

TASMANIA

COMMISSIONER FOR CHILDREN AND YOUNG PEOPLE BILL 2015

CONTENTS

PART 1 – PRELIMINARY

1. Short title
2. Commencement
3. Principles to be observed
4. Interpretation

PART 2 – OFFICE OF COMMISSIONER FOR CHILDREN AND YOUNG PEOPLE

Division 1 – Office of Commissioner for Children and Young People

5. Commissioner for Children and Young People
6. Staff
7. Annual plan

Division 2 – Functions and powers of Commissioner

8. General functions of Commissioner
9. Minister may request Commissioner to investigate or review
10. Commissioner to act as advocate under *Youth Justice Act 1997*
11. General powers of Commissioner
12. Power to compel information
13. Power to establish committees
14. Certain matters not within jurisdiction of Commissioner

15. Delegation

Division 3 – Information Management

16. Information sharing
17. Commissioner may, but is not required to, divulge information
18. Confidentiality of information

PART 3 – REPORTING

19. Annual report
20. Other reports
21. Adverse comments in reports
22. Publication of reports

PART 4 – MISCELLANEOUS

23. Obstruction
24. Protection from liability
25. Regulations
26. Administration of Act
27. Savings and transitionals
28. Consequential Amendments

SCHEDULE 1 – TERMS OF APPOINTMENT

SCHEDULE 2 – COMMITTEES

SCHEDULE 3 – SAVINGS AND TRANSITIONALS

SCHEDULE 4 – CONSEQUENTIAL AMENDMENTS

COMMISSIONER FOR CHILDREN AND YOUNG PEOPLE BILL 2015

*(Brought in by the Minister for Human Services, the
Honourable Jacqueline Anne Petrusma)*

A BILL FOR

**An Act to make provision for the Commissioner for
Children and Young People, to consequentially amend the
Children, Young Persons and Their Families Act 1997, the
Tasmanian Early Years Foundation Act 2005 and the *Youth
Justice Act 1997*, and for related matters**

Be it enacted by Her Excellency the Governor of Tasmania, by
and with the advice and consent of the Legislative Council and
House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Commissioner for
Children and Young People Act 2015*.

2. Commencement

The provisions of this Act commence on a day
or days to be proclaimed.

Commissioner for Children and Young People Act 2015
Act No. of

s. 3

Part 1 – Preliminary

3. Principles to be observed

- (1) The Commissioner or any other person performing a function, or exercising a power, under this Act, must –
 - (a) do so according to the principle that the wellbeing and best interests of children and young people are paramount; and
 - (b) observe any relevant provisions of the United Nations Convention on the Rights of the Child.
- (2) Subject to subsection (1), this Act is to be administered according to the following principles:
 - (a) children are entitled to live in a caring and nurturing environment and to be protected from harm and exploitation;
 - (b) the interests and needs of children and young people who are disadvantaged for any reason or vulnerable should be given special regard and serious consideration;
 - (c) the contributions made by children to the community should be recognised for their value and merit;
 - (d) the views of children on all matters affecting them should be given serious consideration and taken into account;
 - (e) parents, families and communities have the primary role in safeguarding and

Commissioner for Children and Young People Act 2015
Act No. of

Part 1 – Preliminary

s. 4

promoting the wellbeing of children and should be supported in carrying out their role.

4. Interpretation

In this Act, unless the contrary intention appears –

child means a person who has not attained the age of 18 years;

Commissioner means the person appointed under section 5(1);

identifying details includes name, date of birth, street address, contact details, photographs and other prescribed information but does not include any information that is subject to any lawful claim or right of privilege;

information-sharing entity has the same meaning as in the *Children, Young Persons and Their Families Act 1997*;

Ombudsman has the same meaning as in the *Ombudsman Act 1978*;

report means a report of the Commissioner made under this Act;

Secretary means Secretary of the Department;

State authority has the same meaning as in the *State Service Act 2000*;

Commissioner for Children and Young People Act 2015
Act No. of

s. 4

Part 1 – Preliminary

vulnerable, in relation to a child or young person, includes –

- (a) a child or young person who is the subject of proceedings under the *Youth Justice Act 1997*; and
- (b) a child or young person who is, or was, the subject of a care and protection order under the *Children, Young Persons and Their Families Act 1997*; and
- (c) a child or young person who is at risk within the meaning of the *Children, Young Persons and Their Families Act 1997*; and
- (d) a child or young person who is receiving, or has received, services under the *Youth Justice Act 1997* or Part 5 of the *Children, Young Persons and Their Families Act 1997*;

wellbeing, in relation to children and young people, includes the care, development, education, and the physical, emotional and psychological health and safety of children and young people;

young person means a person, who has not attained the age of 18 years, as determined by the Commissioner in accordance with section 8(4).

