

## CLAUSE NOTES

### Commission for Children and Young People Bill 2025

#### PART 1 – PRELIMINARY

**Clause 1      Short title**

Specifies the name of the proposed Act.

**Clause 2      Commencement**

Provides for the provisions of the Act to commence on a day or days to be proclaimed. This allows different sections of the Act to commence at different times when implementing the Act.

**Clause 3      Interpretation**

Provides meanings for terms used in the Act. Definitions are provided for annual report, child, Child Advocate, Commission, Commissioner, Commissioner for Aboriginal Children and Young People, Commissioner for Children and Young People, Deputy Regulator, detention facility, facility resident, financial year, guardian, Independent Regulator, Joint Committee, Ombudsman, resident, State authority, statutory complaint authority, relevant United Nations Conventions, wellbeing, working day and young person.

The clause provides that the definition of out-of-home care is in section 4.

Some notable definitions are:

**child** means a person who is under 18 years of age.

**Commissioner** means each of the Commissioner for Children and Young People, the Child Advocate, and the Commissioner for Aboriginal Children and Young People.

**detention facility** includes a detention centre within the meaning of the *Youth Justice Act 1997*, a prison within the meaning of the *Corrections Act 1997*, where a child or young person may be detained or otherwise reside, a police office, police station or police vehicle where a child or young person may be detained, a court where a child or young person may be detained, and a place or class of places prescribed for the purposes of this section. **facility resident** means a child or young person, who is being detained, or held in remand, in a detention facility.

The intention is that ‘detention facility’ covers all facilities where a child or young person may be held in relation to youth justice, from a police transport vehicle, through to a watchhouse, to the court system and a custodial setting.

**young person** means a person who is between 15 and 20 years of age inclusive, who is the subject of proceedings or the recipient of services under the *Youth Justice Act 1997* or was such a subject or recipient before turning 18, or has been sentenced as an adult under the *Sentencing Act 1997* for a prescribed offence (within the meaning of the *Youth Justice Act 1997*) committed as a child, or was the subject of proceedings to which section 28(1) or (3) of the *Youth Justice Act 1997* applied before the person turned 18, or was in out-of-home care at any time between the ages 15 to 18 inclusive.

This gives the Commission jurisdiction to advocate, and undertake other functions, in relation to a particularly vulnerable cohort of young people between the ages of 15 and 20.

Subclause (2) provides that a reference to an Aboriginal child or young person is a reference to a child or young person who identifies as, or is recognised as, Aboriginal or Torres Strait Islander. This means that Aboriginal or Torres Strait Islander children or young people may self-identify to fall within the Commission’s scope. The reference to a child identifying as an Aboriginal or Torres Strait Islander person is drawn from the *Child and Youth Safe Organisations Act 2023*, sections 15 and 27(8).

The phrase ‘or is recognised as’ allows for cases such as recognition of a very young child or a person with disabilities who may not have the capacity to be able to self-identify. This is different from the definition in subclause (3).

Subclause (3) defines when a person is ‘known to be Aboriginal or Torres Strait Islander’. This applies to an adult person who is to be appointed as Commissioner for Aboriginal Children and Young People, as an Aboriginal or Torres Strait Islander selection panel member on the appointment panel for that position, as either the Commissioner for Children and Young People or the Deputy Independent Regulator (once the former and the Independent Regulator roles are held by one person), and as an independent visitor appointed to visit Aboriginal or Torres Strait Islander children and young people.

The subclause (3) definition reflects the same definition in, and operation of, the *Child and Youth Safe Organisations Act 2023*.

#### **Clause 4            Meaning of out-of-home care**

Provides that a person is in out-of-home care if the person is the subject of a current order or similar power as specified therein. The orders and powers listed come from the *Children, Young Persons and Their Families Act 1997* and the *Adoption Act 1988*. This captures children where the State has intervened in the care of that child. An ability to prescribe a class of persons is also included, this provides a mechanism to add to the definition if required through regulations. Such orders cease when a child turns 18. The Commission has functions including in relation to children in out-of-home-care, and young persons of 15-20 who were in out-of-home-care between the ages of 15-17 inclusive.

#### **Clause 5            Principles to be observed under this Act**

Provides the principles that a person performing a function or exercising a power under the Act is to apply. The paramount consideration is the wellbeing and best interests of children and young people.

Subclause 5(1)(b) provides a list of principles (i) – (v) that are also applied to the performance of the function or exercise of the power, including that the views of children and young people are to be taken into account when making decisions and that children and young people are to be protected from harm and exploitation.

Subclause (2) provides that for the purpose of determining the wellbeing and best interests of children and young people, these are reflected in, but are not limited to the rights and principles in the United Nations Convention on the Rights of the Child, the United Nations Declaration on the Rights of Indigenous Peoples and the United Nations Convention on the Rights of Persons with Disabilities and such other international conventions, declarations or other instruments in force in Australia that apply to, or have an impact on, children and young people.

Subclause (3) provides that in performing a function or exercising a power under the Act, a person is to comply with the provisions of the Act and any other relevant Act when applying the principles and is to take into account any relevant provisions of the United Nations Conventions and Declaration listed above.

#### **Clause 6            Application of Act**

Subclause (1) is an avoidance of doubt clause and provides that the Act is in addition to, and does not derogate from, any other Act relating to the functions and powers of the Commission or a Commissioner.

Subclause (2) confirms that nothing in the Act authorises a Commissioner to, in the person's capacity as Commissioner, perform or exercise a power under the *Child and Youth Safe Organisations Act 2023*, of the Independent Regulator.

The functions and powers under the *Child and Youth Safe Organisations Act 2023* can only be undertaken pursuant to that Act. The two legislative schemes will work alongside each other.

One person will be ultimately appointed as both Commissioner for Children and Young People and Head of Agency under the Act, and Independent Regulator under the *Child and Youth Safe Organisations Act 2023*. This will follow a transition period during which two different people may hold each of those roles and the Commission includes the Independent Regulator (see subclause 7(2)(b)). The Independent Regulator's functions and powers remain in the *Child and Youth Safe Organisations Act 2023*, as made clear by subclause 6(2).

## **PART 2 – COMMISSION FOR CHILDREN AND YOUNG PEOPLE**

### ***Division 1 – Commission for Children and Young People***

#### **Clause 7      Commission for Children and Young People established**

Establishes Commission for Children and Young People. The Commission includes the Commissioner for Children and Young People, the Child Advocate and the Commissioner for Aboriginal Children and Young People, appointed under the Act; and the Independent Regulator and the Deputy Regulator, if those offices are not held by a Commissioner.

The Commission also includes the staff and any persons appointed or made available to assist the Commission and each Commissioner.

Once all provisions in the Act commence, the Act will require that the person appointed to the position of the Commissioner for Children and Young People is also appointed as the Independent Regulator.

Subclause (3) provides that the Commission for Children and Young People is a body corporate with perpetual succession, may have a seal, may sue and be sued in its corporate name and is an instrumentality of the Crown. Subclause (4) provides requirements if the Commission has a seal.

#### **Clause 8      Functions of Commission**

Specifies the Commission's general functions, in addition to any other functions and powers under the Act, or any other Act.

The functions are set out in subclauses (a) – (m), and include making recommendations, advocating for children and young people on a systemic level, monitoring and reviewing the safety, wellbeing, care and treatment of children and young people in out-of-home care or the youth justice system, and promoting and upholding the rights of children and young people.

The functions include those of the Commissioner for Children and Young People pursuant to the *Commissioner for Children and Young People Act 2016* (which the Act repeals) and expanded functions as recommended by the Commission of Inquiry.

#### **Clause 9      Powers of Commission**

Provides that the Commission has the power to do all things necessary, or convenient, to perform its functions and exercise its powers under the Act or any other Act.

