act is in force.

Clause 22      **Periodic reports**

This clause provides that the Monitor is to prepare a report on at relevant intervals, and the process to publish them. These intervals are 5 and 10 years after the conclusion of the Commission of Inquiry, and are intended to focus on the effectiveness of implemented recommendations over time.

Clause 23      **Other reports**

This clause provides that the Monitor may prepare a report on the implementation of monitored actions at any time.

This clause also outlines the requirements to publish and table reports developed under this section.

Clause 24      **Publication of reports**

This clause specifies how and where reports developed by the Monitor must be published.

Clause 25      **Report not to identify individuals**

This clause stipulates that the Monitor is to ensure no report prepared identifies an individual, or contains any identifying information, unless the identity of the individual is public, or with the consent of the individual.

Clause 26      **Agency Head to be notified in certain circumstances**

This clause specifies the process the Monitor is to follow if, in a report, it is naming an agency in respect of a corrective action or compliance notice. Subclause 2 specifies that the Monitor may also publish the response of an Agency head in relation to a notice to be named in a report, and outlines the provisions under which this would occur.

**Part 6**

Clause 27      **Obligation of agencies**

This clause stipulates the responsibility that Agencies have to ensure that all members, officers, employees and agents are aware of their obligations and processes under this Act.

Subclause 2 specifies that Agencies are to take reasonable steps to ensure they have ensured compliance with obligations under this Act.

Clause 28

### **Protection from liability**

This clause provides the Monitor protections from liability in the same manner as a Supreme Court judge, and things said written or done in proceedings under the Bill are not admissible in civil proceedings.

Clause 29

### **Regulations**

This clause provides the ability for regulations to be made.

Clause 30

### **Administration of Act**

This clause provides that the Minister for Justice and Department of Justice are the Minister and Agency responsible for the administration of this Act.

Clause 31

### **Expiry of Act**

This clause provides a sunset clause, specifying the Act can expire as a result of subsequent legislation, or on 31 July 2034 if no earlier date is prescribed.

Clause 32

### **Consequential amendments**

This clause identifies Schedule 3 as containing details on consequential amendments

Schedule 1

### **Relevant agencies and heads of agencies**

This schedule identifies which agencies and heads of agency to which this Act applies

Schedule 2

### **Implementation Monitor**

Clause 1

#### **Term of office**

This clause provides that the Monitor is appointed for a term not exceeding 5 years, and that they may be reappointed for further terms, up to 5 years per term.

Clause 2

#### **Remuneration and conditions of employment**

This clause provides the terms under which the Monitor is to be remunerated.

Subclause 1 specifies that the remunerations and allowances will be specified in the instrument of appointment, and that the Monitor will be an

employee for the purposes of the *Long Service Leave (State Employees) Act 1994*

Subclause 2 provides that the remuneration and allowances of the Monitor may not be reduced without the written agreement of the Monitor.

Subclause 3 stipulates that the remuneration and allowance payable of the Monitor will be paid out of the Public Account, thus creating reserved by law funding for the role.

Subclause 4 specifies that the Public Account is to be appropriated to the extent necessary under subclause 3.

Subclause 5 provides the Monitor is an employee for the purposes of the *Public Sector Superannuation Reform Act 2016*

Clause 3      **Vacation or suspension of office**

This clause provides the circumstances under which the office of the Monitor is vacated, and the circumstances under which the Monitor can be suspended or removed from the office.

Clause 4      **Defect does not invalidate appointment**

This clause provides that the appointment of a person to the role of the Monitor is not invalid if the only basis is a defect or irregularity in relation to the appointment.

Schedule 3      **Consequential amendments**

This schedule outlines existing legislation that will require amendments to give effect to this Act.