**PART 2 – OFFICE OF COMMISSIONER FOR
CHILDREN AND YOUNG PEOPLE**

***Division 1 – Office of Commissioner for Children and Young
People***

5. Commissioner for Children and Young People

- (1) The Governor, on the recommendation of the Minister, is to appoint a person as the Commissioner for Children and Young People.
- (2) Schedule 1 has effect in respect of the Commissioner and his or her appointment.

6. Staff

- (1) The Commissioner may make arrangement with the Head of a State Service Agency for a State Service officer or State Service employee employed in that Agency to be made available to the Commissioner to enable the Commissioner to perform his or her functions under this Act or any other Act.
- (2) Subject to and in accordance with the *State Service Act 2000*, a person may be employed for the purpose of enabling the Commissioner to perform his or her functions under this Act or any other Act.
- (3) Officers and employees made available under subsection (1), or employed under subsection (2), may serve the Commissioner in any capacity in conjunction with State Service employment.

Commissioner for Children and Young People Act 2015
Act No. of

s. 7

Part 2 – Office of Commissioner for Children and Young People

7. Annual plan

The Commissioner is to, no later than 31 March in each year –

- (a) prepare an annual plan describing the Commissioner's proposed program of work and activities for the following financial year; and
- (b) provide a copy of the annual plan to the Minister.

Division 2 – Functions and powers of Commissioner

8. General functions of Commissioner

- (1) The Commissioner has the following functions:
 - (a) advocating for all children and young people in the State generally;
 - (b) acting as advocate for a detainee under the *Youth Justice Act 1997*;
 - (c) researching, investigating and influencing policy development into matters relating to children and young people generally;
 - (d) promoting, monitoring and reviewing the wellbeing of children and young people generally;
 - (e) promoting and empowering the participation of children and young people in the making of decisions, or the

Commissioner for Children and Young People Act 2015
Act No. of

Part 2 – Office of Commissioner for Children and Young People

s. 8

expressing of opinions on matters, that may affect their lives;

- (f) assisting in ensuring the State satisfies its national and international obligations in respect of children and young people generally;
 - (g) encouraging and promoting the establishment by organisations of appropriate and accessible mechanisms for the participation of children and young people in matters that may affect them;
 - (h) such other functions as are prescribed.
- (2) If the Commissioner advises the Minister under this Act or any other Act, the Commissioner must also provide the advice to any other Minister who administers the department, Agency or legislation that is the subject of the advice.
 - (3) Unless otherwise specified, the Commissioner must act independently, impartially and in the public interest when performing a function, or exercising a power, under this Act or any other Act.
 - (4) For the purpose of performing any function, or exercising any power, the Commissioner may determine when a child is considered a young person for the purpose of the function or power.

Commissioner for Children and Young People Act 2015
Act No. of

s. 9

Part 2 – Office of Commissioner for Children and Young People

9. Minister may request Commissioner to investigate or review

- (1) The Commissioner must, if requested to do so by the Minister, undertake an investigation or review into such decision or recommendation made, or such act or omission, under any Act as is specified in the request of the Minister.
- (2) A request of the Minister under subsection (1) –
 - (a) may require the Commissioner to undertake an investigation or review that is outside the jurisdiction of the Commissioner as set out in section 14; and
 - (b) may not –
 - (i) set the terms of the investigation or review; or
 - (ii) state what is to be considered as part of the investigation or review; or
 - (iii) otherwise specify how the investigation or review is to be held; and
 - (c) does not affect the impartiality of the Commissioner or his or her ability to determine the procedure for the investigation or review.
- (3) If the Commissioner prepares a report under section 20 in respect of an investigation or

Commissioner for Children and Young People Act 2015
Act No. of

Part 2 – Office of Commissioner for Children and Young People

s. 10

review performed by the Commissioner at the request of the Minister, the Commissioner must provide a draft of the report to the Minister.

