

**Annexure 1**

**5—Commissioner for Children and Young People**

- (1) There is to be a Commissioner for Children and Young People.
- 5 (2) The Commissioner is independent of direction or control by the Crown or any Minister or officer of the Crown

**6—Terms and conditions of appointment**

- 10 (1) The Commissioner will be appointed by the Governor on the nomination of the Minister for a term not exceeding 5 years and on conditions determined by the Governor and, at the end of a term of appointment, will be eligible for reappointment.
- (2) The Minister must, before nominating a person for appointment as Commissioner, call for expressions of interest in accordance with a scheme determined by the Minister.
- (3) The Commissioner is not a Public Service employee.
- 15 (4) If the Commissioner was, immediately before his or her appointment, employed in the Public Service, the Commissioner retains existing and accruing rights in respect of leave.

**7—Removal etc of Commissioner**

- (1) The Governor may, on the address of both Houses of Parliament, remove the Commissioner from office.
- 20 (2) The Governor may suspend the Commissioner from office for—
  - (a) contravention of a condition of appointment; or
  - (b) misconduct; or
  - (c) failure or incapacity to carry out official duties satisfactorily.
- 25 (3) If the Governor suspends the Commissioner from office, a full statement of the reason for the suspension must be laid before both Houses of Parliament within 7 days after the suspension if Parliament is then in session or, if not, within 7 days after the commencement of the next session of Parliament.
- 30 (4) If, at the end of 20 sitting days after the statement is laid before Parliament, neither House of Parliament has presented an address to the Governor requiring the Commissioner to be restored to office, the Commissioner is removed from office.
- (5) If within 20 sitting days after the statement is laid before Parliament either House of Parliament presents an address to the Governor requiring the Commissioner to be restored to office, the Commissioner is restored to office.
- 35 (6) The office of Commissioner becomes vacant if the holder—
  - (a) dies; or
  - (b) completes a term of office and is not reappointed; or
  - (c) resigns by written notice to the Governor; or

(d) becomes an insolvent under administration within the meaning of the *Corporations Act 2001* of the Commonwealth; or

(e) is convicted of—

(i) an indictable offence against the law of this State; or

(ii) an offence against the law of this State that is punishable by imprisonment for a term of at least 12 months; or

(iii) an offence against the law of another jurisdiction that, if committed in this State, would be an offence of a kind referred to in a preceding paragraph; or

(f) is sentenced to imprisonment for an offence (whether against a law of this State or another jurisdiction); or

(g) becomes a prohibited person within the meaning of the *Child Safety (Prohibited Persons) Act 2016*;

(h) is removed from office by the Governor under this section.

(7) Except as is provided by this section, the Commissioner may not be removed or suspended from office, nor will the office of the Commissioner become vacant.

## **8—Appointment of acting Commissioner**

(1) The Minister may appoint a person (who may be a Public Service employee) to act as the Commissioner during any period for which—

(a) no person is for the time being appointed as the Commissioner; or

(b) the Commissioner is absent from, or unable to discharge, official duties.

(2) The terms and conditions of appointment of the person appointed to act as the Commissioner will be determined by the Minister.

## **9—Delegation**

(1) Subject to this section, the Commissioner may delegate a function or power under this Act (other than a prescribed function or power) to any person or body that is, in the Commissioner's opinion, competent to perform or exercise the relevant function or power.

(2) A delegation under this section—

(a) must be in writing; and

(b) may be conditional or unconditional; and

(c) is revocable at will; and

(d) does not prevent the delegator from acting in any matter.

(3) A function or power delegated under this section may, if the instrument of delegation so provides, be further delegated.

## **10—Honesty and accountability**

The Commissioner and any person appointed to act as the Commissioner are senior officials for the purposes of the *Public Sector (Honesty and Accountability) Act 1995*.

**11—Employees**

- (1) The Commissioner may engage employees on terms and conditions determined by the Commissioner.
- (2) The employees are not Public Service employees but will, for the purposes of the *Public Sector (Honesty and Accountability) Act 1995*, to be taken to be public sector employees employed by the Commissioner.

**12—Use of staff etc of Public Service**

The Commissioner may, by agreement with the Minister responsible for an administrative unit of the Public Service, make use of the services of the staff, equipment or facilities of that administrative unit.

**13—General functions of Commissioner**

- (1) The functions of the Commissioner are—
- (a) to promote and advocate for the rights and interests of all children and young people in South Australia; and
  - (b) to promote the participation by children and young people in the making of decisions that affect their lives; and
  - (c) to advise, and make recommendations to, Ministers, State authorities and other bodies (including non-Government bodies) on matters related to the rights, development and wellbeing of children and young people at a systemic level; and
  - (d) to inquire into and investigate under section 14 matters related to the rights, development and wellbeing of children and young people at a systemic level (whether a Governmental system or otherwise);
  - (e) to assist in ensuring that the State, as part of the Commonwealth, satisfies its international obligations in respect of children and young people; and
  - (f) to undertake or commission research into topics related to children and young people;
  - (g) to prepare and publish reports on matters related to the rights, development and wellbeing of children and young people at a systemic level; and
  - (h) to undertake such other functions as may be conferred on the Commissioner by or under this or any other Act or by the Minister.
- (2) Without limiting any other provision of this Act, the Commissioner should consult with and engage children and young people in the performance of the Commissioner's functions under this Act, and in particular should seek to engage those groups of children and young people whose ability to make their views known is limited for any reason.