Subclause (2) provides for specific powers, including in relation to information, systemic inquiries and reviews, inspection of detention facilities, publishing reports and any other prescribed powers.

#### **Clause 10      Commissioners may use powers and functions of Commission**

Provides that each Commissioner may perform the functions and exercise the powers of the Commission. This means that each Commissioner can perform the functions and exercise the powers provided in clauses 8 and 9 and, unless otherwise specified, the other powers detailed in the Act.

Subclause (2) is an avoidance of doubt clause that provides that a Commissioner or the Commission is not prevented from performing a function or exercising a power that has been performed/exercised by another Commissioner. The intention is that each Commissioner has full independence to undertake functions and exercise the powers provided in the Act.

#### **Clause 11      Powers of certain Commissioners when acting as advocates**

Provides for additional functions when the Child Advocate or the Commissioner for Aboriginal Children and Young People are acting as an advocate for a child or young person, in accordance with the advocacy functions provided in clauses 13 or 14 respectively.

The additional functions include to listen to and give voice to the concerns and grievances of the child and young person and to facilitate the resolution of those concerns and grievances.

The clause provides that these Commissioners must, within reason, seek and take into account the views and wishes of the child or young person before asking another person a question about the child or young person or inspecting or taking extracts or copies of a document that relates to the child or young person. Their privacy must be preserved. The wishes of any other child or young person, who does not wish to communicate the Commissioner, must be respected.

Subclauses (2) and (3) provide that either Commissioner of these two Commissioners may apply to the Tasmanian Civil and Administrative Tribunal to be joined as a party to proceedings, in accordance with section 96 of the *Tasmanian Civil and Administrative Tribunal Act 2020*, if those proceedings relate to a relevant child or young person and are relevant to that Commissioner's functions and powers.

### ***Division 2 – Commissioners***

#### **Clause 12 Commissioner for Children and Young People**

Directs the Governor to appoint a person as the Commissioner for Children and Young People (CCYP). Schedule 1 applies to this appointment, and sets out requirements for the selection of all Commissioners.

The CCYP is to be the Head of Agency for the purposes of the *State Service Act 2000*. This means that the CCYP has obligations under the State Service Act, including promoting State Service Principles and ensuring the Commission is operated as effectively, efficiently and economically as practicable. However, subclause 15(2)(b) states that a Commissioner performing a function, or exercising a power under the Act is not subject to the *State Service Act 2000* in respect of that function or power.

Subclause (4) provides that the person appointed as the CCYP is, by virtue of holding that position, also appointed as the Independent Regulator for the purposes of the *Child and Youth Safe Organisations Act 2023*. This will achieve the Commission of Inquiry's recommendation that functions of the Independent Regulator and Deputy Independent Regulator under the Act are embedded within the new Commission for Children and Young People.

The provisions in the Act will commence by proclamation in stages, and subclause (4) will not commence immediately. This means that the positions of Commissioner for Children and Young People and Independent Regulator will not be held by the same person when the Commission is first established, but that is the 'end state', once all provisions have commenced.

Subclause (5) reflects and carries over the *Child and Youth Safe Organisations Act 2023* section 11(3) requirement that at least one of the persons appointed as Independent Regulator or Deputy Regulator is known to be Aboriginal or Torres Strait Islander. Subclause (6) states that this does not apply to the appointment of the CCYP if the office of Deputy Regulator is vacant at the time of the appointment.

### **Clause 13      Child Advocate**

Directs the Governor to appoint a person as the Child Advocate. The Child Advocate is to establish and administer an independent visitor scheme and an advisory group relating to out-of-home care.

The Child Advocate is to advocate for any individual child or young person, assist and support the making of a complaint to a statutory complaint authority or, with consent, make a complaint on behalf of a child or young person. The Child Advocate has functions and powers relating to children and young people in detention facilities or children in out-of-home care, including to inquire into services, make a complaint to a statutory complaint authority and uphold and promote rights.

Clause 11 applies when the Child Advocate is acting as an advocate.

Schedule 1 applies to the appointment of the Child Advocate, and sets out requirements and processes for the appointment.

### **Clause 14      Commissioner for Aboriginal Children and Young People**

Directs the Governor to appoint a person, who is known to be Aboriginal or Torres Strait Islander, as the Commissioner for Aboriginal Children and Young People.

The Commissioner for Aboriginal Children and Young People has functions and powers relating to any and all Aboriginal children and young people, including to advocate, to promote safety and wellbeing, uphold and promote rights and assist with the making of complaints to a statutory complaint authority, or make complaints as proxy with the child or young person's consent.

For Aboriginal Children and Aboriginal young people in detention facilities or out-of-home care, the Commissioner for Aboriginal Children and Young People will also monitor and investigate systemic issues into those services.

Clause 11 applies when the Commissioner for Aboriginal Children and Young People is acting as an advocate.

Schedule 1 applies to the appointment of the Commissioner for Aboriginal Children and Young People, and sets out requirements and

processes for the appointment. This includes that the majority of members of the selection panel must be known to be Aboriginal or Torres Strait Islander (cl 3(3)) and the majority of children and young people on the panel of children and young people must be Aboriginal or Torres Strait Islander (cl 3(2)).

**Clause 15      Commission and Commissioners not subject to direction or control**

Provides the Commission and each Commissioner is not subject to the direction or control of the Minister, or any Minister, in respect of the performance of a function, or exercise of a power, under the Act.

When performing a function, or exercising a power, as the Commissioner under the Act, a Commissioner is not subject to the direction or control of any other Commissioner; and is not subject to the *State Service Act 2000* in respect of that function or power.

For example, the Commissioner for Children and Young People is Head of Agency for the purposes of the *State Service Act 2000*, but no Commissioner is subject to the State Service Act when exercising a power under the Act.

Unless otherwise specified in this Act or any other Act, the Commission and each Commissioner must act independently, impartially and in the public interest when performing a function or exercising a power.

This clause legislates the independence of the Commission and each Commissioner.

**Clause 16      Acting Commissioners**

Provides that the Governor may appoint a person to act as a Commissioner, for a maximum term of 6 months. This can occur if the office of Commissioner is vacant or the Commissioner is absent from, or unable to perform, the functions or exercise the powers of the office. This can only happen if the Commissioner did not already delegate the functions and powers during that period (under clause 19), and the Governor is satisfied that the person is appropriate to hold the office of Commissioner for that period.

Subclause (2) sets out the requirements for the appointment of a person as an Acting Commissioner, including notification in the *Gazette* and circumstances for revocation of the appointment.

Subclause (3) is an avoidance of doubt provision to make it clear that a person appointed as an Acting Commissioner is taken to be the Commissioner for that period.



### ***Division 3 – Functions and powers generally***

#### **Clause 17 Powers of Commission, or Commissioner, when performing function or exercising power**

Provides that in performing a function, or exercising a power, under this Act, the Commission and each Commissioner may seek such information, and be informed in such manner, as the Commission or Commissioner considers appropriate; may regulate the proceedings of any investigation, review or inquiry held by the Commission or Commissioner in such manner as the Commission or Commissioner considers appropriate; and may hold an investigation, review or inquiry in public or in private. The Commission and each Commissioner is not bound by the rules of evidence.

#### **Clause 18 Certain matters not within the jurisdiction of the Commission**

This clause sets out limitations on the Commission's jurisdiction regarding investigations and reviews in subclause (1), but confirms others actions it may take, in subclauses (2) and (3).

Formal inquiries are dealt with separately, in Part 3.

Subclause (1) provides that unless otherwise specified in the Act or another Act, the Commission and Commissioners do not have the authority to investigate or review certain matters. Ousted matters are a specific decision made in respect of, or specific complaint relating to, an individual case or specific circumstances; information or a document subject to a lawful claim or right of privilege and, in particular circumstances, the application of the systems, policies and practices of the Director of Public Prosecutions, the Police Service and Tasmanian Legal Aid.

