

TASMANIA

**COMMISSION FOR CHILDREN AND YOUNG
PEOPLE BILL 2025**

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COMMISSION FOR CHILDREN AND YOUNG PEOPLE BILL 2025

*(Brought in by the Minister for Justice, Corrections and
Rehabilitation, the Honourable Guy Barnett)*

A BILL FOR

An Act to establish a Commission for Children and Young People, to establish the statutory positions of the Commissioner for Children and Young People, the Child Advocate and the Commissioner for Aboriginal Children and Young People, to enable the offices of Commissioner for Children and Young People and the Independent Regulator to be held by a single person, and for related purposes

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 *Commission for Children and Young People Act 2025*.

2. Commencement

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

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3. Interpretation

(1) In this Act, unless the contrary intention appears –

annual report, in relation to the Commission, means the report prepared under section 26(1);

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

Child Advocate means the person appointed as the Child Advocate in accordance with section 13;

Commission means the Commission for Children and Young People established by section 7;

Commissioner includes each of the following:

- (a) the Commissioner for Children and Young People;
- (b) the Child Advocate;
- (c) the Commissioner for Aboriginal Children and Young People;

Commissioner for Aboriginal Children and Young People means the person appointed as the Commissioner for Aboriginal Children and Young People in accordance with section 14;

Commissioner for Children and Young People means the person appointed as the

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Commissioner for Children and Young People in accordance with section 12;

Deputy Regulator has the same meaning as in the *Child and Youth Safe Organisations Act 2023*;

detention facility includes –

- (a) a detention centre within the meaning of the *Youth Justice Act 1997*; and
- (b) a prison, within the meaning of the *Corrections Act 1997*, where a child or young person may be detained or otherwise reside; and
- (c) a police office, police station or police vehicle where a child or young person may be detained; and
- (d) a court where a child or young person may be detained; and
- (e) 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;

financial year means a period of 12 months ending on 30 June in any year;

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guardian, in relation to a child, has the same meaning as in the *Children, Young Persons and their Families Act 1997*;

Independent Regulator means the person taken, under section 12(4), to be the Independent Regulator for the purposes of the *Child and Youth Safe Organisations Act 2023*;

Joint Committee means the Joint Standing Committee on the Commission for Children and Young People established by section 37;

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

out-of-home care – see section 4;

resident, in relation to a detention facility, includes –

- (a) a facility resident; and
- (b) a child who resides at a detention facility but is not a facility resident; and
- (c) a parent or guardian of a child referred to in paragraph (b) if that parent or guardian is detained, or held in remand, in a detention facility;

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

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statutory complaint authority means a person or entity, including an Agency, who has a legislated function, or power, to determine complaints or review decisions;

United Nations Convention on the Rights of Persons with Disabilities means the United Nations Convention on the Rights of Persons with Disabilities, as it applies to children and young people in Australia, adopted by the General Assembly of the United Nations on 13 December 2006;

United Nations Convention on the Rights of the Child means the United Nations Convention on the Rights of the Child, Australian Treaty Series 1991 No. 4;

United Nations Declaration on the Rights of Indigenous Peoples means the United Nations Declaration on the Rights of Indigenous Peoples, as it applies to children and young people in Australia, adopted by the General Assembly of the United Nations on 13 September 2007;

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

- (a) the care, development, support and education of the child or young person; and

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- (b) the physical, emotional and psychological health and safety of the child or young person; and
- (c) the cultural and material needs of the child or young person;

working day means a day other than –

- (a) a Saturday or Sunday; or
- (b) a statutory holiday as defined in the *Statutory Holidays Act 2000*;

young person means a person who has attained the age of 15 years but has not attained the age of 21 years who –

- (a) is the subject of proceedings, or the recipient of services, under the *Youth Justice Act 1997*; or
- (b) was the subject of proceedings, or the recipient of services, under the *Youth Justice Act 1997* before the person attained the age of 18 years; or
- (c) 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
- (d) was the subject of proceedings to which section 28(1) or (3) of the

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Youth Justice Act 1997 applied
before the person attained the age
of 18 years; or

- (e) was in out-of-home care at any
time after the person attained the
age of 15 years.

(2) For the purposes of this Act –

- (a) a reference to an Aboriginal child is a
reference to a child who identifies as, or
is recognised as, Aboriginal or Torres
Strait Islander; and
- (b) a reference to an Aboriginal young
person is a reference to a young person
who identifies as, or is recognised as,
Aboriginal or Torres Strait Islander.

(3) For the purposes of this Act, a person is known
to be Aboriginal or Torres Strait Islander if the
person –

- (a) is of Aboriginal or Torres Strait Islander
descent; and
- (b) identifies as Aboriginal or Torres Strait
Islander; and
- (c) is accepted as –
- (i) Aboriginal, by a recognised
Aboriginal organisation within
the meaning of the *Child and
Youth Safe Organisations Act
2023*; or

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- (ii) Torres Strait Islander, by a recognised Torres Strait Islander organisation within the meaning of the *Child and Youth Safe Organisations Act 2023*.

4. Meaning of *out-of-home care*

For the purposes of this Act, a person is in out-of-home care if the person –

- (a) is the subject of a voluntary care agreement under section 11 of the *Children, Young Persons and Their Families Act 1997*; or
- (b) is the subject of a requirement to attend a specified place or person under section 20 of the *Children, Young Persons and Their Families Act 1997*; or
- (c) is in the custody of the Secretary, within the meaning of the *Children, Young Persons and Their Families Act 1997*, under section 21 of that Act; or
- (d) is the subject of one or more of the following orders under the *Children, Young Persons and Their Families Act 1997*:
 - (i) an assessment order under section 22 of that Act;
 - (ii) an interim assessment order under section 26 of that Act;

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- (iii) a care and protection order under section 42 of that Act including an order extended under section 44 of that Act;
 - (iv) a supervision order under section 42A of that Act;
 - (v) an interim care and protection order under section 46 of that Act;
 - (vi) a care and protection order revived under section 48(3) of that Act;
 - (vii) an interim order under section 77Q of that Act;
 - (viii) an order made by the Court under section 98(c) of that Act; or
 - (e) is the subject of a warrant, for the person to be taken into safe custody, under section 97 of the *Children, Young Persons and Their Families Act 1997*; or
 - (f) is in the custody of the Secretary, within the meaning of the *Adoption Act 1988*, or a principal officer under that Act, under section 39 of that Act; or
 - (g) is in the guardianship of the Secretary, within the meaning of the *Adoption Act 1988*, under section 40 of that Act; or

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- (h) is the subject of an order under section 42 of the *Adoption Act 1988*; or
- (i) is a member of a class of persons prescribed to be in out-of-home care for the purposes of this Act.

5. Principles to be observed under this Act

- (1) A person performing a function, or exercising a power, under this Act is to ensure that –
 - (a) the paramount consideration when performing the function, or exercising the power, is the wellbeing and best interests of children and young people; and
 - (b) the following principles are also applied to the performance of the function or the exercise of the power:
 - (i) children and young people are entitled to live in a caring and nurturing environment and to be protected from harm and exploitation;
 - (ii) the interests and needs of children and young people who are disadvantaged or vulnerable, for any reason, are to be given special regard and consideration;
 - (iii) the contributions made by children and young people, to the

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community, are to be recognised,
respected and valued;

(iv) the views of children and young people on all matters that affect them individually, or affect all or a specified class of children and young people, are to be taken into account when making decisions;

(v) parents, families, caregivers and communities –

(A) have a significant role in safeguarding and promoting the wellbeing of children and young people; and

(B) are to be supported while carrying out that role.

(2) For the purposes of subsection (1)(a), the wellbeing and best interests of children and young people are reflected in, but are not limited to, the rights and principles specified in –

(a) the United Nations Convention on the Rights of the Child; and

(b) the United Nations Declaration on the Rights of Indigenous Peoples; and

(c) the United Nations Convention on the Rights of Persons with Disabilities; and

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- (d) such other international conventions, declarations or other instruments that are in force in Australia and apply to, or have an impact on, children and young people.
- (3) In performing a function, or exercising a power, under this Act a person is to –
 - (a) comply with the provisions of this Act and any other relevant Act when applying the principles; and
 - (b) take into account any relevant provisions of –
 - (i) the United Nations Convention on the Rights of the Child; and
 - (ii) the United Nations Declaration on the Rights of Indigenous Peoples; and
 - (iii) the United Nations Convention on the Rights of Persons with Disabilities.

6. Application of Act

- (1) For the avoidance of doubt, this 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.
- (2) Despite subsection (1), nothing in this Act authorises a Commissioner, in the person's capacity as Commissioner, to perform a function or exercise a power, under the *Child and Youth*

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Safe Organisations Act 2023, of the Independent
Regulator.

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

Division 1 – Commission for Children and Young People

**7. Commission for Children and Young People
established**

- (1) The Commission for Children and Young People is established.
- (2) The Commission for Children and Young People includes –
 - (a) the following persons appointed under this Act:
 - (i) the Commissioner for Children and Young People;
 - (ii) the Child Advocate;
 - (iii) the Commissioner for Aboriginal Children and Young People; and
 - (b) the following persons if the office is not held by a Commissioner:
 - (i) the Independent Regulator;
 - (ii) the Deputy Regulator;
 - (c) the staff of, and any persons appointed or made available to assist, the Commission and each Commissioner.