- (4) Within 21 days after receiving a draft report under subsection (3), the Minister may do either or both of the following:
 - (a) provide the Commissioner with written comments or feedback on the draft report;
 - (b) make a written request that the Commissioner consult on the draft report with a person specified in the written request.
- (5) If the Minister has taken action under subsection (4) in respect of a draft report under subsection (1), the Commissioner must include in the finalised report, if requested to do so by the Minister –
 - (a) a copy of the written comments or feedback of the Minister provided under subsection (4)(a), if any; and
 - (b) a copy of the written request of the Minister under subsection (4)(b), if any.

10. Commissioner to act as advocate under *Youth Justice Act 1997*

- (1) The Commissioner has the following additional functions when acting as an advocate for a detainee under the *Youth Justice Act 1997*:

Commissioner for Children and Young People Act 2015
Act No. of

s. 10

Part 2 – Office of Commissioner for Children and Young People

- (a) listening to, and giving voice to, the concerns and grievances of the detainee and facilitating the resolution of those concerns and grievances;
 - (b) seeking information about, and facilitating access by the detainee to, support services appropriate to the needs of the detainee;
 - (c) assessing whether the detainee has been provided with adequate information about his or her rights;
 - (d) assessing, in the Commissioner's opinion, the physical and emotional wellbeing of the detainee.
- (2) In acting as an advocate for a detainee within the meaning of the *Youth Justice Act 1997*, the Commissioner –
 - (a) must, within reason, seek and take into account the views and wishes of the detainee before –
 - (i) asking a staff member of the detention centre, within the meaning of that Act, a question about the detainee; or
 - (ii) inspecting, or taking extracts or copies of, a document that relates to the detainee; or
 - (iii) including information about the detainee in a report related to the

Commissioner for Children and Young People Act 2015
Act No. of

Part 2 – Office of Commissioner for Children and Young People

s. 11

Commissioner's function as an
advocate under that Act; and

(b) must –

(i) preserve, as far as practicable in the circumstances, the privacy of the detainee; and

(ii) respect the wishes of any detainee who does not wish to communicate with the Commissioner; and

(c) may accept, and consider, the detainee's views or wishes provided to the Commissioner in any form the Commissioner thinks fit.

11. General powers of Commissioner

(1) The Commissioner has the power to do all things necessary, or convenient, to be done in connection with the performance of his or her functions, and the exercise of his or her powers, under this or any other Act.

(2) Without limiting subsection (1), the Commissioner may –

(a) require any person to provide information, answer questions, or produce documents, so far as may be relevant to the performance of the functions, or the exercise of the powers,

Commissioner for Children and Young People Act 2015
Act No. of

s. 11

Part 2 – Office of Commissioner for Children and Young People

- of the Commissioner or the
administration of this Act; and
- (b) require information and data for the
purposes of –
- (i) collating, studying, interpreting
and maintaining information in
relation to the wellbeing of
children and young people in the
State; and
 - (ii) identifying and monitoring trends
in respect of the wellbeing of
children and young people in the
State; and
- (c) investigate, and make recommendations
in respect of, the systems, policies and
practices of organisations, government or
non-government, that provide services
that affect children and young people;
and
- (d) investigate, and make recommendations
in respect of, the effects of any
legislation, proposed legislation,
documents, government policies, or
practices or procedures, or other matters
relating to the wellbeing of children and
young people; and
- (e) advise and make recommendations, in
relation to the rights and wellbeing of
children and young people, to Ministers,
State authorities and other organisations;
and

Commissioner for Children and Young People Act 2015
Act No. of

Part 2 – Office of Commissioner for Children and Young People

s. 12

-
- (f) provide information to other organisations in accordance with this Act or any other Act; and
 - (g) report publicly on the wellbeing of children and young people in the State; and
 - (h) exercise such other powers as are prescribed.
- (3) In performing a function, or exercising a power, under this Act, the Commissioner –
- (a) may regulate any proceedings held under this Act in any manner he or she considers appropriate; and
 - (b) is not bound by the rules of evidence but may inform himself, or herself, on any matter in any manner the Commissioner thinks fit; and
 - (c) is not required to hold a hearing as part of an investigation or review, or as part of the performance of any other function, under this Act; and
 - (d) may investigate, or review, a matter in any manner he or she considers appropriate; and
 - (e) may hold an investigation, or review, under this Act in public or in private.