Subclause (2) clarifies that nothing prevents the Commission or a Commissioner from providing a child, young person or support person with information about relevant government and non-government programs or services that may be relevant; referring a child, young person or support person to such a program or service; or investigating or reviewing a systemic matter that affects children or young people generally as a result of a matter raised in respect of an individual child or individual young person.

Subclause (3) confirms that only the Child Advocate and Commissioner for Aboriginal Children and Young People can advocate for an individual child or individual young person.

#### **Clause 19 Commission and Commissioners may delegate certain functions and powers**

Provides that the Commission or a Commissioner may delegate a function or power of the Commission, or a Commissioner. However, the power of delegation itself cannot be delegated.

**Clause 20      Functions and powers must be delegated in certain circumstances**

This clause sets out the process for managing conflicts of interest within the Commission. It provides that if the Commission is satisfied that a function or power under the Act is unable to be performed or exercised by a specific Commissioner without a conflict of interest being present, the Commission may authorise another Commissioner, if appropriate, to perform that function or exercise that power.

Subclause (2) provides a function or power delegated under subsection (1) is taken to have been performed by the delegate as if the delegate were the person with the authority to perform the function or exercise the power; and may only be performed by the delegate while the delegator has the conflict of interest which has resulted in the function or power being so delegated.

**Clause 21      Certain interactions under this Act may be refused**

Provides that nothing in the Act requires a child or young person to talk to or interact with a Commissioner, or a visitor under the independent visitor scheme, if the child or young person does not wish to do so.

In relation to access to a resident of a detention facility under Division 4 who is not a child or young person, the Act does not require that resident to talk to or interact with a Commissioner if the resident does not wish to do so. This covers a parent caring for a child in the facility.

If a resident of a detention facility (that is a child or young person in a detention facility) does not wish to talk or interact with a Commissioner under Division 4, the resident must personally inform the Commissioner of that refusal.

***Division 4 - Powers of entry and inspection of certain facilities***

**Clause 22      Inspection of detention facilities**

Provides that a Commissioner can access, inspect and review a detention facility. This implements Commission of Inquiry recommendation 12.38(b) that the Commission has the power to enter adult prison facilities to visit children and young people in those facilities to monitor their safety and wellbeing.

These inspections can occur at any time during the ordinary business hours of the detention facility or as agreed with the person in charge of

the detention facility. They can occur on as many occasions as the Commissioner considers reasonable, with or without notice and with any assistance the Commissioner considers reasonably necessary. Photographs, files or audio or visual recordings can be taken.

The clause provides notice requirements regarding proposed inspections. It permits publication of a schedule of intended visits.

Despite the fact that an inspection can occur without notice, a Commissioner is to give notice if the inspection is planned, a reasonable period of notice is able to be provided and the Commissioner is satisfied that giving a reasonable period of notice would not defeat the purpose for which the Commissioner intends to use the power. This is appropriate given that the Commission is a systemic oversight body rather than an investigative one.

A person in charge of a detention facility must not unreasonably refuse a Commissioner access to the detention facility. A maximum fine of 100 penalty units applies.

This clause does not limit the statutory obligations or powers of the Custodial Inspector or the Tasmanian National Preventive Mechanism to undertake inspections of custodial centres or places of detention under other legislation.

#### **Clause 23      Access to certain persons**

Provides that a Commissioner is entitled to have access to residents of a detention facility at all times if the resident is a child or young person or has care or charge of a child while in the detention facility; the purposes being to monitor the safety and wellbeing of the resident. The latter reference ensures Commissioners can visit a parent who has care of a child while in the detention facility, so that the Commissioner can monitor the safety and wellbeing of the child.

Subclause (2) creates an offence for certain obstructive behaviours committed by a person in charge of a detention facility, each member of staff, and each person providing services, at a detention facility. A Commissioner must be allowed to privately interview a resident and an interpreter must be allowed to attend if required. Those staff must not read, copy or remove any written correspondence between a Commissioner or the Commission and a resident without the resident's approval.

#### **Clause 24      Commission to issue identity cards**

Provides for the issuing of identity cards. This is so Commissioners and Commission staff are identifiable when visiting a detention facility.

There is a penalty provision regarding breaching the requirement to return the identity card if the person ceases to be part of the Commission.

### ***Division 5 – Administration of Commission***

#### **Clause 25      Annual plan**

Provides that before 30 June in any calendar year, the Commission is to prepare a plan for the next financial year that is to describe the proposed program of work and activities for the year intended to be undertaken by the Commission and each Commissioner. This is required to be published as part of the annual report.

#### **Clause 26      Annual reports and other reports**

Provides that within 4 months after the end of each financial year, the Commission must prepare a report on the activities of the Commission, and each Commissioner, during that financial year.

Subclause (2) sets out what an annual report is to contain, including a summary of inquiries undertaken and a list of reports published.

Subclause (3) requires the annual report to be tabled in each House of Parliament. This is to occur on or before 31 October each year.

Subclause (4) sets out alternative requirements for tabling where the House of Parliament is not sitting and subclause (3) cannot be complied with.

Subclause (5) provides that the Commission may at any time provide to the Minister, or table in Parliament, a report on any matter arising in connection with the performance of the functions, or the exercise of the powers, of the Commission or a Commissioner under this Act; or any matter that is within the jurisdiction of the Commission or a Commissioner. The Commission can also provide such a report to the Joint Committee on specified matters. Further, it can at any time, publish a report on a matter relating to children or young people, or a specific class of children or young people, within the State.

This provides an avenue for Commissioners, and the Commission, to table reports in Parliament at any time, on any matter related to their functions.

#### **Clause 27      Adverse comments in reports**

Provides the process that is to be followed if a comment in a report is adverse to a person, which includes a Secretary of a Department or a Minister. This provides procedural fairness.

**Clause 28      Publication of reports**

Provides that the Commission can publish a report in any manner it considers appropriate, and must publish a version, or parts of the report, in a format that is suitable for children, unless it considers that it is not appropriate to do so.

Subclause (2) provides that if the Commission intends to table a report in Parliament, the Commission is to table the report before it is published.

**Clause 29      Minister to receive copy of reports in certain circumstances**

Subclause (1) provides that if the Minister requests the Commission to conduct an inquiry, the Commission is to provide the Minister with a draft of any report prepared in respect of the inquiry (if it chooses to conduct the inquiry – see clause 34).

Subclauses (2) and (3) provide the process that occurs once the Minister has received a draft report under subsection (1).

Subclause (4) is an avoidance of doubt clause to clarify the effect of any comments or feedback of the Minister.

***Division 6 – Visitor schemes, committees and advisory groups***

**Clause 30      Independent visitor scheme**

Directs the Child Advocate to establish an independent visitor scheme, where independent persons visit children and young people in a detention facility, in out-of-home care and in other prescribed facilities.

In establishing the independent visitor scheme, the Child Advocate is to ensure that Aboriginal children and young people have access to independent visitors who are known to be Aboriginal or Torres Strait Islanders, and is to consult with the Commissioner for Aboriginal Children and Young People in relation to how the scheme applies to Aboriginal children and young people.

The Child Advocate and Commissioner for Aboriginal Children can appoint independent visitors.

Each Commissioner is taken to be an independent visitor. However, a visit by a Commissioner is only a visit under the independent visitor scheme if the visit is for a prescribed purpose. This is because a Commissioner may visit a child or young person for a different purpose, such as when inspecting a detention facility pursuant to Division 4 of Part 2.

Subclause (5) sets out aspects of the scheme that may be prescribed through regulations, including the frequency of visits, the manner of appointment and the functions and powers of independent visitors, and applicable requirements and expectations. This will enable the Child Advocate to contribute to the design of the independent visitor scheme, with appropriate consultation.