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- (3) The Commission for Children and Young People –
- (a) is a body corporate with perpetual succession; and
 - (b) may have a seal; and
 - (c) may sue and be sued in its corporate name; and
 - (d) is an instrumentality of the Crown.
- (4) If the Commission for Children and Young People has a seal –
- (a) it is to be kept and used as authorised by the Commission; and
 - (b) all courts and persons acting judicially must take judicial notice of the imprint of the seal on a document and presume that it was duly sealed by the Commission.

8. Functions of Commission

In addition to any other functions and powers under this Act or any other Act, the Commission has the following functions:

- (a) to make recommendations to the Minister, or any other Minister, in relation to one or more of the following:
 - (i) improving all services provided for, or in respect of, children and young people including out-of-

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- home care services and youth justice services;
- (ii) ensuring that the State satisfies its national and international obligations in respect of all, or a specified class of, children and young people;
- (b) to advise and make recommendations to all Ministers, State Service Agencies and other organisations –
 - (i) in relation to the rights and wellbeing of children and young people; and
 - (ii) on other matters that impact on, or relate to, children and young people;
- (c) to review, research, investigate and influence systemic policy development on –
 - (i) decision-making practices and procedures, in State Service Agencies, which may impact on children or young people; and
 - (ii) matters relating to all, or a specified class of, children and young people;
- (d) to conduct inquiries into systemic decisions, or recommendations, made under any Act if the decisions or

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recommendations relate to children or young people;

- (e) to advocate for all, or a specified class of, children and young people;
- (f) to promote, monitor and review the safety and wellbeing of all, or a specified class of, children and young people;
- (g) to promote and uphold the rights of all, or a specified class of, children and young people;
- (h) to promote and empower the participation of children and young people in influencing decisions, and expressing opinions on matters, that affect their lives or the lives of all, or a specified class of, children and young people;
- (i) to monitor and review the safety, wellbeing, care and treatment of children and young people in out-of-home care or the youth justice system;
- (j) to monitor and review data and information that is collected in relation to children and young people including, but not limited to, data in relation to the following matters:
 - (i) facility residents;
 - (ii) children in out-of-home care;

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- (iii) the use of isolation, force, restraints and searches on children or young people;
 - (iv) serious incidents, such as abuse, self-harm, assaults, escapes, riots or damage to property, involving children in out-of-home care or facility residents;
- (k) to –
 - (i) monitor and review the use of electronic surveillance in detention facilities at regular intervals of not less than 12 months; and
 - (ii) make recommendations on whether the use of electronic surveillance is appropriate or recommended and on any other matters in relation to electronic surveillance that the Commission considers appropriate;
- (l) to monitor and review –
 - (i) the operation of detention facilities where facility residents reside; and
 - (ii) the safety and wellbeing of, and the provision of services to, children and young people within detention facilities;

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- (m) to encourage and assist organisations to establish appropriate and accessible mechanisms for the participation of children and young people in matters that may affect their lives or the lives of all, or a specified class of, children and young people.

9. Powers of Commission

- (1) The Commission has the power to do all things necessary, or convenient, to perform its functions and exercise its powers under this Act or any other Act.
- (2) Without limiting subsection (1), the Commission has the power –
 - (a) to require, under Part 5, any person to provide documents, answers to questions, or other information, so far as may be relevant to the performance of the functions, or the exercise of the powers, of the Commission; and
 - (b) to require information and data for the purposes of –
 - (i) collating, studying, interpreting and maintaining information in relation to children or young people within the State; or
 - (ii) identifying and monitoring trends in respect of children or young people within the State; and

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- (c) to conduct systemic investigations, inquiries or reviews into –
 - (i) the systems relating to out-of-home care or youth justice including, but not limited to, the treatment of children and young people within those systems; or
 - (ii) the safety and wellbeing of, and the provision of services to, children and young people within those systems; or
 - (iii) other matters that impact on, or relate to, children or young people; and
- (d) to conduct inspections of detention facilities; and
- (e) to provide information to other persons if the provision of the information does not breach this Act or any other Act; and
- (f) to publish reports in such manner as the Commission considers appropriate; and
- (g) to exercise such other powers as are prescribed.

10. Commissioners may use powers and functions of Commission

- (1) For the purposes of this Act, each Commissioner may perform the functions, and exercise the powers, of the Commission.

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- (2) For the avoidance of doubt, the fact that a Commissioner has performed a function, or exercised a power, of the Commission does not prevent another Commissioner or the Commission from performing that function or exercising that power.

11. Powers of certain Commissioners when acting as advocates

- (1) The Child Advocate, or the Commissioner for Aboriginal Children and Young People, when acting as an advocate for a child or young person, in accordance with the advocacy functions under section 13 or 14, respectively –
- (a) has the following additional functions:
- (i) to listen to, and give voice to, the concerns and grievances of the child or young person and facilitate the resolution of those concerns and grievances;
 - (ii) to seek information about, and facilitate access by the child or young person to, support services appropriate to the needs of the child or young person;
 - (iii) to assess whether the child or young person has been provided with adequate information about the rights of that child or young person;

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- (iv) to assess, in the opinion of the Child Advocate or Commissioner for Aboriginal Children and Young People, the wellbeing of the child or young person; and
- (b) must, while acting as such an advocate –
 - (i) within reason, seek and take into account the views and wishes of the child or young person before –
 - (A) asking another person a question about the child or young person; or
 - (B) inspecting, or taking extracts or copies of, a document that relates to the child or young person; and
 - (ii) preserve, as far as practicable in the circumstances, the privacy of the child or young person; and
 - (iii) respect the wishes of any other child or young person who does not wish to communicate with the Child Advocate or Commissioner for Aboriginal Children and Young People.
- (2) In addition to any other power under this Act or any other Act, the Child Advocate may apply to TASCAT to be joined as a party to proceedings,

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in accordance with section 96 of the *Tasmanian Civil and Administrative Tribunal Act 2020*, if those proceedings –

- (a) relate to a child or young person; and
 - (b) are relevant to the functions and powers of the Child Advocate.
- (3) In addition to any other power under this Act or any other Act, the Commissioner for Aboriginal Children and Young People may apply to TASCAT 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 –
 - (a) relate to an Aboriginal child or Aboriginal young person; and
 - (b) are relevant to the functions and powers of the Commissioner for Aboriginal Children and Young People.

Division 2 – Commissioners

12. Commissioner for Children and Young People

- (1) The Governor is to appoint a person as the Commissioner for Children and Young People.
- (2) Schedule 1 applies to the appointment of the Commissioner for Children and Young People under this section.
- (3) For the purposes of the *State Service Act 2000*, the Commissioner for Children and Young

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People is to be the Head of Agency within the meaning of that Act.

- (4) The person appointed as the Commissioner for Children and Young People is, by virtue of holding that position, also taken to be appointed as the Independent Regulator for the purposes of the *Child and Youth Safe Organisations Act 2023*.
- (5) In appointing a person as the Commissioner for Children and Young People under subsection (1), the Governor is to ensure that at least one, or both, of the following positions is held by a person, or are held by persons, who are known to be Aboriginal or Torres Strait Islander:
 - (a) the Commissioner for Children and Young People;
 - (b) the Deputy Regulator.
- (6) Subsection (5) does not apply to the appointment of the Commissioner for Children and Young People if the office of Deputy Regulator is vacant at the time of the appointment.

13. Child Advocate

- (1) The Governor is to appoint a person as the Child Advocate.
- (2) The Child Advocate –
 - (a) is to establish and administer –

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- (i) an independent visitor scheme in accordance with section 30; and
 - (ii) an advisory group, relating to out-of-home care, in accordance with section 31(2); and
 - (b) has the functions and powers to –
 - (i) advocate for any individual child or young person including, but not limited to, a child or young person in a detention facility or in out-of-home care; and
 - (ii) inquire into youth justice services or out-of-home care services, if the Child Advocate is contacted about the provision of those services to a child or young person; and
 - (iii) assist and support any individual child or young person to make a complaint to a statutory complaint authority; and
 - (iv) with the consent of a child or the child's guardian, make a complaint to a statutory complaint authority on behalf of the child; and
 - (v) with the consent of a young person, make a complaint to a statutory complaint authority on behalf of the young person; and

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- (vi) uphold and promote the rights of children and young people in a detention facility or out-of-home care.

- (3) Schedule 1 applies to the appointment of the Child Advocate under this section.

14. Commissioner for Aboriginal Children and Young People

- (1) The Governor is to appoint a person, who is known to be Aboriginal or Torres Strait Islander, as the Commissioner for Aboriginal Children and Young People.
- (2) The Commissioner for Aboriginal Children and Young People has the following functions and powers:
 - (a) to advocate for an Aboriginal child or Aboriginal young person, or all, or a specified class of, Aboriginal children and Aboriginal young people, including and not limited to children in out-of-home care or facility residents;
 - (b) to monitor, or investigate the systemic issues relating to, the experiences and treatment of Aboriginal children and Aboriginal young people while in a detention facility or out-of-home care;
 - (c) to promote the safety and wellbeing of all, or a specified class of, Aboriginal children and Aboriginal young people;

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- (d) to inquire into youth justice services or out-of-home care services, if the Commissioner for Aboriginal Children and Young People is contacted about the provision of those services to an Aboriginal child or Aboriginal young person;
 - (e) to assist and support Aboriginal children and Aboriginal young people to make a complaint to a statutory complaint authority;
 - (f) with the consent of an individual Aboriginal child or the child's guardian, to make a complaint to a statutory complaint authority on behalf of the Aboriginal child;
 - (g) with the consent of an individual Aboriginal young person, to make a complaint to a statutory complaint authority on behalf of the Aboriginal young person;
 - (h) to make a complaint to a statutory complaint authority on behalf of all, or a specified class of, Aboriginal children or Aboriginal young persons;
 - (i) to uphold and promote the rights of Aboriginal children and Aboriginal young people.
- (3) Schedule 1 applies to the appointment of the Commissioner for Aboriginal Children and Young People under this section.