Commissioner for Children and Young People Act 2015
Act No. of

s. 12

Part 2 – Office of Commissioner for Children and Young People

12. Power to compel information

- (1) If necessary for the performance of a function, or the exercise of a power, the Commissioner may require a person to do any one or more of the following:
 - (a) to provide information in the format, or manner, specified by the Commissioner, including information that contains identifying details of a child or young person if specifically required by the Commissioner;
 - (b) to answer questions whether orally or in writing;
 - (c) to produce documents as specified in the requirement.
- (2) A person must comply with a requirement of the Commissioner under subsection (1) unless, to do so, would require the person to provide information, answer questions, or produce documents –
 - (a) in respect of which there is a lawful claim or right of privilege; or
 - (b) that contain information, communicated to a medical professional in confidence, relating to the physical, mental or psychological health of a person; or
 - (c) that may incriminate the person in an offence.

Commissioner for Children and Young People Act 2015
Act No. of

Part 2 – Office of Commissioner for Children and Young People

s. 13

Penalty: Fine not exceeding 100 penalty units and, in the case of a continuing offence, a further fine not exceeding 10 penalty units for each day during which the offence continues.

- (3) In addition to any penalty imposed on a person under subsection (2), a court may make an order requiring the person to provide information, answer questions, or produce documents, to the Commissioner in accordance with the order.
- (4) A person complying with a requirement of the Commissioner under subsection (1) or of a court order under subsection (3) cannot, by virtue of complying with that requirement –
 - (a) be held to have breached any code of professional etiquette or ethics; or
 - (b) be taken to have departed from acceptable standards of professional conduct; or
 - (c) be taken to have contravened any confidentiality requirements of any Act.

13. Power to establish committees

- (1) The Commissioner –
 - (a) must establish, as a committee, the Children and Young People Consultative Council; and

Commissioner for Children and Young People Act 2015
Act No. of

s. 14

Part 2 – Office of Commissioner for Children and Young People

- (b) must establish, as a committee, the Children and Young People Advisory Council; and
 - (c) may establish other committees as the Commissioner considers appropriate to assist the Commissioner in the performance of his or her functions or the exercise of his or her powers.
- (2) If the Commissioner establishes a committee under subsection (1)(c), the Commissioner is to specify the purpose, or function, the committee is to fulfil.
- (3) Schedule 2 has effect with respect to the members and meetings of committees established under subsection (1).

14. Certain matters not within jurisdiction of Commissioner

- (1) Unless otherwise specified, the Commissioner does not have the authority to investigate or review –
 - (a) a specific decision made in respect of an individual case or specific circumstances; or
 - (b) information, or a document, that is subject to a lawful claim or right of privilege; or
 - (c) the application of the systems, policies and practices of the Director of Public

Commissioner for Children and Young People Act 2015
Act No. of

Part 2 – Office of Commissioner for Children and Young People

s. 14

Prosecutions, or the Police Service, in specific circumstances to determine whether or not to institute, or continue with, proceedings for an offence in those circumstances; or

- (d) the application of the systems, policies and practices of the Police Service in specific circumstances to determine whether or not to apply for a police family violence order, or a family violence order, under the *Family Violence Act 2004* in those circumstances; or
- (e) the application of the systems, policies and practices of the Legal Aid Commission of Tasmania in respect of the legal advice given in specific circumstances by lawyers employed, engaged or funded by the Legal Aid Commission of Tasmania; or
- (f) any other prescribed matter or decision.

(2) Subsection (1)(a) does not prevent the Commissioner from –

- (a) providing a child, or his or her family, with information about relevant government and non-government programs or services; or
- (b) referring a child, or his or her family, to such programs or services; or

Commissioner for Children and Young People Act 2015
Act No. of

s. 15

Part 2 – Office of Commissioner for Children and Young People

- (c) investigating or otherwise dealing with any matter affecting the wellbeing of children generally when it is raised through a matter relating to a specific child.

15. Delegation

The Commissioner may delegate any of his or her functions and powers under this Act, other than this power of delegation.

Division 3 – Information Management

16. Information sharing

- (1) In this section –

non-identifying information means information in relation to a person that does not –

- (a) contain identifying details for the person; or
 - (b) enable the identity of the person to be ascertained or discovered.
- (2) The Commissioner may do either or both of the following:
 - (a) provide an information-sharing entity with non-identifying information relating to a child or young person;

Commissioner for Children and Young People Act 2015
Act No. of

Part 2 – Office of Commissioner for Children and Young People

s. 17

-
- (b) request non-identifying information relating to a child or young person from an information-sharing entity.
 - (3) An information-sharing entity may, on its own initiative, provide the Commissioner with non-identifying information relating to a child or young person if it is lawful to do so.
 - (4) A person providing information under this section –
 - (a) cannot, by virtue of providing the information, be held to have breached any code of professional etiquette or ethics, to have departed from any accepted standards of professional conduct or to have contravened any Act; and
 - (b) to the extent that he or she has acted in good faith, incurs no civil or criminal liability in respect of providing the information.