#### **Clause 31      Committees and advisory groups**

Subclause (1) provides that the Children and Young People Advisory Council and the Children and Young People Consultative Council, established under the *Commissioner for Children and Young People Act 2016*, are continued as a committee under the new Act.

Subclause (2) provides that the Child Advocate is to establish an advisory group in relation to children in out-of-home care. Subclause (3) provides that the Commissioner for Aboriginal Children and Young People is to establish an advisory group in relation to Aboriginal children and young people.

Subclause (4) provides a Commissioner may establish such other committees or advisory groups as the Commissioner considers appropriate to assist the Commission or advise a Commissioner, relating to functions and powers under the Act.

The terms of reference, meetings and procedures of a committee or advisory group are to be determined by the Commissioner who establishes the committee or advisory group, or as set out in Schedule 3. The Commissioner may consult with the committee or advisory group in respect of the proposed terms of reference.

### **PART 3 – COMMISSION INQUIRIES**

The Act references inquiries in both formal and informal contexts. Subclauses 8(d) and 9(2)(c) use the term in a general, informal context in which the Commission can ask questions about, and enquire into, a relevant issue. These occur outside of the specific inquiry powers contained in Part 3.

Part 3 gives the Commission the power to conduct formal inquiries under that Part. The powers and protections in clause 36 in Part 3 apply to inquiries under Part 3 but not to those other, informal inquiries.

#### **Clause 32      Interpretation of Part**

Provides that in Part 3, **reviewable process** means a service, system, policy or practice referred to in section 33(1).

### **Clause 33      Power to conduct inquiries**

Subclause (1) provides that the Commission may conduct an inquiry into a reviewable process, being services, systems, policies or practices of an organisation or agency, government or non-government, that provides services that affect children or young people. The provision includes a non-exhaustive list of services the Commission may inquire into.

Subclause (2) provides that an inquiry under the Act may be conducted at the request of the Minister or a Commissioner or alternatively, on the initiative of the Commission as a whole or a specific Commissioner.

Subclause (3) sets out the permissible scope and foundation of an own-motion inquiry.

Such an inquiry must relate to a reviewable process provided in respect of all, or a specified class of, children and young people. It may not inquire into specific decisions, complaints, or circumstances regarding an individual child or young person. However, it can investigate or review a systemic matter that arises as a result of a matter raised about an individual. It can also hold an inquiry into a matter raised in respect of an individual, if that is commenced by the Child Advocate or Commissioner for Aboriginal Children and Young People.

Subclause (4) confirms an inquiry may not make recommendations in respect of a specific decision made in respect of, or a specific case of circumstances relating to, an individual.

### **Clause 34      Minister may request inquiries**

Provides that the Minister may request that the Commission undertake an inquiry. The Commission is not required to comply with that request.

The request may authorise the Commission to conduct an inquiry that is outside its jurisdiction (and that request is taken to be within jurisdiction of the Commission for the purpose of the inquiry). However, the Minister may not set the specific terms of the inquiry, state what is, or is not, to be considered by the Commission as part of the inquiry or otherwise specify how the inquiry is to be conducted.

A request of the Minister under this section does not affect the impartiality of the Commission, or a Commissioner, to determine the procedure or process for any inquiry.

### **Clause 35      Commission to notify Minister of inquiries**

Provides that if the Commission intends to conduct an inquiry under Part 3, it is to notify the Minister or if the inquiry involves, or is likely to

involve, a matter or reviewable process that is the responsibility of another Minister, the other Minister, before conducting the inquiry.

**Clause 36      Inquiries**

Provides that the Commission may determine the format, and procedures, of an inquiry and may regulate any proceedings held under the Act in any manner it considers appropriate. The Commission has the power to maintain order at any hearing or proceeding conducted by the Commission as part of an inquiry.

Subclause (3) protects information given by a person to a hearing, or proceeding, so that information can't be disclosed as part of legal proceedings, other than proceedings against the person under the Act.

Subclause (4) provides that as part of an inquiry under Part 3, nothing requires the Commission to hold a hearing or other proceedings, accept information offered to it or permit a person to appear at a hearing or other proceeding.

**PART 4 – JOINT STANDING COMMITTEE**

**Clause 37      Joint Standing Committee on the Commission for Children and Young People**

Subclause (1) establishes the Joint Standing Committee on the Commission for Children and Young People.

Subclause (2) provides for the membership of the Joint Committee. It must consist at least 6 but not more than 8 Members of Parliament. Half are to be Members of the Legislative Council and half are to be Members of the House of Assembly.

The members of the Joint Committee are to include at least one representative of each political party that has 3 or more members in the House of Assembly.

The Joint Committee is to be appointed at the commencement of the first session of each Parliament according to the practice regulating the appointment of Members of Parliament to serve on select committees.

Part 1 of Schedule 2 sets out requirements in relation to the membership of the Joint Committee, and Part 2 of Schedule 2 sets out the proceedings of the Joint Committee. This includes that the Committee can summon witnesses, including Commissioners, to appear before it to give evidence and produce documents.

**Clause 38      Functions and powers of Joint Committee**



Provides for the functions and powers of the Joint Committee, as set out in subparagraphs (a) to (f). This includes to monitor and review the performance of the functions of the Commission, and each Commissioner, and to report to Parliament on relevant matters.

The Joint Committee is to undertake a three-year review which may recommend amendments to the Act.

This model is based on the oversight function provided by the Joint Standing Committee on Integrity.

Subclause (2) specifies areas where the Joint Committee does not have authority. Subclause (3) is an avoidance of doubt clause to further clarify the role of the Joint Committee.

#### **Clause 39      Joint Committee to report to Parliament**

Directs the Joint Committee to report to Parliament by way of a report tabled in Parliament. This is to occur by 30 November each year, unless Parliament is not sitting, in which case a copy of the report is to be provided by that date to the Clerk of the relevant House of Parliament. Subclauses (3) and (4) provide further procedural matters relating to the tabling of the report in Parliament.

### **PART 5 – INFORMATION MANAGEMENT**

#### **Clause 40      Interpretation of Part**

Provides for definitions that are relevant to Part 5.

**Government entity** means an information-sharing entity and a Community-Based Intake Service within the meaning of the *Children, Young Persons and Their Families Act 1997* and a Minister or a Secretary of a department.

**identifying information** means information in relation to a person that contains details that identify the person or enable the identity of the person to be ascertained or discovered.

**relevant authority** means the Commission and each Commissioner, the Police Service and statutory appointments with investigative and/or complaint-handling functions being the Independent Regulator and Deputy Regulator, the Integrity Commission, the Ombudsman, the Registrar within the meaning of the *Registration to Work with Vulnerable People Act 2013*, the Custodial Inspector, the National Preventive Mechanism, the Anti-Discrimination Commissioner, the Disability Commissioner, the Health Complaints Commissioner; and any other prescribed person or entity.

**Clause 41      Identity of children and young people protected**

Mandates an overarching principle that the Commission protect, as far as practicable, the identity of the child or young person. This may include redacting identifying information, for example.

This principle is one of the ways that the Act protects personal information.

**Clause 42      Powers of Commissioners in relation to information**

Provides the powers that a Commissioner has in relation to information. A Commissioner may, subject to the other provisions in Part 5, obtain information, make a copy or record of information, disclosure and otherwise use information under the Act.

Subclause (2) provides that a Commissioner may only take an action under Part 5 in respect of information obtained under the Act if the action is taken for one or more of the following purposes:

- a purpose or function of the Commissioner under the Act;
- if the Commissioner is providing the information to another Commissioner under the Act, a purpose or function of that other Commissioner.
- to protect and promote the safety and wellbeing of children and young people;
- to examine matters in relation to the safety and wellbeing of children and young people;
- to share information with, or to receive information from, other jurisdictions for the purpose of analysing and publishing data in relation to a function or power of the Commissioner under the Act; or
- a prescribed purpose.