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15. Commission and Commissioners not subject to direction or control

- (1) 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 this Act.
- (2) When performing a function, or exercising a power, as the Commissioner under this Act, a Commissioner –
 - (a) is not subject to the direction or control of any other Commissioner; and
 - (b) is not subject to the *State Service Act 2000* in respect of that function or power.
- (3) 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.

16. Acting Commissioners

- (1) The Governor may appoint a person to act as a Commissioner, for a term not exceeding 6 months, if –
 - (a) for any period –
 - (i) the office of Commissioner is vacant; or

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- (ii) the Commissioner is absent from, or is unable to perform the functions, or exercise the powers, of the office; and
 - (b) the Commissioner did not delegate, under section 19, the functions and powers of the office of Commissioner during that period; and
 - (c) the Governor is satisfied that the person is appropriate to hold the office of Commissioner for that period.
 - (2) The appointment of a person as an Acting Commissioner under subsection (1) –
 - (a) is to be notified in the *Gazette* as soon as practicable after the appointment occurs; and
 - (b) may be revoked, by the Governor, only if –
 - (i) the Commissioner appointed to that office returns to office before the end of the period for which the person has been appointed to act as Commissioner; or
 - (ii) a new person has been appointed to that office of Commissioner in accordance with this Act; or
 - (iii) the Governor is no longer satisfied that the appointed person is appropriate to hold the

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office of Commissioner for that
period.

- (3) For the avoidance of doubt, a person appointed to act as a Commissioner under this section is taken, for the purposes of this Act and any other Act, to be the Commissioner while so acting.

Division 3 – Functions and powers

17. Powers of Commission, or Commissioner, when performing function or exercising power

In performing a function, or exercising a power, under this Act, the Commission, and each Commissioner –

- (a) may seek such information, and be informed in such manner, as the Commission or Commissioner considers appropriate; and
- (b) 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
- (c) may hold an investigation, review or inquiry in public or in private; and
- (d) is not bound by the rules of evidence.

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18. Certain matters not within jurisdiction of Commission

- (1) Unless otherwise specified in this Act or another Act, the Commission and the Commissioners do not have the authority to investigate or review –
- (a) a specific decision made in respect of, or specific complaint relating to, 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 Prosecutions, or the Police Service –
 - (i) to specific circumstances; or
 - (ii) in determining whether or not to institute, or continue with, proceedings for an offence; or
 - (iii) in determining whether or not to apply for an order under the *Family Violence Act 2004*; or
 - (d) the application of the systems, policies and practices of Tasmanian Legal Aid in respect of legal advice given by lawyers employed, engaged or funded by Tasmanian Legal Aid; or

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- (e) any other prescribed matter, decision or process.
- (2) Nothing in subsection (1) prevents the Commission or a Commissioner from –
 - (a) providing a child, young person or support person with information about relevant government and non-government programs or services that may be relevant; or
 - (b) referring a child, young person or support person to such a program or service; or
 - (c) investigating or reviewing a systemic matter that affects all, or a specified class of, children or young people if that investigation or review is commenced as a result of a matter raised in respect of an individual child or individual young person.
- (3) For the avoidance of doubt, nothing in this Act authorises the Commission or a Commissioner, other than the Child Advocate or the Commissioner for Aboriginal Children and Young People, to advocate for an individual child or individual young person.

19. Commission and Commissioners may delegate certain functions and powers

- (1) The Commission, in writing, may delegate a function or power of the Commission, under this

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Act or any other Act, other than this power of delegation.

- (2) A Commissioner, in writing, may delegate to another Commissioner, or a person appointed to assist the Commission or the Commissioner, a function or power of the Commissioner, under this Act or any other Act, other than this power of delegation.

20. Functions and powers must be delegated in certain circumstances

- (1) If the Commission is satisfied that a function or power under this 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.
- (2) A function or power delegated under subsection (1) –
 - (a) is taken to have been performed or exercised by the delegate as if the delegate were the person with the authority to perform the function or exercise the power; and
 - (b) may only be performed or exercised by the delegate while the delegator has the conflict of interest which has resulted in the function or power being so delegated.

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21. Certain interactions under this Act may be refused

- (1) For the avoidance of doubt, nothing in this Act –
 - (a) requires a child, or young person, to talk or interact with a Commissioner, or a visitor under the independent visitor scheme established under section 30, if the child or young person does not wish to do so; or
 - (b) in relation to access to a resident of a detention facility under Division 4 who is not a child or young person, requires that resident to talk or interact with a Commissioner if the resident does not wish to do so.
- (2) If a resident of 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

22. Inspection of detention facilities

- (1) A Commissioner may access, inspect and review a detention facility, any aspect of a detention facility or any equipment or facilities used in connection with a detention facility –
 - (a) at any time –
 - (i) during the ordinary business hours of the detention facility; or

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- (ii) as agreed between the Commissioner and the person in charge of the detention facility; and
 - (b) on as many occasions as the Commissioner considers reasonable; and
 - (c) with or without notice; and
 - (d) with any assistance, persons or equipment as the Commissioner considers reasonably necessary.
- (2) A Commissioner, and any member of staff of the Commission, may take such photographs, files or audio or visual recordings as the Commissioner considers necessary to perform a function or exercise a power under this Act.
- (3) A Commissioner, or the Commission, may publish a schedule of –
- (a) the dates and locations at which a Commissioner intends to carry out an inspection under this Division; and
 - (b) which Commissioner intends to carry out the inspection.
- (4) A person in charge of a detention facility must not unreasonably refuse a Commissioner access to the detention facility.
- Penalty: Fine not exceeding 100 penalty units.
- (5) Despite subsection (1)(c), a Commissioner is to give notice to the person in charge of a detention

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facility that the Commissioner intends to use a power under this section in respect of the detention facility if –

- (a) the use of the power is planned, and a reasonable period of notice is able to be provided to the person in charge of the detention facility; and
- (b) 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.

23. Access to certain persons

- (1) For the purposes of this Act and to ensure the wellbeing of children and young people, a Commissioner is entitled –
 - (a) to have access to a resident of a detention facility, at all times, if the resident –
 - (i) is a child or young person; or
 - (ii) has care or charge of a child while in the detention facility; and
 - (b) to monitor the safety and wellbeing of the resident.
- (2) The person in charge of a detention facility and each member of staff, and each person providing services, at the detention facility –

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- (a) must allow a Commissioner to conduct an interview with a resident of the detention facility out of the hearing of any other person; and
 - (b) must allow a Commissioner to be accompanied by an interpreter when conducting an interview with a resident of the detention facility at the detention facility, if the Commissioner considers an interpreter is required; and
 - (c) must not, without the approval of the resident of the detention facility, read, copy or remove anything written by –
 - (i) the resident of the detention facility to a Commissioner or the Commission; or
 - (ii) a Commissioner, or the Commission, to a resident of the detention facility.

Penalty: Fine not exceeding 100 penalty units.

24. Commission to issue identity cards

- (1) The Commission is to issue an identity card to –
 - (a) each Commissioner; and
 - (b) each other person who is part of the Commission.
- (2) An identity card issued under this section –

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- (a) must contain the name and recent photograph of the person to whom the card has been issued; and
 - (b) must contain a statement that the person is part of the Commission and, if the person is a Commissioner, the title of office held by the person; and
 - (c) may contain any other information that the Commission considers appropriate.
- (3) A person issued with an identity card under this section is to allow a member of staff of a detention facility inspected under section 22, or any resident of the detention facility accessed under section 23, to inspect the identity card of the person who is carrying out the inspection of the facility.
- (4) A person issued with an identity card under this section must return, to the Commission, the identity card issued to the person if the person ceases to be part of the Commission.

Penalty: Fine not exceeding 20 penalty units.

Division 5 – Administration of Commission

25. Annual plan

Before 30 June in any calendar year, the Commission is to prepare a plan, for the financial year that is to commence on 1 July of that calendar year, that describes the proposed program of work and activities, as known for

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that financial year, intended to be undertaken by the Commission and each Commissioner.

26. Annual reports and other reports

- (1) 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.
- (2) An annual report is to contain –
 - (a) in relation to the immediately preceding financial year –
 - (i) details of the performance of the functions, and the exercise of the powers, of the Commission and each Commissioner under this Act; and
 - (ii) a summary of each inquiry undertaken under Part 3;
 - (iii) a list of reports published by the Commission, and each Commissioner, under this Act; and
 - (b) a copy of the annual plan, prepared under section 25, for the current financial year.
- (3) On or before 31 October in each year, the Commission is to lay before each House of Parliament the annual report for the immediately preceding financial year.