17. Commissioner may, but is not required to, divulge information

- (1) Unless otherwise specified, the Commissioner may divulge to a relevant authority all, or any part of, information provided to him or her –
 - (a) if the Commissioner considers it appropriate in the circumstances; and

Commissioner for Children and Young People Act 2015
Act No. of

s. 18

Part 2 – Office of Commissioner for Children and Young People

- (b) if to do so would be lawful in the circumstances.
- (2) The Commissioner may refer any matter to the Ombudsman if the Commissioner thinks it appropriate to do so.
- (3) A person who is, or has been, the Commissioner may not, in proceedings before a court, or a person authorised by law to hear, receive or examine evidence, be compelled to disclose information acquired in his or her capacity as Commissioner, being information that was disclosed or obtained under this Act.
- (4) For the purposes of this section, a relevant authority may include –
 - (a) the Police Service; and
 - (b) a Community-Based Intake Service within the meaning of *Children, Young Persons and Their Families Act 1997*; and
 - (c) a Minister or a Secretary of a department; and
 - (d) any other prescribed person or prescribed organisation.

18. Confidentiality of information

- (1) A person who is, or has been, engaged in the performance of a function, or exercise of a power, under this Act must not, directly or indirectly, record, dispose of or make use of

Commissioner for Children and Young People Act 2015
Act No. of

Part 2 – Office of Commissioner for Children and Young People

s. 18

information obtained in the course of performing the function or exercising the power except –

- (a) for the purposes of, or in connection with, performing functions, or exercising powers, under this Act or any other Act; or
- (b) with the written consent of –
 - (i) the person to whom the information relates; and
 - (ii) if the person to whom the information relates is a child, his or her legal guardian; or
- (c) the person reasonably believes that the use, or disclosure, of the information is necessary –
 - (i) to lessen or prevent a serious threat to an individual's health, safety or welfare; or
 - (ii) to lessen or prevent a serious threat to public health or public safety; or
- (d) in other prescribed circumstances.

Penalty: Fine not exceeding 50 penalty units.

- (2) Subsection (1) does not apply to the disclosure of statistical or other information that could not reasonably be expected to lead to the identification of any person to whom it relates.

Commissioner for Children and Young People Act 2015
Act No. of

s. 18

Part 2 – Office of Commissioner for Children and Young People

- (3) If information collected under this Act is lawfully disclosed, this section does not prevent the further disclosure of the information for the purpose for which the disclosure was made.

PART 3 – REPORTING

19. Annual report

- (1) Within 3 months after the end of each financial year, the Commissioner must provide, to the Minister and the Secretary, a report on the performance of the powers, and the exercise of the functions, of the Commissioner during that financial year.
- (2) Before 30 November in each year, the Commissioner must cause a copy of the annual report for the preceding financial year to be laid before each House of Parliament.
- (3) If the Commissioner is unable to comply with subsection (2) for any reason other than that a House of Parliament is not sitting, the Commissioner must cause to be laid before each House of Parliament a statement specifying –
 - (a) the reasons for the failure to comply with that subsection; and
 - (b) an estimate of the day by which a copy of the annual report will be ready to be laid before each House of Parliament.
- (4) If the Commissioner is unable to comply with subsection (2) because a House of Parliament is not sitting, the Commissioner must –
 - (a) forward a copy of the annual report to the Clerk of that House; and

Commissioner for Children and Young People Act 2015
Act No. of

s. 20

Part 3 – Reporting

- (b) within the next 7 sitting-days of that House, cause a copy of the annual report to be laid before that House.

20. Other reports

- (1) The Commissioner may, at any time, prepare a report on –
 - (a) any investigation, review or research conducted in the performance of the Commissioner’s functions; or
 - (b) any other matter arising in the performance of those functions; or
 - (c) any other matter or issue relating to children that the Commissioner considers appropriate.
- (2) A report under subsection (1) may include recommendations relating to –
 - (a) changes to written law, draft law, policy, practice or procedure; or
 - (b) the taking of any other action that Commissioner considers appropriate to safeguard and promote the wellbeing of children.
- (3) The Commissioner must provide the Minister with a copy of the report under subsection (1) within 7 days after the report is finalised.
- (4) The Commissioner may cause a copy of a report under subsection (1) to be laid before each

House of Parliament no sooner than 7 sitting-days after a copy of the report has been given to the Minister in accordance with subsection (3).