This clause sets out the purposes for which the Commission can obtain and use information, and the required link to a purpose or function of the Act. This provides important safeguards around the use of personal information.

A Commissioner can share information with another Commissioner where it is for a purpose or function of the other Commissioner under the Act. Commissioners can share information with other Commissioners so that information is not unnecessarily 'siloed', where doing so may lead to adverse outcomes for children and young people.

**Clause 43      Information may be volunteered to Commission**

Provides that a person including a Government entity may provide to the Commission or a Commissioner information relating to a child or young person if it is lawful for the person or entity to do so. This can be done on their own initiative.

To the extent that the person has acted in good faith in providing information under this clause, no civil or criminal liability is incurred in respect of providing the information.

This provides an avenue for relevant information to be provided to the Commission. This may permit the disclosure of identifying information if it is lawful, for example if the person or Government entity have the consent of the person identified.

#### **Clause 44      Power to request information**

Provides that the Commission or a Commissioner may request a person – which includes a Government entity or a relevant authority - to provide information, answer questions and produce documents. Such a request may include a request for identifying information.

This is not a coercive power, and the recipient of such a request is not legally required to provide the information. It is expected that the Commission and Commissioners would generally use this option in the first instance when seeking information.

#### **Clause 45      Power to compel information**

Provides a coercive power by which the Commission or a Commissioner may require information, answers to questions or the production of documents. This relates to information held by a person or a Government entity but does not apply to a relevant authority.

This means the Commission or a Commissioner can not compel information from a relevant authority (such as the Ombudsman), but can request information from that authority under clause 44, and the relevant authority may also provide information pursuant to clause 43. Information can therefore be compelled from a Government Department.

A requirement for information under this section is to be made via written notice. Subclause (2) provides the details that need to be included in the written notice.

Identifying information may only be required if, first, the Commission or Commissioner specifically requests it. Second, the Commission or Commissioner must have the consent of the person identified or must be unable to, or believe it impracticable to, request or compel it with the identifying information redacted (including from another source).

Subclause (4) makes non-compliance an offence unless one of the stipulated exceptions applies. A person or Government entity can refuse to comply where there is a lawful claim or right of privilege; the information contains information communicated to a medical professional in confidence relating to the physical or psychological health of a person; it may prejudice or compromise legal proceedings; or may incriminate the person or Government entity in an offence.

The Magistrates Court may also make an order requiring the person or Government entity to comply, in addition to any penalty imposed.

Subclause (6) is an avoidance of doubt provision to clarify that information can be requested from a State Service Agency database, provided doing so would not breach a national or international agreement or the information can be provided in a manner that does not identify a child or young person who is, or has been, a resident of another State.

#### **Clause 46      Commission may refuse to disclose information**

Provides that unless otherwise specified, the Commission or a Commissioner can disclose or refer information provided to the Commission or Commissioner to a relevant authority or Government entity. This can occur if the Commission or Commissioner is satisfied that it is both appropriate and lawful in the circumstances.

Subclause (2) protects a current or former Commission from being compelled to disclose information disclosed or obtained by the Commissioner under the Act, in court or similar proceedings.

Subclause (3) is an avoidance of doubt provision that makes it clear the Commission can disclose information obtained in the performance of its functions or the exercise of its powers if it reasonably believes that the disclosure of the information is necessary to prevent or reduce a serious threat to any person's health, safety or welfare, or to public health and safety generally, or to enable allegations of misconduct or criminal behaviour to be investigated, and the Commission is satisfied on reasonable grounds that the information is being disclosed to an appropriate person or entity to prevent or reduce the threat, or to investigate the allegations.

This would allow the Commission to share information urgently with the police to enable allegations to be investigated, for example.

#### **Clause 47      Confidentiality of information**

Clause 47 creates an offence provision. It provides a general requirement that a person who is or has been engaged in the

performance of a function or exercise of a power under the Act must not record, dispose of or make use of information obtained in the course of performing the function or exercising the power except in specified circumstances. This covers all current and former staff of the Commission.

The permitted exemptions are where the disclosure is for the purposes of, or in connection with, performing functions, or exercising powers, under the Act or any other Act; when the information was obtained from a public source; with the written consent of the person to whom the information relates (and if the person to whom the information relates is a child, the child or child's guardian); if the person reasonably believes that the use, or disclosure, of the information is necessary to prevent or reduce a serious threat to an individual's health, safety or welfare or a serious threat to public health or public safety; to enable allegations of misconduct or criminal behaviour to be investigated or in other prescribed circumstances.

The confidentiality requirement does not apply to the disclosure of statistical or other information that could not reasonably be expected to identify a person.

If information collected under the Act is lawfully disclosed, the information can be further disclosed for the purpose for which the disclosure was made.

#### **Clause 48      Exemption from *Personal Information Protection Act 2004***

Provides that a personal information custodian, within the meaning of the *Personal Information Protection Act 2004*, is not taken to have contravened that Act by reason of collecting, using, disclosing or otherwise dealing with information in accordance with the Act. The Act makes the Commission a personal information custodian under the *Personal Information Protection Act 2004* (by virtue of making it a public authority, being an Agency under the *State Service Act 2000*).

This will allow the Personal Information protection principles in the *Personal Information Protection Act 2004* to apply to the Commission to the extent that they do not conflict with the information management provisions in the Act. It reflects the approach taken in the *Custodial Inspector Act 2016* and the *OPCAT Implementation Act 2021*.

### **PART 6 - MISCELLANEOUS**

#### **Clause 49      Commission to avoid concurrent investigations**

Directs the Commission to avoid concurrent work on the same matters as other bodies, where appropriate. Subclause (1) provides that in

conducting an investigation or inquiry under the Act, the Commission is to liaise with other relevant statutory authorities, statutory officers and official bodies, to prevent, if appropriate, duplicate inquiries or investigations and where separate inquiries or investigations are conducted, to facilitate the coordination and resourcing.

Subclause (2) provides that if the Commission, or a Commissioner, becomes aware that a child or young person has sought assistance from another statutory authority, statutory officer or official body in respect of a matter, the Commission or Commissioner is to take all reasonable steps to avoid unnecessary duplication of assistance to the child, or young person, in respect of the matter and facilitate the provision of support and assistance to the child or young person.

The Commission will therefore work with other statutory authorities on matters where there may be shared jurisdiction. The Act supports a 'no wrong door' approach while ensuring that matters are managed by the most appropriate authority. This is particularly important in a small jurisdiction. However, this provision does not prevent outright multiple authorities from each undertaking an inquiry.

#### **Clause 50      Offences**

Provides that a person must not obstruct or hinder a person who is performing a function or exercising a power under the Act.

A person must not threaten or attempt to intimidate or influence a person who is performing a function or exercising a power under the Act.

This is a general offence provision with a maximum penalty of 100 penalty units.

#### **Clause 51      Protection from reprisal**

Provides protection from reprisals where a person has provided or may provide information under the Act. The information may be true or false, but must be provided in good faith.

This is an offence provision. A maximum penalty of 100 penalty units applies.

#### **Clause 52      Protection from liability**

Provides protection for Commissioners and any other person performing a function or exercising a power under the Act from personal liability, civil or criminal, in respect of any act done or omitted to be done in good faith. This applies to acts done or omitted in the performance or exercise, or purported performance or exercise, of that

function or power or while complying with a requirement or request made, or purportedly made, under the Act.

The protection from liability also applies to a person disclosing information under Part 5, where the disclosure is in good faith.

Subclause (3) is an avoidance of doubt clause on the meaning of “personal liability” in the provision. It includes a breach of a code of professional conduct or ethics, a departure from any accepted standards of professional conduct or ethics and a professional or ethical sanction or other disciplinary proceeding.