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- (4) If the Commission is unable to comply with subsection (3) in respect of an annual report because a House of Parliament is not sitting, the Commission must –
 - (a) forward a copy of the annual report to the Clerk of that House; and
 - (b) within the next 7 sitting-days of that House, cause a copy of the annual report to be laid before that House.
- (5) The Commission may, at any time –
 - (a) provide to the Minister, or lay before each House of Parliament, a report on –
 - (i) 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
 - (ii) any matter that is within the jurisdiction of the Commission or a Commissioner; or
 - (b) provide a report to the Joint Committee on –
 - (i) 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

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- (ii) any matter that is within the jurisdiction of the Commission or a Commissioner; or
- (c) publish a report on a matter relating to children or young people, or a specific class of children or young people, within the State.

27. Adverse comments in reports

- (1) Despite anything in section 26, the Commission or a Commissioner must not include a comment in a report under this Act that is adverse to a person unless the Commission, or Commissioner, has –
 - (a) notified the person, in writing –
 - (i) of the intention to make the comment in the report; and
 - (ii) of all relevant details in respect of the comment including, but not limited to, the evidence on which the comment is based; and
 - (iii) that the person is entitled to make a representation in respect of the comment and that any such representation will be included in the report; and
 - (b) allowed the person at least 15 working days to make representations to the Commission, or Commissioner, in

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respect of the comment before the report is finalised.

- (2) If a person has made a representation to the Commission, or Commissioner, under subsection (1)(b) in respect of a comment in a report that is adverse to the person, the Commission or Commissioner must include a copy of the representation in the report, except where the person has requested that the representation not be included in the report.
- (3) Despite subsection (1)(b), the Commission, or Commissioner, and the person notified of an adverse comment under subsection (1)(a) may agree to a period of less than 15 working days to make representations in respect of the comment.

28. Publication of reports

- (1) The Commission –
 - (a) must publish a version of a report under this Act, or such parts of the report as the Commission considers appropriate, in a format that is suitable for children unless the Commission considers that it is not appropriate to do so; and
 - (b) may publish a report under this Act, including a report to be published under paragraph (a), in any manner that the Commission considers appropriate.
- (2) Despite subsection (1), if the Commission intends to table a report in both Houses of

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Parliament, the Commission must not publish the report until the report has been so tabled.

- (3) For the avoidance of doubt, this section applies to a report under this Act, regardless of whether the report is by the Commission or a Commissioner.

29. Minister to receive copy of reports in certain circumstances

- (1) If the Minister makes a request under section 34 for the Commission to conduct an inquiry, the Commission is to provide the Minister with a draft of any report prepared by the Commission in respect of the inquiry.
- (2) Within 15 working days after receiving a draft report under subsection (1), the Minister may do either or both of the following:
- (a) provide the Commission with written comments, or feedback, on the draft report;
 - (b) make a written request that the Commission consult on the draft report with a person specified in the written request.
- (3) If the Minister has taken an action under subsection (2) in respect of a draft report under subsection (1), the Commission must include in the finalised report, if requested to do so by the Minister –

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- (a) a copy of the written comments or feedback provided by the Minister under subsection (2)(a), if any; and
 - (b) a copy of the written request of the Minister under subsection (2)(b), if any.
- (4) For the avoidance of doubt, a comment or request by, or the feedback of, the Minister under subsection (2) does not require the Commission to take any action other than an action under subsection (3), if required.

Division 6 – Visitor schemes, committees and advisory groups

30. Independent visitor scheme

- (1) The Child Advocate is to establish a scheme to ensure that independent persons visit –
 - (a) facility residents in a detention facility; and
 - (b) children in out-of-home care; and
 - (c) children and young people in other prescribed facilities.
- (2) In establishing an independent visitor scheme under subsection (1), the Child Advocate –
 - (a) is to ensure that Aboriginal children and Aboriginal young people have access to independent visitors who are known to be Aboriginal or Torres Strait Islander; and

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- (b) is to consult with the Commissioner for Aboriginal Children and Young People in relation to how the independent visitor scheme applies to Aboriginal children and Aboriginal young people.
 - (3) For the purposes of the scheme established under subsection (1) –
 - (a) each Commissioner is taken to be an independent visitor under the scheme; and
 - (b) the Child Advocate may appoint one or more persons as independent visitors under the scheme; and
 - (c) the Commissioner for Aboriginal Children and Young People may appoint one or more persons as independent visitors under the scheme.
 - (4) For the avoidance of doubt, a visit by a Commissioner may only be considered a visit under the independent visitor scheme if the visit is for a prescribed purpose.
 - (5) The regulations may prescribe, for the purposes of the independent visitor scheme –
 - (a) the frequency of visits to occur under the scheme; and
 - (b) the manner of appointment of independent visitors including, but not limited to, other persons who may appoint independent visitors; and

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- (c) the circumstances in which a visit may be postponed by the person in charge of –
 - (i) the residence or facility where a child is in out-of-home care; or
 - (ii) the detention facility where a child or young person is detained; or
 - (iii) any other facilities prescribed under subsection (1); and
- (d) the functions and powers of the independent visitors while making a visit under the scheme; and
- (e) the requirements, and expectations, that apply to a visit under the scheme.

31. Committees and advisory groups

- (1) The following committees, established under the *Commissioner for Children and Young People Act 2016*, are continued as a committee under this Act:
 - (a) the Children and Young People Advisory Council;
 - (b) the Children and Young People Consultative Council.
- (2) The Child Advocate is to establish an advisory group in relation to children in out-of-home care.

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- (3) The Commissioner for Aboriginal Children and Young People is to establish an advisory group in relation to Aboriginal children and young people.
 - (4) A Commissioner may establish such other committees or advisory groups as the Commissioner considers appropriate –
 - (a) to assist the Commission in the performance of a function, or the exercise of a power, under this Act; or
 - (b) to advise the Commissioner, or Commission, in relation to one or more of the functions of the Commissioner under this Act.
 - (5) The Commissioner who establishes a committee or advisory group under this section –
 - (a) is to, subject to this Act and the regulations, determine the terms of reference for the committee or advisory group; and
 - (b) may consult with the committee or advisory group in respect of the proposed terms of reference for the committee or advisory group.
 - (6) Unless otherwise specified in the terms of reference for a committee or advisory group under this section, Schedule 3 has effect with respect to the members and meetings of the committee or advisory group.

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Part 3 – Commission Inquiries

PART 3 – COMMISSION INQUIRIES

32. Interpretation of Part

In this Part –

reviewable process means a service, system, policy or practice referred to in section 33(1).

33. Power to conduct inquiries

(1) The Commission may conduct an inquiry into services, systems, policies or practices of an organisation or agency, government or non-government, that provides services that affect children or young people including, but not limited to, the following services:

- (a) services provided under the *Children, Young Persons and Their Families Act 1997* and the *Youth Justice Act 1997*;
- (b) services provided by –
 - (i) child care services within the meaning of the *Child Care Act 2001*; or
 - (ii) schools within the meaning of the *Education Act 2016*; or
 - (iii) if relevant, TasTAFE within the meaning of the *TasTAFE (Skills and Training Business) Act 2021*;

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- (c) out-of-home care services or youth justice services.

(2) An inquiry under this Act may be conducted –

- (a) at the request of the Minister or a Commissioner; or
- (b) on the initiative of the Commission as a whole or a specific Commissioner.

(3) An inquiry under this section on the initiative of the Commission or a Commissioner –

- (a) is to relate to a reviewable process provided in respect of all, or a specified class of, children and young people; and
- (b) may investigate or review a systemic matter that affects all, or a specified class of, children or young people if that investigation or review is commenced as a result of a matter raised in respect of an individual child or individual young person; and
- (c) may not relate to a specific decision made in respect of, or a specific case of circumstances relating to, an individual; and
- (d) may not be commenced into a matter raised in respect of an individual child or young person, unless the inquiry is commenced by the Child Advocate or Commissioner for Aboriginal Children and Young People.

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- (4) For the avoidance of doubt, an inquiry under this Act may not make recommendations in respect of a specific decision made in respect of, or a specific case of circumstances relating to, an individual.

34. Minister may request inquiries

- (1) If the Minister requests that the Commission conduct an inquiry under this Part, the Minister –
 - (a) may authorise the Commission to conduct an inquiry that is outside the jurisdiction of the Commission as specified under this Act; and
 - (b) may not –
 - (i) set the specific terms of the inquiry; or
 - (ii) state what is, or is not, to be considered by the Commission as part of the inquiry; or
 - (iii) otherwise specify how the inquiry is to be conducted.
- (2) For the avoidance of doubt, 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 under this Part.
- (3) For the avoidance of doubt –

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- (a) nothing in this section requires the Commission to comply with a request of the Minister under this section; and
 - (b) if the Commission accepts the request of a Minister under this section to conduct an inquiry, that includes an authority under subsection (1)(a), that request is taken to be within the jurisdiction of the Commission for the purposes of the inquiry.

35. Commission to notify Minister of inquiries

If the Commission intends to conduct an inquiry under this Part, the Commission is to notify the following persons before conducting the inquiry:

- (a) the Minister;
- (b) if the inquiry involves, or is likely to involve, a matter or reviewable process that is the responsibility of another Minister, the other Minister.

36. Inquiries

(1) The Commission –

- (a) may determine the format, and procedures, of an inquiry under this Part; and
- (b) may regulate any proceedings held under this Act in any manner that the Commission considers appropriate.