21. Adverse comments in reports

Despite anything in this Part, the Commissioner must not include a comment in a report that is adverse to a person unless the Commissioner has –

- (a) notified the person in writing of his or her intention to make the comment; and
- (b) allowed the person at least 15 working days to make representations to the Commissioner in respect of the comment before the report is finalised.

22. Publication of reports

(1) The Commissioner –

- (a) must publish a version of the report, or such parts of the report as the Commissioner considers appropriate, in a form that is suitable for children unless the Commissioner considers that it is not appropriate to do so; and
- (b) may publish the report, including a version of the report to be published under paragraph (a), in any manner the Commissioner considers appropriate.

Commissioner for Children and Young People Act 2015
Act No. of

s. 22

Part 3 – Reporting

- (2) Despite subsection (1), if the Commissioner intends to lay a report before both Houses of Parliament, the Commissioner must not publish the report until after the report has been laid before both Houses of Parliament.

PART 4 – MISCELLANEOUS

23. Obstruction

A person must not obstruct, or hinder, a person who is performing a function, or exercising a power, under this Act.

Penalty: Fine not exceeding 100 penalty units and, in the case of a continuing offence, a further fine not exceeding 10 penalty units for each day during which the offence continues.

24. Protection from liability

- (1) The Commissioner, and any other person, performing a function or exercising a power under this Act does not incur any personal liability, civil or criminal, in respect of any act done or omitted to be done in good faith in the performance or exercise, or purported performance or exercise, of that function or power.
- (2) No civil or criminal proceedings are to be brought against the Commissioner, or any other person performing a function or exercising a power under this Act, in respect of an act or omission referred to in subsection (1) without the leave of the Supreme Court, and the Supreme Court is not to give leave under this section unless it is satisfied that there is substantial ground for the contention that the person to be

Commissioner for Children and Young People Act 2015
Act No. of

s. 25

Part 4 – Miscellaneous

proceeded against has acted, or omitted to act, in bad faith.

25. Regulations

- (1) The Governor may make regulations for the purposes of this Act.
- (2) Without limiting the generality of subsection (1), the regulations may –
 - (a) provide for, and in relation to, the conduct of investigations, reviews and other proceedings held under this Act; and
 - (b) provide for the prohibition, or restriction, of the publication or disclosure of information collected under this Act.

26. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Human Services; and
- (b) the department responsible to that Minister in relation to the administration of this Act is the Department of Health and Human Services.

Commissioner for Children and Young People Act 2015
Act No. of

Part 4 – Miscellaneous

s. 27

27. Savings and transitionals

The savings and transitional provisions set out in Schedule 3 have effect.

28. Consequential Amendments

The legislation specified in Schedule 4 is amended as specified in that Schedule.

Commissioner for Children and Young People Act 2015
Act No. of

sch. 1

SCHEDULE 1 – TERMS OF APPOINTMENT

Section 5(2)

1. Duration of appointment

- (1) The Commissioner holds office for such term, not exceeding 5 years, as is specified in the instrument of appointment.
- (2) A person who has been appointed to the office of Commissioner may from time to time be reappointed for a single further term, not exceeding 5 years, as may be specified in the instrument of appointment.

2. Terms of appointment

- (1) The Commissioner holds office on such conditions relating to matters not provided for by this Act as are specified in his or her instrument of appointment.
- (2) The Commissioner must not, except in so far as authorised to do so by the Governor –
 - (a) hold any office of profit, or trust, other than the office of Commissioner; or
 - (b) engage in paid employment outside the duties of the office of Commissioner.
- (3) Subject to subclause (2), if the holder of an office under an Act is required, by or under that Act, to devote the whole of his or her time to the duties of that office, that requirement does not

prevent the holder from holding that office in conjunction with the office of Commissioner.

- (4) The *State Service Act 2000* does not apply in relation to the Commissioner.