**14—Commissioner may inquire into matters affecting children and young people at systemic level**

(1) The Commissioner may, in the Commissioner's absolute discretion, conduct an inquiry into—

- (a) the policies, practices and procedures of a State authority or authorities as they relate to the rights, development and wellbeing of children and young people generally, or a particular group of children and young people; and
- (b) any other matter declared by the regulations to fall within the ambit of this subsection.

(2) However, the Commissioner may only conduct an inquiry under this section if the Commissioner is of the opinion that—

- (a) the matter raises an issue of particular significance to children and young people; and
- (b) the matter is of a systemic nature rather than being limited to an isolated incident; and
- (c) it is in the public interest to conduct the inquiry.

(3) To avoid doubt, and without limiting any other provision of this section, the Commissioner—

- (a) may, in the course of conducting an inquiry into matters of a systemic nature, consider a matter affecting a particular child or young person; and
- (b) may conduct an inquiry under this section as a consequence of becoming aware of a matter affecting a particular child or young person.

(4) The Commissioner must not conduct an inquiry under this section if to do so would be likely to impede an investigation or proposed investigation relating to a matter that is being, or is to be, conducted by an inquiry agency.

(5) Subject to this Act, the Commissioner may conduct an inquiry under this section in such manner as the Commissioner thinks fit.

(6) A State authority must assist the Commissioner in the conduct of an inquiry under this section as requested by the Commissioner.

(7) The Commissioner must inform each relevant State authority as to the nature and timing of an inquiry under this section.

(8) In this section—

*inquiry agency* has the same meaning as in section 43.

**15—Powers of Commissioner**

(1) For the purposes of an inquiry under section 14, the Commissioner has the powers of a commission as defined in the *Royal Commissions Act 1917* and that Act applies as if—

- (a) the Commissioner were a commission as so defined; and
- (b) the subject matter of the inquiry were set out in a commission of inquiry issued by the Governor under that Act.

- (2) For the purposes of any other function under this Act, the Commissioner has such powers as may be necessary or expedient for the performance of that function.

**16—Recommendations**

- 5 (1) The Commissioner may, on completing an inquiry under section 14, or in response to issues observed by the Commissioner in the course of such an inquiry, recommend to a State authority that the State authority—
- (a) change practices, policies or procedures in a specified way or review practices, policies or procedures to achieve specified outcomes; or
  - 10 (b) conduct, or participate in, specified educational programs or educational programs designed to achieve specified outcomes; or
  - (c) take such other specified action as may be specified by the Commissioner.
- (2) If the Commissioner is not satisfied that a State authority has complied with a recommendation or recommendations, the Commissioner may require the State authority to provide to the Commissioner within a specified period a report setting out the reasons for non-compliance.
- 15 (3) The Commissioner may, on receiving a report under subsection (2), submit a copy of the report to the Minister setting out the views of the Commissioner in respect of the State authorities non-compliance with the recommendation or recommendations.
- (4) The Minister must, on receiving a report under subsection (3), prepare a report to Parliament setting out—
- 20 (a) the Minister's response to the Commissioner's report; and
  - (b) if any action has been taken, or is proposed to be taken, (whether by the Minister, a State authority or any other person or body) in relation to a recommendation to which the Commissioner's report relates—details of that action or proposed action; and
  - 25 (c) if no action is to be taken (whether by the Minister, a State authority or any other person or body) in relation to a recommendation to which the Commissioner's report relates—the reasons for not taking action; and
  - (d) any other information required by the regulations.
- 30 (5) The Minister must, within 6 sitting days after completing a report under subsection (4), cause a copy of both the report and the Commissioner's report under subsection (3) to be laid before both Houses of Parliament.

**17—Report of inquiry under section 14**

- (1) The Commissioner must, on completing an inquiry under section 14, prepare and deliver to the Minister a report on the inquiry (including details of any recommendations made in respect of the inquiry).
- (2) The Minister must, within 6 sitting days after receiving a report under subsection (1), cause a copy of the report to be laid before both Houses of Parliament.
- (3) The Minister must, on receiving a report under subsection (1)—
  - (a) provide a copy of the report to the Minister responsible for each area identified in the report; and
  - (b) prepare a report setting out—
    - (i) the Minister's response to the Commissioner's report; and
    - (ii) if any action has been taken, or is proposed to be taken, (whether by the Minister, a State authority or any other person or body) in relation to the Commissioner's report—details of that action or proposed action; and
    - (iii) if no action is to be taken (whether by the Minister, a State authority or any other person or body) in relation to the Commissioner's report—the reasons for not taking action; and
    - (iv) any other information required by the regulations.
- (4) The Minister must, within 6 sitting days after completing a report under subsection (3), cause a copy of the report to be laid before both Houses of Parliament.

**18—Commissioner may provide other reports**

- (1) The Commissioner may prepare and provide to the Minister reports on matters related to the rights, development and wellbeing of children and young people at a systemic level.
- (2) The Minister must cause a copy of a report received under subsection (1) to be laid before both Houses of Parliament within 6 sitting days after receiving the report.

**19—Commissioner may publish reports**

The Commissioner may, once a report under this Part has been laid before each House of Parliament and after consultation with the Minister, publish all or part of the report as the Commissioner thinks fit.