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Part 3 – Commission Inquiries

- (2) The Commission has the power to maintain order at any hearing, or other proceeding, conducted by the Commission as part of an inquiry under this Part.
- (3) Information given by a person to a hearing, or proceeding, conducted by the Commission as part of an inquiry under this Part may not be disclosed by the Commission as part of legal proceedings other than proceedings against the person under this Act.
- (4) Nothing in this Part requires the Commission to –
 - (a) hold a hearing, or other proceedings, in respect of an inquiry under this Part; or
 - (b) accept information offered to it as part of such an inquiry; or
 - (c) permit a person to appear at a hearing or other proceeding, as part of such an inquiry.

PART 4 – JOINT STANDING COMMITTEE

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

- (1) The Joint Standing Committee on the Commission for Children and Young People is established.
- (2) The Joint Committee consists of an even number, that is not less than 6 and not more than 8, of Members of Parliament of whom –
 - (a) half are to be Members of the Legislative Council; and
 - (b) half are to be Members of the House of Assembly.
- (3) The members of the Joint Committee established by this section are to include at least one representative of each political party that has 3 or more members in the House of Assembly.
- (4) 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 of the Legislative Council and the House of Assembly, respectively.
- (5) Part 1 of Schedule 2 has effect with respect to the membership of the Joint Committee.
- (6) Part 2 of Schedule 2 has effect with respect to the proceedings of the Joint Committee.

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Part 4 – Joint Standing Committee

38. Functions and powers of Joint Committee

- (1) The Joint Committee has the following functions and powers:
 - (a) to monitor and review the performance of the functions of the Commission, and each Commissioner, under this Act;
 - (b) to report to both Houses of Parliament, as it considers appropriate, on the following matters:
 - (i) matters relevant to the Commission and its functions and powers;
 - (ii) matters relevant to the functions or powers of a specific Commissioner;
 - (c) to examine the annual reports of the Commission and any other reports of the Commission, or a Commissioner, under this Act and report to both Houses of Parliament on any matter appearing in, or arising out of, such reports;
 - (d) to report to the Legislative Council, or the House of Assembly, on any matter relevant to a function or power of the Commission, or a Commissioner, that is referred to the Joint Committee by the Legislative Council or House of Assembly;

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- (e) to provide guidance and advice relating to the functions and powers of the Commission or a Commissioner;
 - (f) as soon as practicable after the third anniversary of the commencement of this section –
 - (i) to review the functions, powers and operations of the Commission, and each Commissioner; and
 - (ii) to table a report regarding that review including, but not limited to, any actions that are recommended to be taken in relation to this Act, the Commission or a specific Commissioner.
- (2) Nothing in this Part authorises the Joint Committee –
- (a) to examine or report on any matter, including an individual complaint or concern, that is being considered by a Commissioner; or
 - (b) to review a decision of a Commissioner, or the Commission, to hold an examination or inquiry, refuse to hold an examination or inquiry or discontinue an examination or inquiry; or
 - (c) to make findings, recommendations, determinations or decisions in relation to

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Part 4 – Joint Standing Committee

an examination or inquiry, by a Commissioner, into a matter relating to an individual complaint or concern.

- (3) For the avoidance of doubt, nothing in this section –
- (a) prevents the Joint Committee from monitoring and reviewing the performance of the functions of an individual Commissioner under this Act; and
 - (b) prevents any Commissioner under this Act, and any member of the Commission, from appearing before the Joint Committee.

39. Joint Committee to report to Parliament

- (1) By 30 November in each year, the Joint Committee is to –
- (a) make a report of its proceedings under this Act, in respect of the immediately preceding financial year; and
 - (b) cause a copy of the report to be laid before both Houses of Parliament.
- (2) If the Joint Committee is unable to comply with subsection (1) because a House of Parliament is not sitting, the Joint Committee is to provide a copy of the report, on or before 30 November, to the Clerk of the relevant House.

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- (3) Upon presentation to the Clerk of a House of Parliament, the report is taken to have been laid before that House of Parliament for the purposes of this section.
- (4) The Clerk of a House of Parliament is to cause a copy of a report provided under this section to be laid before that House of Parliament within the first 3 sitting-days after the Clerk received the report.

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Part 5 – Information Management

PART 5 – INFORMATION MANAGEMENT

40. Interpretation of Part

In this Part –

Government entity means –

- (a) an information-sharing entity within the meaning of the *Children, Young Persons and Their Families Act 1997*; and
- (b) a Community-Based Intake Service within the meaning of the *Children, Young Persons and Their Families Act 1997*; and
- (c) a Minister or a Secretary of a department;

identifying information means information in relation to a person that –

- (a) contains details that identify the person; or
- (b) enables the identity of the person to be ascertained or discovered;

relevant authority means –

- (a) the Commission and each Commissioner; and
- (b) the Independent Regulator and the Deputy Regulator, within the

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meaning of the *Child and Youth Safe Organisations Act 2023*; and

- (c) the Police Service or a police service of another State or a Territory; and
- (d) the Integrity Commission within the meaning of the *Integrity Commission Act 2009*; and
- (e) the Ombudsman; and
- (f) the Registrar within the meaning of the *Registration to Work with Vulnerable People Act 2013*; and
- (g) the Custodial Inspector appointed under section 5 of the *Custodial Inspector Act 2016*; and
- (h) the Tasmanian national preventive mechanism within the meaning of the *OPCAT Implementation Act 2021*; and
- (i) the Anti-Discrimination Commissioner appointed under section 5 of the *Anti-Discrimination Act 1988*; and
- (j) the Disability Commissioner appointed under section 27 of the *Disability Rights, Inclusion and Safeguarding Act 2024*; and

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- (k) the Health Complaints Commissioner appointed under section 5 of the *Health Complaints Act 1995*; and
- (l) any other prescribed person or prescribed entity.

41. Identity of children and young persons to be protected

The Commission and each Commissioner must ensure that, as far as is practicable, the identity of a child or young person is protected if –

- (a) the identity of the child or young person is disclosed to the Commission, or Commissioner, under this Act; or
- (b) identifying information in respect of a child or young person is disclosed to the Commission, or Commissioner, under this Act; or
- (c) the Commission or Commissioner intends to publish information under this Act that has been disclosed to the Commission or Commissioner under this Act.

42. Powers of Commissioners in relation to information

- (1) Despite any other Act, a Commissioner may, subject to this Part –
 - (a) obtain information under this Act; and

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- (b) make a copy, or record, of information obtained under this Act; and
 - (c) disclose information, obtained under this Act, to any person including, but not limited to, another Commissioner; and
 - (d) otherwise use information under this Act.
- (2) A Commissioner may only take an action under this Part in respect of information obtained under this Act if the action is taken for one or more of the following purposes:
- (a) a purpose or function of the Commissioner under this Act;
 - (b) if the Commissioner is providing the information to another Commissioner under this Act, a purpose or function of the other Commissioner under this Act;
 - (c) to protect and promote the safety and wellbeing of children and young people;
 - (d) to examine matters in relation to the safety and wellbeing of children and young people;
 - (e) 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 this Act;
 - (f) a prescribed purpose.

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43. Information may be volunteered to Commission

- (1) A person, including a Government entity or a relevant authority, may, on its own initiative, provide to the Commission or a Commissioner information relating to a child or young person if it is lawful for the person, entity or authority to do so.
- (2) A person, entity or authority providing information under this section, to the extent that the person, entity or authority has acted in good faith, incurs no civil or criminal liability in respect of providing the information to the Commission or Commissioner.

44. Power to request information

- (1) The Commission or a Commissioner may request a person, including a Government entity or a relevant authority, to do one or more of the following:
 - (a) provide information specified in the request;
 - (b) answer questions, whether orally or in writing, as specified in the request;
 - (c) produce documents, in any format, as specified in the request.
- (2) A request under subsection (1) may include a request for information that may include identifying information in respect of one or more persons.

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- (3) Nothing requires a person, including a Government entity or relevant authority, to comply with a request under subsection (1).

45. Power to compel information

- (1) The Commission or a Commissioner may, by written notice in accordance with subsection (2), require a person or a Government entity, other than a relevant authority, to do one or more of the following:
- (a) provide information in the format, or manner, specified by the Commission or Commissioner including, but not limited to, identifying information in relation to a child or young person;
 - (b) answer questions, whether orally or in writing;
 - (c) produce documents as specified in the requirement, in any format including, but not limited to, audio or video recordings or photographs.
- (2) A notice under subsection (1), in respect of a requirement, is to include the following information:
- (a) details of the requirement made under subsection (1) in respect of the person or Government entity;
 - (b) the date by which the person or Government entity is to comply with the

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requirement, being a date that is not less than 14 days after the written notice is given under subsection (1);

(c) a statement of –

(i) the actions that may be taken under this Act against the person or Government entity for failing to comply with the requirement; and

(ii) the maximum penalty that may apply to the person or Government entity for such a failure;

(d) the grounds on which the person or Government entity is not required to comply with the requirement, in accordance with subsection (4) or (6);

(e) any other prescribed information.