3. Remuneration

- (1) The remuneration and allowances payable to the Commissioner are to be specified in his or her instrument of appointment or otherwise determined by the Governor.
- (2) If a person is appointed Commissioner –
- (a) he or she is not eligible to become a member of the contributory scheme as defined in the *Retirement Benefits Regulations 2005*; and
 - (b) the *Public Sector Superannuation Reform Act 1999* applies to the Commissioner as if he or she were an employee within the meaning of that Act; and
 - (c) subject to subclause (3), he or she is a member of the Tasmanian Accumulation Scheme established under the *Public Sector Superannuation Reform Act 1999*.
- (3) The Commissioner may elect, by notice in writing given to the Secretary either before or after commencing as Commissioner, that instead of being a member of the Tasmanian

Commissioner for Children and Young People Act 2015
Act No. of

sch. 1

Accumulation Scheme so established, he or she becomes –

- (a) a member of a retirement savings account within the meaning of the *Retirement Savings Account Act 1997* of the Commonwealth; or
 - (b) a member of a complying superannuation fund as provided by the law of the Commonwealth.
- (4) If the Commissioner makes an election under subclause (3), he or she may elect, by notice in writing given to the Secretary either before or after commencing as Commissioner, to become a member of the Tasmanian Accumulation Scheme so established.
- (5) Subclauses (2) and (3) do not apply to a person appointed as Commissioner if, immediately before his or her appointment, the person was a contributor to the contributory scheme as defined in the *Retirement Benefits Regulations 2005*.

4. Vacation of office

- (1) A person appointed as Commissioner is taken to vacate the office of Commissioner if –
- (a) he or she dies; or
 - (b) he or she resigns the office by written notice to the Governor; or
 - (c) he or she is removed from office under subclause (2).

Commissioner for Children and Young People Act 2015
Act No. of

sch. 1

-
- (2) The Governor, by written notice to the Commissioner, may remove the Commissioner from office if the Commissioner –
- (a) is, without good reason, absent from the office of Commissioner for an extended period of time; or
 - (b) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors, or makes an assignment of his or her remuneration or estate for their benefit; or
 - (c) is convicted –
 - (i) in Tasmania of any crime or offence punishable by imprisonment for a term of 12 months or longer; or
 - (ii) elsewhere of any crime or offence which, if committed in Tasmania, would be punishable by imprisonment for a term of 12 months or longer; or
 - (iii) of an offence against this Act; or
 - (d) is unable to perform adequately, or competently, the duties of the office; or
 - (e) has neglected to perform the duties of the office; or

Commissioner for Children and Young People Act 2015
Act No. of

sch. 1

- (f) is guilty of misconduct of such a nature that the Governor feels the Commissioner is unsuitable to continue to hold the office.

5. Defect does not invalidate appointment

An appointment of a person as Commissioner is not invalid merely because of a defect or irregularity in relation to that appointment.

SCHEDULE 2 – COMMITTEES

Section 13(3)

1. Membership generally

- (1) A committee established under this Act consists of 5 or more persons as determined by the Commissioner.
- (2) The Commissioner may appoint a member of a committee as the chairperson of the committee.

2. Children and Young People Advisory Council

In appointing the members of the Children and Young People Advisory Council, the Commissioner must have regard to the desirability of having as members of the committee persons with a range of experience and backgrounds, including persons –

- (a) from non-government organisations and community organisations; and
- (b) from groups which represent the diversity of the Tasmanian population; and
- (c) employed by government agencies concerned with the health, welfare, care, protection, development or legal rights of children; and
- (d) employed in a private practice that is relevant to the health, welfare, care,

Commissioner for Children and Young People Act 2015
Act No. of

sch. 2

protection, development or legal rights of
children.

3. Children and Young People Consultative Council

In appointing the members of the Children and
Young People Consultative Council, the
Commissioner must ensure that the members –

- (a) are children; and
- (b) are from groups which represent the
diversity of the Tasmanian population.

4. Conditions of appointment

- (1) A member of a committee is entitled to be paid
such remuneration and allowances as are
specified in his or her instrument of appointment
or as are otherwise determined by the
Commissioner.
- (2) A member of a committee holds office for the
term, and on the conditions, determined by the
Commissioner.

5. Conduct of committee

- (1) Meetings of a committee are to be held in
accordance with any written directions given by
the Commissioner.
- (2) Subject to subclause (1) and except as otherwise
provided in this Act, a committee may regulate

the calling of, and the conduct of business at, its meetings.

- (3) A committee may obtain assistance, information and advice from any person it thinks fit.