The protections in this section apply to information obtained in accordance with Acts listed in subparagraphs (4)(a) – (h). These Acts establish statutory officers that the Commission may seek information from as “relevant authorities”, and conversely, where information may be volunteered to the Commission pursuant to clause 43.

### **Clause 53      Regulations**

Provides that the Governor may make regulations for the purposes of the Act.

Subclause (2) does not limit the generality of the regulation making power but provides examples of matters that regulations may provide for. This includes the conduct of reviews and other proceedings held under the Act.

Subclauses (3) and (4) provide other aspects that regulations may authorise or adopt.

### **Clause 54      Administration of Act**

Provides that until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* the administration of the Act is assigned to the Minister for Justice and the department responsible to that Minister in relation to the administration of the Act is the Department of Justice.

### **Clause 55      Review of Act**

Provides for a statutory five-year review of the Act, following the first appointment of a Commissioner under the Act.

The review is to be completed, and a copy tabled in Parliament, within 6 years. The review is to be completed, reported on and tabled within 12 months.

### **Clause 56      Savings and transitional provisions**

Provides that the savings and transitional provisions specified in Schedule 4 have effect.

**Clause 57      Consequential amendments**

Provides that the legislation specified in Schedule 5 is amended as specified in that Schedule.

**Clause 58      Legislation repealed**

Provides that the legislation specified in Schedule 6 is repealed.

**Clause 59      Legislation revoked**

Provides the legislation specified in Schedule 7 is revoked.

**SCHEDULE 1 – APPOINTMENT OF COMMISSIONERS**

**Clause 1      Selection of Commissioners**

Provides for the process of selecting Commissioners. The requirements implement Commission of Inquiry recommendation 18.7 for how Commissioners should be appointed.

This includes that the views and opinions of a panel of children and young people are sought and taken into account as part of the selection process and when determining the best process to select the Commissioner.

When selecting a person to appoint as the Commissioner for Aboriginal Children and Young People, the majority of the members of the selection panel must be known to be Aboriginal or Torres Strait Islander and the majority of the children and young people on the panel which has input into the selection process must be Aboriginal children or Aboriginal young people.

Before making a recommendation to the Governor in respect of the appointment of a Commissioner, the Minister is to consult with at least one representative of each political party that has two or more sitting members in Parliament at that time.

**Clause 2      Eligibility of members**

Provides requirements that the Minister is to be satisfied with in order to recommend to the Governor a person to be appointed as a Commissioner.

This includes that the Minister is satisfied that the person is a fit and proper person to hold the position and has relevant experience, knowledge or qualifications to ensure that the person is a suitable



person to perform the functions and exercise the powers of the specific Commissioner.

**Clause 3      Duration of appointment**

Provides that a Commissioner can be appointed for a term up to 5 years, and this is to be specified in the instrument of appointment.

A person who has been appointed as a Commissioner may be reappointed to that position for one further term of up to 5 years.

**Clause 4      Terms and conditions of appointment generally**

Provides that a Commissioner holds office on such terms and conditions as are specified in the relevant instrument of appointment. This means that details of the appointment will be contained in the instrument of appointment, which is the usual manner for statutory appointments.

Subclause (2) provides that a Commissioner must not hold any other office of profit, or trust, or engage in paid employment outside the duties of that office, except as authorised by the Governor.

**Clause 5**

**Commissioner for Children and Young People may act as other Commissioners in certain circumstances**

Provides that if at any time there is no person appointed as, or acting as, the Child Advocate and the Commissioner for Aboriginal Children and Young People, the Commissioner for Children and Young People (CCYP) may perform all the functions and exercise all the powers of the Commission under the Act.

However, there is a qualification: in performing those functions and exercising those powers, the CCYP may not examine, investigate or review a specific decision made in respect of an individual case or specific circumstance.

**Clause 6      Remuneration**

Provides that remuneration and allowances payable to a Commissioner are specified in the instrument of appointment for that member, or as otherwise determined by the Governor.

A Commissioner is an employee for the purposes of the *Public Sector Superannuation Reform Act 2016*.

**Clause 7      Vacation of office**

Provides for when a Commissioner is taken to vacate that office.

This includes that the person is absent for an extended period of time without reasonable excuse, becomes bankrupt, is convicted of a crime or offence punishable by imprisonment for a term of 12 months or longer (this covers all crimes in the *Criminal Code Act 1924*), is in the opinion of the Governor unable to perform adequately or competently the duties, or has neglected to perform them, is guilty of conduct of such a nature that the Governor forms the opinion that the person is unsuitable to continue to hold the office of Commissioner. The use of the word 'guilty' means that the Governor is satisfied that the conduct occurred. In some cases, it is the failure to do something that means the person is guilty of unsuitable conduct.

Subclause 2 provides that a person appointed as Commissioner for Children and Young People is taken to vacate that office if the person ceases to be appointed as the Independent Regulator under the *Child and Youth Safe Organisations Act 2023*. This is because once all the provisions are proclaimed, the Act provides that the person appointed as the Commissioner for Children and Young People is taken to be the Independent Regulator, so if that person ceases to be the Independent Regulator, they will by virtue of that cease to be the Commissioner for Children and Young People as well.

**Clause 8      Defect does not invalidate appointment**

Provides that an appointment of a person as a Commissioner is not invalid solely on the basis that there is a defect or irregularity, in relation to that appointment.

**SCHEDULE 2 – JOINT COMMITTEE**

**PART 1 – MEMBERSHIP OF JOINT COMMITTEE**

**Clause 1      Vacancies**

Provides for what is to occur if there is a vacancy in the membership of the Joint Committee, including if a vacancy occurs while Parliament is not in session.

**Clause 2      Resignations**

Provides for how a member of the Joint Committee can resign, which is by writing to the presiding officer of the relevant House of Parliament.

**Clause 3      Chairperson of Joint Committee**

Provides that there is to be a chairperson and a vice-chairperson of the Joint Committee. These are to be elected by the members of the Joint

Committee at the first meeting of the Joint Committee, or as soon as practicable after that first meeting.

**Clause 4      Secretary of Joint Committee**

Provides that the President of the Legislative Council and the Speaker of the House of Assembly, jointly, are to appoint an officer of one of the Houses of Parliament to be secretary of the Joint Committee.

**Clause 5      Membership of Joint Committee is not an office of profit**

Provides certainty that membership of the Joint Committee does not mean that the member cannot sit or vote as a member of either House of Parliament or void the election of the holder of the officer as a member of either House of Parliament.

**PART 2 – PROCEEDINGS OF JOINT COMMITTEE**

**Clause 1      Proceedings of Joint Committee**

Provides for the proceedings of the Joint Committee. A quorum of the Joint Committee is at least half of the total number of members of the Joint Committee but may not be made up exclusively of members of one House of Parliament.

Subclause (2) provides that the chairperson of the Joint Committee or vice-chairperson of the Joint Committee is to preside at all meetings of the Joint Committee at which the chairperson is present.

Where there is a quorum but the chairperson and voice-chairperson are absent, the members in attendance may appoint one of their number present to be the temporary chairperson of the Joint Committee, and is to have all the powers of the chairperson of the Joint Committee.

The Joint Committee is to keep minutes of its meetings and proceedings.

The Joint Committee may sit and transact business during any adjournment or recess and sit at such time and in such places, and conduct its proceedings in such manner, as it thinks fit.

**Clause 2      Voting at meetings of Joint Committee**

Provides that a chair has a vote like other members and does not have a deciding vote in the case of a split/equal vote. When the votes on a question are equal, the question passes in the negative.

If a division is called for on any question, the names of the members voting are to be stated in the minutes and in the report of the Joint

Committee. A question is decided by the majority of votes of members voting.