(3) The Commission or a Commissioner may only require a person or Government entity to provide identifying information under subsection (1) if –

(a) the identifying information is specifically requested by the Commission or Commissioner; and

(b) the Commission or Commissioner –

(i) has the consent of the person identified in the information; or

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- (ii) is unable to, or believes that it is not practicable to –
 - (A) obtain the consent of the person identified in the information; or
 - (B) request or compel, including from another source, information that has the identifying information redacted.
 - (4) A person or Government entity must comply with a requirement made under subsection (1) unless, to do so, would require the person or Government entity to provide information, answer a question or produce a document –
 - (a) in respect of which there is a lawful claim or right of privilege; or
 - (b) that contains information, communicated to a medical professional in confidence, relating to the physical or psychological health of a person; or
 - (c) may prejudice, or compromise, legal proceedings including, but not limited to, an investigation, inquiry or review; or
 - (d) may incriminate the person or Government entity in an offence.

Penalty: Fine not exceeding 100 penalty units.

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- (5) In addition to any penalty imposed on a person or Government entity under subsection (4), the Magistrates Court may make an order requiring the person or Government entity to provide the information, answer the question or produce the document, as specified in the order, to the Commission or relevant Commissioner.
- (6) For the avoidance of doubt, subsection (1) applies to information that may be kept and maintained in a database, or similar format, by a State Service Agency if –
 - (a) that information may be provided without breaching a national or international agreement in place in respect of the database; or
 - (b) the information may be provided in a manner that does not identify a child or young person who is not, and has not been, a resident of the State.

46. Commission may refuse to disclose information

- (1) Unless otherwise specified, the Commission or a Commissioner may disclose or refer to a relevant authority or Government entity all, or any part of, information provided to the Commission or a Commissioner –
 - (a) if the Commission or Commissioner is satisfied that it is appropriate in the circumstances; and

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- (b) if to do so would be lawful in the circumstances.
- (2) A person who is, or has been, a 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 that was disclosed, or obtained, by the Commissioner under this Act.
- (3) For the avoidance of doubt, the Commission has the power to disclose information obtained in the performance of its functions, or the exercise of its powers, under this Act if the Commission reasonably believes that –
- (a) the disclosure of the information is necessary –
- (i) to prevent or reduce a serious threat to any person’s health, safety or welfare, or to public health and safety generally; or
- (ii) to enable allegations of misconduct or criminal behaviour to be investigated; and
- (b) the information is being disclosed to a person, or entity, who is most appropriate to prevent or reduce the threat or to investigate the allegations.

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47. 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 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) when the information was obtained from a public source; or
 - (c) with the written consent of –
 - (i) the person to whom the information relates; or
 - (ii) if the person to whom the information relates is a child, the child or the child's guardian; or
 - (d) if the person reasonably believes that the use, or disclosure, of the information is necessary –
 - (i) to prevent or reduce a serious threat to an individual's health, safety or welfare; or
 - (ii) to prevent or reduce a serious threat to public health or public safety; or

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(iii) to enable allegations of
misconduct or criminal behaviour
to be investigated; or

(e) 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 identify, or lead to the identification of, any person to whom it relates.
- (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.

48. Exemption from *Personal Information Protection Act 2004*

A person who is 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 this Act.

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Part 6 – Miscellaneous

PART 6 – MISCELLANEOUS

49. Commission to avoid concurrent investigations

- (1) In conducting an inquiry or investigation under this Act, the Commission is to liaise with other relevant statutory authorities, statutory officers and official bodies –
 - (a) to prevent, if appropriate, duplicate inquiries or investigations; and
 - (b) to facilitate the coordination, and resourcing, of inquiries or investigations into the same matters that are to be conducted separately.
- (2) 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 –
 - (a) take all reasonable steps to avoid unnecessary duplication of assistance to the child, or young person, in respect of the matter; and
 - (b) facilitate the provision of support and assistance to the child or young person in respect of the matter.

50. Offences

- (1) 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.

- (2) A person must not threaten, or attempt to intimidate or influence, a person who is performing a function, or exercising a power, under this Act.

Penalty: Fine not exceeding 100 penalty units.

51. Protection from reprisal

A person must not –

- (a) prejudice, or threaten to prejudice, the safety or career of another person; or
- (b) intimidate or harass, or threaten to intimidate or harass, another person; or
- (c) do any act that is, or is likely to be, to the detriment of another person; or
- (d) incite or permit another person to take any of the actions specified in paragraph (a), (b) or (c) in relation to another person –

because the other person has provided, is providing or may in the future provide information, whether true or false, under this Act, in good faith.

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Penalty: Fine not exceeding 100 penalty units.

52. Protection from liability

- (1) A 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 –
 - (a) in the performance or exercise, or purported performance or exercise, of that function or power; or
 - (b) while complying with a requirement or request made, or purportedly made, under this Act.
- (2) A person does not incur any personal liability, civil or criminal, when complying with a requirement or request made, or purportedly made, under this Act, or disclosing information under Part 5, in good faith.
- (3) For the avoidance of doubt, a reference in this section to personal liability includes –
 - (a) a breach of a code of professional conduct or ethics; and
 - (b) a departure from any accepted standards of professional conduct or ethics; and
 - (c) a professional or ethical sanction or other disciplinary proceeding.

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- (4) The protections of this section apply to information obtained in accordance with the following Acts:
- (a) the *Anti-Discrimination Act 1988*;
 - (b) the *Child and Youth Safe Organisations Act 2023*;
 - (c) the *Custodial Inspector Act 2016*;
 - (d) the *Disability Rights, Inclusion and Safeguarding Act 2024*;
 - (e) the *Health Complaints Act 1995*;
 - (f) the *Ombudsman Act 1978*;
 - (g) the *OPCAT Implementation Act 2021*;
 - (h) the *Registration to Work with Vulnerable People Act 2013*.

53. 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 relate 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.

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- (3) The regulations may –
 - (a) authorise any matter to be from time to time approved, determined, applied or regulated by any person specified in the regulations; and
 - (b) be made subject to conditions or so as to apply differently according to matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the regulations.
- (4) The regulations may adopt, either wholly or in part and with or without modification, and either specifically or by reference, any convention, standards, rules, codes or specifications, whether the standards, rules, codes or specifications are published or issued before or after the commencement of a specified provision of this Act.

54. 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 Justice; and
- (b) the department responsible to that Minister in relation to the administration of this Act is the Department of Justice.

55. Review of Act

The Minister is to –

- (a) cause a review of this Act to occur in respect of the 5-year period commencing on the first appointment of a Commissioner under this Act; and
- (b) ensure that the review is completed and cause a copy of a report of the review to be laid before each House of Parliament within 6 years after the first appointment of a Commissioner under this Act.

56. Savings and transitional provisions

The savings and transitional provisions specified in Schedule 4 have effect.

57. Consequential amendments

The legislation specified in Schedule 5 is amended as specified in that Schedule.

58. Legislation repealed

The legislation specified in Schedule 6 is repealed.

59. Legislation revoked

The legislation specified in Schedule 7 is revoked.

**SCHEDULE 1 – APPOINTMENT OF
COMMISSIONERS**

Division 2 of Part 2

1. Selection of Commissioners

- (1) As far as is reasonably practicable, the process of selecting a Commissioner is to –
 - (a) be a transparent process that involves the external advertisement of the position; and
 - (b) be in accordance with the best practice for merit-based recruitment; and
 - (c) be advertised in a manner that is freely available to all members of the public; and
 - (d) include, as part of the selection panel for the position –
 - (i) at least one person who is not a State Service officer or State Service employee; and
 - (ii) if appropriate, at least one young person; and
 - (e) ensure that, as part of the process, the views and opinions of a panel of children and young people –

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- (i) are sought in respect of the selection of the Commissioner; and
 - (ii) are taken into account when determining the best process to select the Commissioner; and
 - (iii) are taken into account as part of the selection process for that Commissioner.
- (2) When selecting a person to appoint as the Commissioner for Aboriginal Children and Young People –
 - (a) the majority of the members of the selection panel must be known to be Aboriginal or Torres Strait Islander; and
 - (b) the majority of children and young people on the panel of children and young people, referred to in subclause (1)(e) and established in respect of the selection of the Commissioner, are to be Aboriginal children or Aboriginal young people.
- (3) Before making a recommendation to the Governor under this Act in respect of the appointment of a Commissioner, the Minister is to consult with at least one representative of each political party that has 2 or more sitting members in Parliament at that time.

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2. Eligibility of members

In addition to any other requirement in this Act, the Minister may only recommend to the Governor a person to be appointed as a Commissioner if the Minister is satisfied that the person –

- (a) is a fit and proper person to hold the position of Commissioner; and
- (b) has relevant experience, knowledge or qualifications, in relation to children or young people, including, but not limited to, vulnerable children and vulnerable young people; and
- (c) has relevant knowledge of, or experience in, implementing procedures and approaches which have the primary purpose of avoiding, as far as possible, further harm or trauma to individuals; and
- (d) holds the prescribed registration, and has completed satisfactorily the prescribed checks, to ensure that the person is a suitable person to perform the functions and exercise the powers of the specific Commissioner.

3. Duration of appointment

- (1) A Commissioner is appointed for such term, not exceeding 5 years, as is specified in the relevant instrument of appointment.

- (2) A person who has been appointed as a Commissioner may be reappointed to that position for one further term, not exceeding 5 years, as may be specified in the relevant instrument of appointment.

4. Terms and conditions of appointment generally

- (1) A Commissioner holds office on such terms and conditions as are specified in the relevant instrument of appointment.
- (2) A 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 that the member holds as Commissioner; or
 - (b) engage in paid employment outside the duties of that office.