6. Disclosure of interests

- (1) If –

- (a) a member of a committee or the partner of a member of a committee has a direct or indirect interest in a matter being considered, or about to be considered, by the committee; and
- (b) the interest could conflict with the proper performance of the member's duties in relation to the consideration of the matter –

the member, as soon as practicable after the relevant facts come to the member's knowledge, must disclose the nature of the interest to a meeting of the committee.

Penalty: Fine not exceeding 10 penalty units.

- (2) A disclosure under subclause (1) is to be recorded in the minutes of the meeting and, unless the committee otherwise determines, the member who made the disclosure must not –
- (a) be present during any deliberation of the committee in relation to the matter; or

Commissioner for Children and Young People Act 2015
Act No. of

sch. 2

- (b) take part in any decision of the committee in relation to the matter.
- (3) Subclause (1) does not apply in respect of an interest that arises only because the member of a committee also holds an office under the *State Service Act 2000*.

SCHEDULE 3 – SAVINGS AND TRANSITIONALS

Section 27

1. Interpretation

In this Schedule –

former Act means the *Children, Young Persons and Their Families Act 1997*.

2. Commissioner for Children

The person holding the office of Commissioner for Children under the former Act immediately before the commencement of Division 1 of Part 2 of this Act –

- (a) is taken to be appointed as Commissioner for Children and Young People under section 5(1) of this Act, subject to the same terms and conditions of his or her appointment under the former Act; and
- (b) is eligible for reappointment under this Act for a single further period, not exceeding 5 years, as may be specified in the instrument of appointment.

3. Annual report

- (1) In this clause –

relevant financial year means the financial year in which section 19 commences.

Commissioner for Children and Young People Act 2015
Act No. of

sch. 3

- (2) The first annual report of the Commissioner under section 19 is to include a report on –
 - (a) the performance of the powers, and the exercise of the functions, of the Commissioner under this Act during the relevant financial year; and
 - (b) the performance of the powers, and the exercise of the functions, of the Commissioner under the former Act during the relevant financial year.

4. Committees

- (1) The Children and Young Persons Consultative Council established under the former Act is taken, on and after the day on which section 13(1)(a) of this Act commences, to be the Children and Young People Consultative Council established under that section.
- (2) The Children and Young Persons Advisory Council established under the former Act is taken, on and after the day on which section 13(1)(b) of this Act commences, to be the Children and Young People Advisory Council established under that section.
- (3) A member of a committee taken to be established under subclause (1) or (2) remains a member of the committee so established, on the same terms and conditions as specified in his or her instrument of appointment to the committee under the former Act.

SCHEDULE 4 – CONSEQUENTIAL AMENDMENTS

Section 28

Children, Young Persons and Their Families Act 1997

1. Section 3(1) is amended by omitting the definition of *Commissioner*.
2. Part 9 is amended by omitting “**COMMISSIONER FOR CHILDREN, ADVISORY PANELS AND FACILITATORS**” from the heading to that Part and substituting “**ADVISORY PANELS AND FACILITATORS**”.
3. Division 1 of Part 9 is repealed.
4. Section 110 is amended by omitting subsection (3).
5. Schedules 1 and 2 are repealed.

Tasmanian Early Years Foundation Act 2005

1. Section 3 is amended by omitting the definition of *Commissioner for Children* and substituting the following definition:

Commissioner for Children and Young People means the person appointed and holding office as Commissioner for Children and Young People under the

Commissioner for Children and Young People Act 2015
Act No. of

sch. 4

*Commissioner for Children and Young
People Act 2015;*

2. Section 7(2) is amended by omitting paragraph (d) and substituting the following paragraph:

 (d) the Commissioner for Children and Young People.
3. Section 14(2) is amended by omitting “Commissioner for Children” and substituting “Commissioner for Children and Young People”.

Youth Justice Act 1997

1. Section 3(1) is amended by omitting the definition of *Commissioner for Children* and substituting the following definition:

***Commissioner for Children and Young
People*** means the Commissioner for
Children and Young People appointed
and holding office under the
*Commissioner for Children and Young
People Act 2015;*

2. Section 22(4A)(c) is amended by omitting “Commissioner for Children” twice occurring and substituting “Commissioner for Children and Young People”.
3. Section 31(6)(b) is amended by omitting “Commissioner for Children” twice occurring

Commissioner for Children and Young People Act 2015
Act No. of

sch. 4

and substituting “Commissioner for Children and Young People”.

- 4.** Section 45(3A)(c) is amended by omitting “Commissioner for Children” twice occurring and substituting “Commissioner for Children and Young People”.