### **Clause 3      Evidence before Joint Committee**

Provides for how the Joint Committee takes evidence. The Joint Committee may summon witnesses to appear before it to give evidence and to produce documents, and for that purpose has all the power and authority of a Select Committee of the House of Assembly.

A witness who is summoned to appear, or who appears, before the Joint Committee has the same protection and privileges as a witness in an action tried in the Supreme Court.

Except where it considers that there is good and sufficient reason to take evidence in private, all evidence is to be taken by the Joint Committee in public.

In deciding to take evidence in private, the Joint Committee may seek advice from the Commission.

When requested by a witness the Joint Committee must take in private any evidence that, in the opinion of the Joint Committee, relates to a secret or confidential matter.

The Joint Committee may, in its discretion, disclose or publish, or authorise the disclosure or publication of, evidence taken in private. This is subject to subclause (7) which provides that if evidence is taken in private that the Joint Committee considers relates to a secret or confidential matter and the witness requests that that evidence not be published, the Joint Committee must not, without the written consent of the witness, disclose or publish or authorise the disclosure or publication of that evidence, unless it has already been lawfully published.

If evidence is taken by the Joint Committee in private, no person (whether a member of the Joint Committee or not) may, without the authority of the Joint Committee given in writing by the chairperson of the Joint Committee, disclose or publish that evidence unless it has already been lawfully published.

Any person who discloses or publishes any evidence contrary to the provisions of this clause is guilty of an offence. A fine not exceeding 5 000 penalty units or imprisonment for a term not exceeding one year applies.

Sections 2A and 2B of the *Parliamentary Privilege Act 1858* apply to any matter being examined by the Joint Committee under this Act. These sections relate to examination of witnesses and provide that

meetings can be held by electronic communication, so that all members of the committee do not need to be present in the same place.

**Clause 4            Continuation of proceedings**

Provides that the Joint Committee can consider evidence considered at a prior time, even when it is constituted differently.

**Clause 5            Witnesses' expenses**

A witness who appears before the Joint Committee to give evidence is entitled to be paid such fees and travelling expenses as the chairperson or vice-chairperson of the Joint Committee sees fit to allow, being fees and travelling expenses calculated in accordance with the scale for the time being prescribed under section 27 of the *Public Works Committee Act 1914*.

**SCHEDULE 3 – COMMITTEES AND ADVISORY GROUPS**

**Clause 1            Interpretation of Schedule**

Provides that in Schedule 3, ***relevant Commissioner*** in relation to a committee or advisory group continued or established under the Act, means in the case of a committee continued under section 31(1) – the Commissioner for Children and Young People and in any other case, the Commissioner who established the committee or advisory group.

**Clause 2            Membership generally**

Provides that a committee continued under section 31(1), and a committee or advisory group established by a Commissioner under section 31(4) is to consist of at least 5 persons.

The relevant Commissioner is to appoint the chairperson of a committee or advisory group.

**Clause 3            Children and Young People Advisory Council**

Provides that in appointing the members of the Children and Young People Advisory Council, the Commissioner for Children and Young People must have regard to the desirability of having as members persons with a range of experiences and backgrounds. The clause provides a non-exhaustive list of considerations including from groups which represent the diverse nature of the Tasmanian community.

**Clause 4            Children and Young People Consultative Council**

Provides that in appointing the members of the Children and Young People Consultative Council, the Commissioner for Children and Young People must ensure that members are children or young people and are from groups which represent the diverse nature of the Tasmanian community.

**Clause 5            Conditions of appointment**

Provides that a member of a committee or advisory group is entitled to be paid such remuneration and allowances as are specified in the instrument of appointment for the member, or as otherwise determined by the relevant Commissioner for the committee or advisory group.

A member of a committee or advisory group holds that office for the term, and on the conditions, as determined by the relevant Commissioner for the committee.

**Clause 6            Proceedings of committee**

Provides that meetings of a committee under this Act are to be held in accordance with any written direction given to the committee by the relevant Commissioner for the committee. Subject to this, and except as provided in this Act or any other Act, a committee may regulate the calling of and the conduct of business at its meetings. A committee may inform itself as it considers appropriate and obtain assistance, information and advice from any person whom it considers appropriate.

**Clause 7            Disclosure of interests**

Provides the process that is to occur if a member of a committee or a family member of the member has a direct or indirect pecuniary interest in a matter being considered.

There is a maximum fine of 10 penalty units if the members does not disclose the relevant interest.

**SCHEDULE 4 – SAVINGS AND TRANSITIONAL PROVISIONS**

**Clause 1            Interpretation**

Provides that in Schedule 4, **existing Regulator** means the person who is the Regulator, within *Child and Youth Safe Organisations Act 2023*, on the day this clause commences; **former Act** means the *Commissioner for Children and Young People Act 2016* and **relevant Commissioner** means the person who is the Commissioner, within the meaning of the *Commissioner for Children and Young People Act 2016*, immediately before the commencement of section 12(1).

## **Clause 2      Existing Commissioner to continue**

Provides that the appointment of the relevant Commissioner under the former Act, or the appointment of a person to act as the relevant Commissioner under the former Act, is terminated on the day on which clause 12(1) commences or a person is appointed as Commissioner for Children and Young People under the Act, whichever last occurs.

Subclause (2) provides that if a person has not been appointed as Commissioner for Children and Young People under the Act on the day on which section 12(1) commences, the relevant Commissioner is taken to hold the office of Commissioner for Children and Young People. This allows a transitional period until a Commissioner under the new Act is appointed.

Subparagraphs (a), (b) and (c) set out how the appointment is to operate in this scenario, including that the person holds the office on the same terms and conditions as appointed as the relevant Commissioner under the former Act, is taken to meet the eligibility requirements for the office, and is not to be, or required to be, appointed as the Independent Regulator.

Subclause 3 provides that if the relevant Commissioner holds the office of Commissioner for Children and Young People by virtue of subclause (2), the relevant Commissioner ceases to hold that office on the day on which a person is appointed as Commissioner for Children and Young People under this Act, or in accordance with the terms and conditions of that appointment.

## **Clause 3      Existing Regulator to continue**

Provides that if on the day section 12(1) of the Act commences, a person holds the office of Independent Regulator under the *Child and Youth Safe Organisations Act 2023*, that person remains the existing Regulator on the same terms and conditions on which the person was appointed as the existing Regulator under that Act. That person ceases to hold the office of Independent Regulator under the *Child and Youth Safe Organisations Act 2023* when section 12(4) commences or the person ceases to hold the office of Independent Regulator in accordance with the terms and conditions of that appointment, whichever occurs first.

Subclause 2 clarifies that if section 12(1) commences and section 12(4) has not commenced, a reference to the Independent Regulator holding that office by virtue of section 12(4) is taken to include a reference to the existing Regulator.

Subclause 3 is an avoidance of doubt provision and provides that nothing in the Act or the *Child and Youth Safe Organisations Act 2023* prevents a person from being appointed as the Commissioner for Children and Young People while holding the statutory office of Independent Regulator under the *Child and Youth Safe Organisations Act 2023* if section 12(4) has not commenced at the time of the appointment and the Minister and Governor consider it appropriate.

This allows for different scenarios giving rise to the eventual transition from having an existing Independent Regulator appointed under the *Child and Youth Safe Organisations Act 2023* to the 'two-hat' model under s 12 of the Act whereby the same person is appointed both CCYP and Independent Regulator via that section.

#### **Clause 4**

##### **Committees**

Provides that on the day on which section 31(1) commences, a member of a committee continued under that subsection remains a member of the committee so continued on the same terms and conditions as are specified in the member's instrument of appointment to the committee under the former Act.

#### **Clause 5**

##### **Annual report**

Provides that within 45 working days after the day on which this Schedule commences, the relevant Commissioner is to provide the Minister with an annual report in accordance with section 19 of the former Act for such part of a financial year as occurred before that Schedule commenced.