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

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 –

- (a) may perform all the functions and exercise all the powers of the Commission under this Act; and

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- (b) in performing those functions and exercising those powers, may not examine, investigate or review a specific decision made in respect of an individual case or specific circumstance.

6. Remuneration

- (1) The remuneration and allowances payable to a Commissioner are –
 - (a) as specified in the instrument of appointment for that Commissioner; or
 - (b) as otherwise determined by the Governor.
- (2) A Commissioner is an employee for the purposes of the *Public Sector Superannuation Reform Act 2016*.

7. Vacation of office

- (1) A person appointed as a Commissioner under this Act is taken to vacate that office if the person –
 - (a) is, without reasonable excuse, absent from that office 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 the person's creditors, or makes an assignment of the person's

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remuneration or estate for the person's benefit; or

(c) is convicted –

(i) in Tasmania of a crime, or offence, punishable by imprisonment for a term of 12 months or longer; or

(ii) elsewhere of a 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, in the opinion of the Governor, unable to perform adequately, or competently, the duties of the person's office as Commissioner; or

(e) has neglected to perform the duties of the person's office as Commissioner; or

(f) is guilty of conduct of such a nature, including reportable conduct within the meaning of *Child and Youth Safe Organisations Act 2023*, that the Governor forms the opinion that the person is unsuitable to continue to hold the office of Commissioner.

(2) A person appointed as the Commissioner for Children and Young People is taken to vacate that office if the person ceases to be appointed as

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the Independent Regulator under the *Child and Youth Safe Organisations Act 2023*.

8. Defect does not invalidate appointment

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

Section 37

PART 1 – MEMBERSHIP OF JOINT COMMITTEE

1. Vacancies

- (1) The office of a member of the Joint Committee becomes vacant for any reason that would also cause the member to vacate the member's seat as a member of the Legislative Council or the House of Assembly, as the case may be.
- (2) If a vacancy occurs in the office of a member of the Joint Committee, it is to be filled in accordance with section 37(4) within the first 10 sitting-days of the House, of which the member was also a member, after the vacancy occurred.
- (3) If such a vacancy occurs while Parliament is not in session, the Governor may appoint a member of the House of Parliament to temporarily fill the vacancy until it is filled in accordance with section 37(4).

2. Resignations

A member of the Joint Committee may resign the office of member of the Joint Committee by writing addressed to the presiding officer of the House of Parliament of which the member is a member of Parliament.

3. Chairperson of Joint Committee

There is to be a chairperson and a vice-chairperson of the Joint Committee, who 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.

4. Secretary of Joint Committee

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.

5. Membership of Joint Committee not an office of profit

The office of a member of the Joint Committee is not an office of profit or emolument, within the meaning of the *Constitution Act 1934*, and the acceptance and holding of such an office does not –

- (a) render the holder of the office incapable of sitting or voting as a member of either House of Parliament; or
- (b) make void the election of the holder of the office as a member of either House of Parliament.

PART 2 – PROCEEDINGS OF JOINT COMMITTEE

1. Proceedings of Joint Committee

- (1) At least half of the total number of members of the Joint Committee constitute a quorum of the Joint Committee, but the quorum may not be made up exclusively of members of one House of Parliament.
- (2) The chairperson of the Joint Committee, or, in the case of the chairperson's absence or other inability to act as chairperson, the vice-chairperson of the Joint Committee, is to preside at all meetings of the Joint Committee at which the chairperson is present.
- (3) At a meeting of the Joint Committee at which a quorum is present –
 - (a) the members in attendance may, in the absence of the chairperson of the Joint Committee and vice-chairperson of the Joint Committee, appoint one of their number then present to be the temporary chairperson of the Joint Committee; and
 - (b) the temporary chairperson of the Joint Committee has, during the absence of the chairperson of the Joint Committee and vice-chairperson of the Joint Committee, all the powers of the chairperson of the Joint Committee.
- (4) The Joint Committee is to cause minutes of its meetings and proceedings to be kept.

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(5) The Joint Committee may –

- (a) sit and transact business during any adjournment or recess; and
- (b) sit at such times and in such places, and conduct its proceedings in such manner, as it thinks fit.

2. Voting at meetings of Joint Committee

(1) At a meeting of the Joint Committee –

- (a) the chairperson of the Joint Committee or, in the chairperson's absence, the vice-chairperson of the Joint Committee, has a deliberative vote only; and
- (b) when the votes on a question are equal, the question passes in the negative.

(2) 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.

(3) A question is decided by the majority of votes of the members voting, if the vote is taken at a meeting of which a majority of members, appointed to serve on the Joint Committee, is present.

3. Evidence before Joint Committee

(1) 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.

- (2) 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.
- (3) 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.
- (4) In deciding to take evidence in private, the Joint Committee may seek advice from the Commission about whether to take the evidence in private.
- (5) Notwithstanding anything in subclause (3), the Joint Committee, when requested so to do by a witness, must take in private any evidence that, in the opinion of the Joint Committee, relates to a secret or confidential matter.
- (6) Subject to subclause (7), the Joint Committee may, in its discretion, disclose or publish, or authorise the disclosure or publication of, evidence taken in private.
- (7) If there is taken in private any evidence of a witness 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 consent in writing of the witness, disclose or publish, or authorise the disclosure or

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publication of, that evidence, unless it has already been lawfully published.

- (8) 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.
- (9) References in this clause to evidence are to be construed as including references to documentary evidence, and references in this clause to evidence given by a witness is to be construed as including references to any part of the evidence so given.
- (10) Any person who discloses or publishes any evidence contrary to the provisions of this clause is guilty of an offence.

Penalty: Fine not exceeding 5 000 penalty units or imprisonment for a term not exceeding one year.
- (11) Sections 2A and 2B of the *Parliamentary Privilege Act 1858* apply to any matter being examined by the Joint Committee under this Act.

4. Continuation of proceedings

If the Joint Committee, as constituted at any time, has taken evidence in relation to any matter, but the Joint Committee as so constituted has ceased to exist before reporting on that

matter, the Joint Committee as next constituted may consider that evidence as if it had been given before it.

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**

Section 31

1. Interpretation of Schedule

In this Schedule –

relevant Commissioner, in relation to a committee or advisory group continued or established under this Act, means –

- (a) in the case of a committee continued under section 31(1) – the Commissioner for Children and Young People; and
- (b) in any other case, the Commissioner who established the committee or advisory group.

2. Membership generally

- (1) A committee continued under section 31(1) is to consist of at least 5 persons, as determined by the Commissioner for Children and Young People.
- (2) A committee, or advisory group, established by a Commissioner under section 31(4) is to consist of at least 5 persons as determined by the Commissioner.
- (3) The chairperson of a committee or advisory group is to be appointed by the relevant

Commissioner for the committee or advisory group.

3. Children and Young People Advisory Council

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 including, but not limited to persons –

- (a) from non-government, or community, organisations; and
- (b) from groups which represent the diverse nature of the Tasmanian community; and
- (c) employed by, or having experience with, State authorities relating to the health, welfare, care, protection, development, support and legal rights of children or young people; and
- (d) employed by, or having experience with, private entities relating to the health, welfare, care, protection, development, support and legal rights of children or young people.

4. Children and Young People Consultative Council

In appointing the members of the Children and Young People Consultative Council, the

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must ensure that members –

- (a) are children or young people; and
- (b) are from groups which represent the diverse nature of the Tasmanian community.

5. Conditions of appointment

- (1) A member of a committee or advisory group is entitled to be paid such remuneration and allowances –
 - (a) as are specified in the instrument of appointment for the member; or
 - (b) as otherwise determined by the relevant Commissioner for the committee or advisory group.
- (2) 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.

6. Proceedings of committee

- (1) 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.
- (2) Subject to subclause (1) 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.

- (3) Subject to subclause (1), a committee may –
- (a) inform itself as it considers appropriate; and
 - (b) obtain assistance, information and advice from any person whom it considers appropriate.

7. Disclosure of interests

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

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

Penalty: Fine not exceeding 10 penalty units.

- (2) A disclosure of a pecuniary interest under subclause (1) is to be recorded in the minutes of the meeting and, unless the committee otherwise

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determines, the member who made the disclosure must not –

- (a) be present during any deliberation of the committee in relation to the matter to which the disclosure relates; or
 - (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 solely because a member of a committee also holds an office, or employment, under the *State Service Act 2000*.

**SCHEDULE 4 – SAVINGS AND TRANSITIONAL
PROVISIONS**

Section 56

1. Interpretation

In this Schedule –

existing Regulator means the person who is the Regulator, under the *Child and Youth Safe Organisations Act 2023*, on the day on which this clause commences;

former Act means the *Commissioner for Children and Young People Act 2016*;

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).

2. Existing Commissioner to continue

- (1) 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 –
 - (a) section 12(1) commences; or
 - (b) a person is appointed as Commissioner for Children and Young People under this Act –

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whichever last occurs.

- (2) If a person has not been appointed as Commissioner for Children and Young People under this Act on the day on which section 12(1) commences, the relevant Commissioner –
- (a) is taken to hold the office of Commissioner for Children and Young People under this Act on the same terms and conditions on which the person was appointed as the relevant Commissioner under the former Act; and
 - (b) is taken to meet the eligibility requirements for the office of Commissioner for Children and Young People under this Act; and
 - (c) for the term of the appointment remaining under the former Act, is not –
 - (i) taken also to be appointed as the Independent Regulator under the *Child and Youth Safe Organisations Act 2023*; or
 - (ii) required also to be appointed as the Independent Regulator under that Act.
- (3) 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 when the first of the following occurs:

- (a) on the day on which a person is appointed as Commissioner for Children and Young People under this Act;
- (b) the person's appointment as the Commissioner for Children and Young People ends, in accordance with the terms and conditions of the person's appointment as the relevant Commissioner under the former Act.

3. Existing Regulator to continue

- (1) If, on the day on which section 12(1) of this Act commences, a person holds the office of Independent Regulator under the *Child and Youth Safe Organisations Act 2023* –
 - (a) 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; and
 - (b) that person ceases to hold the office of Independent Regulator under the *Child and Youth Safe Organisations Act 2023* when the first of the following occurs:
 - (i) section 12(4) commences;
 - (ii) the person ceases to hold the office of Independent Regulator in accordance with the terms and conditions of that appointment.

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- (2) If, on the day on which section 12(1) of this Act commences, section 12(4) has not commenced, a reference to the Independent Regulator holding that office by virtue of section 12(4), in this or any other Act, is taken to include a reference to the existing Regulator as appointed to that office under the *Child and Youth Safe Organisations Act 2023* and continued under this clause.
- (3) For the avoidance of doubt, nothing in this 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 –
 - (a) section 12(4) has not commenced at the time of the appointment; and
 - (b) the Minister and Governor consider it appropriate in the circumstances.

4. Committees

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.

5. Annual report

- (1) 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.
- (2) The annual report requirements of this Act apply to such part of the financial year as remains after this Schedule commences.

6. Legal matters

- (1) For the avoidance of doubt, 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 –
 - (a) relate to the former Act or the relevant Commissioner in the Commissioner's capacity as relevant Commissioner; and
 - (b) if this Act had commenced, could have been instituted by or against the relevant Commissioner.
- (2) 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.

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.

8. Records and other documents

- (1) 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.
- (2) 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.

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

- (1) The Commissioner for Children and Young People may appoint a person to act as an advocate for a facility resident if –

- (a) the Commissioner for Children and Young People is appointed under this Act; and
 - (b) section 13 has not yet commenced.
- (2) The Commissioner for Children and Young People may only appoint a person under subclause (1) if the Commissioner is satisfied that the person –
 - (a) has suitable knowledge and experience to act as an advocate; and
 - (b) holds any relevant qualifications or certifications.
- (3) A person appointed under subclause (1) as an advocate for a facility resident has the following functions:
 - (a) listening to, and giving voice to, the concerns and grievances of the facility resident and facilitating the resolution of those concerns and grievances;
 - (b) seeking information about, and facilitating access by the facility resident to, support services appropriate to the needs of the facility resident;
 - (c) assessing whether the facility resident has been provided with adequate information about the facility resident's rights;

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- (d) assessing, in the person's opinion, the wellbeing of the facility resident.
- (4) In acting as an advocate for a facility resident, a person appointed under subclause (1) must –
 - (a) within reason, seek and take into account the views and wishes of the facility resident before –
 - (i) asking a staff member of the detention centre, within the meaning of the *Youth Justice Act 1997*, a question about the facility resident; or
 - (ii) inspecting or taking extracts from, or copies of, a document that relates to the facility resident; and
 - (b) preserve, as far as practicable in the circumstances, the privacy of the facility resident; and
 - (c) respect the wishes of any other facility resident who does not wish to communicate with the person.

SCHEDULE 5 – CONSEQUENTIAL AMENDMENTS

Section 57

Child and Youth Safe Organisations Act 2023

1. Section 4 is amended by omitting the definition of *Regulator* and substituting the following definition:

Regulator means the person who is taken to be appointed as the Independent Regulator by virtue of section 12(4) of the *Commission for Children and Young People Act 2025*;

2. Part 2 is amended by omitting **“INDEPENDENT REGULATOR AND DEPUTY INDEPENDENT REGULATOR”** from the heading to that Part and substituting **“REGULATOR AND DEPUTY REGULATOR”**.

3. Section 11 is amended as follows:

- (a) by omitting paragraph (a) from subsection (2);

- (b) by omitting subsection (3) and substituting the following subsection:

- (3) If the Governor appoints a person as the Deputy Independent Regulator under subsection (2), the Governor is to ensure that, at any one time, at least one person

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appointed as either the Deputy Independent Regulator or the Regulator is known to be Aboriginal or Torres Strait Islander.

4. Section 40(3) is amended by inserting after paragraph (g) the following paragraphs:

- (ga) the Child Advocate within the meaning of the *Commission for Children and Young People Act 2025*;
- (gb) the Commissioner for Aboriginal Children and Young People within the meaning of the *Commission for Children and Young People Act 2025*;

5. Schedule 4 is amended as follows:

- (a) by omitting from clause 1(1) “Regulator and Deputy Regulator each hold” and substituting “Deputy Regulator holds”;
- (b) by omitting from clause 1(2) “the Regulator or”;
- (c) by omitting from clause 2(1) “Regulator and Deputy Regulator hold office, respectively,” and substituting “Deputy Regulator holds office”;
- (d) by omitting from clause 2(2) “Regulator and”;

- (e) by omitting from clause 2(2)(a) “Regulator or”;
- (f) by omitting from clause 2(3) “Regulator and”;
- (g) by omitting from clause 3(1) “Regulator and”;
- (h) by omitting from clause 3(2) “Regulator and Deputy Regulator are employees” and substituting “Deputy Regulator is an employee”;
- (i) by omitting clause 4 and substituting the following clause:

4. Vacation of office

- (1) A person appointed as the Deputy Regulator is taken to vacate that office if the person –
 - (a) is, without good reason, absent from that office 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 the person’s creditors, or makes an assignment of the person’s remuneration

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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

(f) is guilty of misconduct of
such a nature that the

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Governor forms the opinion that the person is unsuitable to continue to hold the office.

- (2) For the avoidance of doubt, the person holding the office of Regulator is taken to vacate that office if the person ceases to be appointed as the Commissioner for Children and Young People under the *Commission for Children and Young People Act 2025*.

- (j) by omitting from clause 5 “Regulator or”.

Disability Rights, Inclusion and Safeguarding Act 2024

1. Section 38(1) is amended by omitting paragraphs (c) and (d) and substituting the following paragraphs:
 - (c) a Commissioner within the meaning of the *Commission for Children and Young People Act 2025*;
 - (d) the Regulator within the meaning of the *Child and Youth Safe Organisations Act 2023*;
2. Section 82(1) is amended by omitting paragraphs (n) and (o) from the definition of *information-sharing entity* and substituting:

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- (n) the Regulator within the meaning of the *Child and Youth Safe Organisations Act 2023*; or
- (o) a Commissioner, within the meaning of the *Commission for Children and Young People Act 2025*; or

Financial Management Act 2016

1. Schedule 1 is amended by inserting after

Brand Tasmania

The chief executive officer appointed under section 21 of the *Brand Tasmania Act 2018*

in Part 1 the following item:

Commission for Children and Young People

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

1. Section 35(3) is amended by omitting paragraph (b) and substituting the following paragraph:

- (b) *Commission for Children and Young People Act 2025*;

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Ombudsman Act 1978

1. Section 26 is amended by inserting after subsection (3B) the following subsection:

(3C) Subsection (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.

Right to Information Act 2009

1. Section 6(1) is amended by omitting paragraph (ma) and substituting the following paragraph:

(ma) the Commission, and each Commissioner, under the *Commission for Children and Young People Act 2025*;

State Service Act 2000

1. Schedule 1 is amended by inserting after

Brand Tasmania

Chief executive officer

in Part 2 the following item:

Commission for Children and
Young People

Commissioner for Children and
Young People

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Tasmanian Civil and Administrative Tribunal Act 2020

1. Section 97 is amended by inserting after paragraph (b) the following paragraphs:
 - (ba) if the proceedings relate to a child or young person within the meaning of the *Commission for Children and Young People Act 2025*, the Child Advocate within the meaning of that Act;
 - (bb) if the proceedings relate to an Aboriginal child or young person within the meaning of the *Commission for Children and Young People Act 2025*, the Commissioner for Aboriginal Children and Young People within the meaning of that Act;

Youth Justice Act 1997

1. Section 3(1) is amended as follows:
 - (a) by omitting the definition of *Commissioner for Children and Young People*;
 - (b) by inserting the following definition after the definition of *Custodial Inspector*:

CYP Commissioner means a Commissioner appointed under the *Commission for Children and Young People Act 2025*;

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2. Section 22(4A)(c) is amended by omitting “the Commissioner for Children and Young People” twice occurring and substituting “a CYP Commissioner”.
3. Section 31(6)(b) is amended by omitting “the Commissioner for Children and Young People” twice occurring and substituting “a CYP Commissioner”.
4. Section 45(3A)(c) is amended by omitting “the Commissioner for Children and Young People” twice occurring and substituting “a CYP Commissioner”.

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SCHEDULE 6 – LEGISLATION REPEALED

Section 58

Commissioner for Children and Young People Act 2016 (No. 2
of 2016)

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SCHEDULE 7 – LEGISLATION REVOKED

Section 59

*Proclamation under the Commissioner for Children and
Young People Act 2016 (No. 36 of 2016)*