The annual report requirements of the Act apply to such part of the financial year as remains after Schedule 4 commences.

#### **Clause 6**

##### **Legal matters**

Subclause 1 is an avoidance of doubt provision, clarifying that legal proceedings may be instigated by or against the Commissioner for Children and Young People on and after the day on which section 12(1) commences, if the proceedings relate to the former Act or the relevant Commissioner in the Commissioner's capacity as relevant Commissioner and if this Act had commenced, could have been instituted by or against the relevant Commissioner.

A person who is, or has been, a Commissioner under the former Act may not, in proceedings before a court, or a person authorised by law to hear, receive or examine evidence, be compelled to disclose



information that was disclosed, or obtained, by the Commissioner under that Act.

**Clause 7           References to certain positions**

A reference to the relevant Commissioner, by title, in any document or information, is taken, on and after the day on which section 12(1) commences, to be a reference to the Commissioner for Children and Young People.

**Clause 8           Records and other documents**

Provides that a record, statement or document, or other information, kept by the relevant Commissioner under the former Act is taken to be, on and after the day on which section 12(1) commences, a record, statement, document or information kept by the Commissioner for Children and Young People.

On the day on which section 12(1) commences, a person who holds a record, statement, document or information referred to in this clause is to ensure that the record, statement, document or information is transferred to the Commissioner for Children and Young People in accordance with any relevant direction of that Commissioner.

This provision ensures the transfer of information to the new Commission.

**Clause 9           Power of Commissioner for Children and Young People to appoint advocate**

Provides that if the Commissioner for Children and Young People is appointed under the Act and the section establishing the Child Advocate has not commenced, the Commissioner for Children and Young People may appoint a person to act as an advocate for a facility resident. That person will not be a Commissioner.

This will allow the Commission to provide advocacy for a child or young person who is being detained or held in remand in a detention facility, prior to when the statutory office of Child Advocate is established. This is because all provisions in the Act will not be proclaimed at the same time.

Subclause 2 provides that a person can only be appointed as an advocate if the Commissioner is satisfied that the person has suitable knowledge and experience to act as an advocate and holds any relevant qualifications.

Subclause 3 provides the functions that an advocate has, which includes listening to and giving voice to concerns and grievances of the

facility resident and facilitating the resolution of those concerns and grievances and assessing the wellbeing of the facility resident.

Subclause 4 provides requirements that the advocate must apply, including seeking and taking into account the views and wishes and preserving the privacy of the facility resident.

## **SCHEDULE 5 – CONSEQUENTIAL AMENDMENTS**

### ***Child and Youth Safe Organisations Act 2023***

Clauses 1 to 5 make consequential amendments to the *Child and Youth Safe Organisations Act 2023*. The amendments reflect that the Independent Regulator and Deputy Regulator will form part of the new Commission for Children and Young People, and that the person appointed as Commissioner for Children and Young People is, by virtue of holding that position, also appointed as the Independent Regulator within the meaning of the *Child and Youth Safe Organisations Act 2023*.

- Clause 1** A new definition in section 4 of **Regulator** means the person who is appointed as the Independent Regulator by virtue of section 12(4) of the *Commission for Children and Young People Act 2025*.
- Clause 2** Amends the heading of Part 2 to ‘Regulator and Deputy Regulator’.
- Clause 3** Amends section 11 by omitting paragraph (a) from subclause (2). Subsection (3) is replaced, the requirement remains with minor language changes to clarify application of the clause.
- Clause 4** Amends subsection 40(3) to provide that Child Advocate and Commissioner for Aboriginal Children and Young People can share information or documents relating to matters in subsection 40(2) with the Regulator.
- Because the Independent Regulator works with individual complaints, this provision provides a mechanism for the Independent Regulator to share information relating to individual advocacy with the Child Advocate and Commissioner for Aboriginal Children and Young People.
- Clause 5** Amends Schedule 4 – Terms of appointment, to reflect that the terms of appointment for the Regulator are located in the *Commission for Children and Young People Act 2025*. This is achieved by omitting ‘Regulator’ and/or ‘Deputy Regulator’ from a number of the subclauses.

Clause 4 - Vacation of office is replaced to reflect the vacation of office clauses in the *Commission for Children and Young People Act 2025*. This is to provide consistency between the two Acts, given that once all provisions are proclaimed, the person who is appointed to the positions of Commissioner for Children and Young People and Regulator will be the same person.

### ***Disability Rights, Inclusion and Safeguarding Act 2024***

Clauses 1 and 2 make consequential amendments to the *Disability Rights, Inclusion and Safeguarding Act 2024*.

- Clause 1** Amends section 38(1) to update references to the Commissioner and Regulator. This is in relation to the Disability Commissioner referring matters.
- Clause 2** Amends section 82(1) to update references in the definition of *information-sharing entity* to the Commissioner and Regulator.

### ***Financial Management Act 2016***

- Clause 1** Schedule 1 is amended to provide that the Commission for Children and Young People is a Government Agency, and the Accountable Authority is the Commissioner for Children and Young People appointed under section 12 of the *Commission for Children and Young People Act 2025*.

### ***OPCAT Implementation Act 2021***

- Clause 1** Section 35(3) is amended to update the reference to the *Commission for Children and Young People Act 2025*. This is in relation to protections for provision of information to a Tasmanian National Preventive Mechanism or the Subcommittee.

### ***Ombudsman Act 1978***

- Clause 1** A new subsection is inserted into section 26. It provides that subsection 26(1) does not prevent the disclosure of information to the Commission, or a Commissioner, under the *Commission for Children and Young People Act 2025* if the information is relevant to the performance or exercise by the Commission or Commissioner of a function or power

under that Act. This provides a legislated pathway for the Ombudsman to provide information to the Commission.

### ***Right to Information Act 2009***

- Clause 1** Section 6(1) is amended to update the reference to the new Commission, and each Commissioner, under the *Commission for Children and Young People Act 2025*. This means that the *Right to Information Act 2009* does not apply to information in the possession of the Commission or Commissioners, or in the possession of a person whose services are provided or procured for the purposes of assisting the Commission or a Commissioner, unless the information relates to the administration of the Commission. This exclusion applied to the Commissioner for Children and Young People under the 2016 Act, and reflects how similar bodies are treated under the Right to Information Act.

### ***State Service Act***

- Clause 1** Schedule 1 is amended to provide that the Commission for Children and Young People is a State Authority, and the Head of Agency is the Commissioner for Children and Young People.

### ***Tasmanian Civil and Administrative Tribunal Act 2020***

- Clause 1** Section 97 is amended to provide that the Child Advocate and the Commissioner for Aboriginal Children and Young People may intervene and be heard in proceedings to which they are not already parties, if the proceedings relate to particular children and young people.

### ***Youth Justice Act 1997***

Clauses 1 to 5 amend the *Youth Justice Act 1997* to update references and insert a new definition of **CYP Commissioner** which means a Commissioner appointed under the *Commission for Children and Young People Act 2025*. References to the Commissioner for Children and Young People are updated to a 'CYP Commissioner'.

The *Youth Justice Regulations 2019* prescribe the Commissioner for Children and Young People as a prescribed officer for the purposes of section 125A(1) of the *Youth Justice Act 1997*, providing access to detention centres and detainees.

## **SCHEDULE 6 – LEGISLATION REPEALED**

Provides that the *Commissioner for Children and Young People Act 2016* is repealed.

The functions and powers in the *Commissioner for Children and Young People Act 2016* are included in the expanded Commission for Children and Young People, as provided in the Act.

## **SCHEDULE 7 – LEGISLATION REVOKED**

Provides that the proclamation under the 2016 Act is revoked. The proclamation commenced the *Commissioner for Children and Young People Act 2016*. As that Act is being repealed, the proclamation is to be revoked.