



New South Wales

Advocate for Children and Young People Bill 2014

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are as follows:

- (a) to establish the statutory office of the Advocate for Children and Young People (the *Advocate*) and to provide for its functions,
- (b) to establish a new Youth Advisory Council (the *Council*) and to provide for its functions,
- (c) to abolish the Commission for Children and Young People.

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 defines certain words and expressions used in the proposed Act.

Part 2 Advocate for Children and Young People

Clause 4 provides for the appointment of an Advocate for children and young people by the Governor.

Clause 5 sets out the term of office of the Advocate and provides for re-appointment of the Advocate.

Clause 6 makes it clear that the office of Advocate is a full-time office except to the extent permitted by the Minister.

Clause 7 sets out how the employment and remuneration of the Advocate is to be governed.

Clause 8 sets out the circumstances that qualify as a vacancy in the office of Advocate and provides for an appointment to fill that vacancy.

Clause 9 provides for the removal of the Advocate from office by the Governor in certain circumstances.

Clause 10 makes it clear that the Advocate is not a Public Service employee and that provisions of the *Government Sector Employment Act 2013* do not apply to the employment of the Advocate except as provided by proposed section 7.

Clause 11 provides for the appointment of an acting Advocate in certain circumstances.

Clause 12 provides for staff to be employed in the Public Service under the *Government Sector Employment Act 2013* to enable the Advocate to exercise his or her functions.

Clause 13 enables the Advocate to delegate functions (other than the power of delegation) to persons including staff of the Advocate.

Part 3 Functions of Advocate

Clause 14 outlines the principles that govern the work of the Advocate with paramount considerations being the safety, welfare and well-being of children and young people.

Clause 15 outlines the functions of the Advocate which include acting as an advocate for children and young people, promoting their safety, welfare and well-being and promoting the participation of children and young people in the making of decisions that affect their lives. These functions must be exercised in line with certain requirements including the requirement that systemic issues affecting children and young people are considered, and the requirement that the interests and needs of vulnerable and disadvantaged children and young people are given priority.

Clause 16 requires the Advocate and other relevant government or non-government agencies to work co-operatively in exercising their respective functions including the facilitation of access to documents and information on behalf of the Advocate.

Clause 17 enables the Advocate to refer certain matters to police and other investigative agencies where a criminal offence may have occurred or where grounds may exist for disciplinary action under any law.

Clause 18 outlines how the Advocate can use and obtain information in relation to reports received and submitted under the *Children and Young Persons (Care and Protection) Act 1998*.

Clause 19 makes it clear that the Advocate does not have the function of dealing directly with the complaints or concerns of particular children or young people.

Part 4 Youth Advisory Council and other advisory committees

Clause 20 establishes the Youth Advisory Council.

Clause 21 provides for the membership of the Council, being 12 part-time members at least 6 of whom are under the age of 25 years at the time of their appointment and an ex-officio member, being the Advocate or the Advocate's nominee.

Clause 22 outlines the functions of the Council including its role in advising the Minister and the Advocate on the planning, development, integration and implementation of government policies and programs concerning young persons. In exercising its functions the Council must work co-operatively with the Advocate.

Clause 23 enables the Advocate to appoint advisory committees to assist the Advocate and the Council in the exercise of their functions.

Part 5 Special inquiries by Advocate

Clause 24 authorises the Minister to require the Advocate to conduct a special inquiry into a specified issue affecting children or young people (at the Advocate's request or on the Minister's own initiative).

Clause 25 requires the Advocate to make a special report on the results of a special inquiry.

Clause 26 deals with the general conduct of a special inquiry. Special inquiries are to be conducted with as little formality as possible and the Advocate may obtain information in whatever manner it wishes and consult whomever he or she believes is appropriate to consult.

Clause 27 enables the Advocate to hold hearings for the purposes of a special inquiry. The advocate is required to give the public reasonable notice of such hearings and may call for written submissions to be made before hearings begin. Hearings are to be held in public unless the Advocate is satisfied that it is desirable to hold a confidential hearing or if the hearing concerns the evidence of a child or young person and that child or young person requests a private hearing.

Clause 28 makes it clear that a person appearing at a hearing of a special inquiry is not entitled to be represented by an Australian legal practitioner. The Advocate may authorise such representation where it is necessary or desirable in the public interest or for the safety, welfare or well-being of a child or young person.

Clause 29 enables the Advocate to direct that certain information and evidence relating to a private hearing must not be published, including any information that might enable a person who has given evidence at such a hearing to be identified.

Clause 30 authorises the Advocate to require employees of government agencies and other persons to give a statement of information, to attend a hearing to give evidence or to produce a document for the purposes of a special inquiry.

Clause 31 provides for exemptions in respect of evidence or information to a special inquiry for Cabinet documents and other privileged material.

Part 6 Reports by Advocate

Clause 32 requires the Advocate to prepare annual reports to Parliament of its operations and to furnish those reports to the Presiding Officer of each House of Parliament within 4 months after 30 June in each year. Those reports must include a description of the Advocate's activities during that year, an evaluation of the response of relevant authorities to the Advocate's recommendations and any recommendations for changes in the laws of the State or for administrative action that the Advocate considers should be made or taken.

Clause 33 requires the Advocate to make such a special report to the Minister at the request of the Minister. The Advocate may also make a report to Parliament on any particular issue or general matter relating to its functions.

Clause 34 requires the Advocate to provide the Minister with a draft of each of its reports to Parliament at least one month (or other agreed period) before it is furnished to the Presiding Officers. The Minister may comment on a draft report and require the Advocate to consult about it but the Advocate is not bound to make any changes to its draft report subsequent to any comment of the Minister.

Clause 35 provides for a copy of a report furnished to the Presiding Officers to be laid before each House of Parliament. If the report includes a recommendation that the report be made public immediately, the Presiding Officer may make it public whether or not the House is in session and whether or not the report has been laid before the House. Such publicised reports attract the same privileges and immunities as if they had been laid before the House prior to their publication.

Part 7 Parliamentary Joint Committee

Clause 36 constitutes a Parliamentary Joint Committee known as the Committee on Children and Young People.

Clause 37 outlines the functions of the Committee. These include the monitoring and review of the exercise by the Advocate of the Advocate's functions and the examination of each annual or other report of the Advocate.

Clause 38 provides that the Committee is to consist of 7 members, 3 from the Legislative Council and 4 from the Legislative Assembly.

Part 8 Miscellaneous

Clause 39 provides that the proposed Act is to bind the Crown.

Clause 40 protects the Advocate, members of the Council and other advisory committees and other persons acting on their directions from personal liability for anything done or omitted in good faith in the execution of the proposed Act.

Clause 41 provides for the summary disposal of offences against the proposed Act or regulations and makes it clear that proceedings for such offences must be commenced not later than 2 years from when the offence was alleged to have been committed.

Clause 42 enables the Governor to make regulations for the purposes of the proposed Act.

Clause 43 provides for the review of the proposed Act in 5 years from the date of assent to the proposed Act.

Schedule 1 Provisions relating to membership and procedure of Youth Advisory Council

Schedule 1 contains provisions relating to membership and procedure of the Council including provision for the following:

- (a) the appointment of a Chair and Deputy Chair of the Council,
- (b) terms of office of appointed members of the Council,
- (c) member allowances,
- (d) vacancies in the office of members of the Council and the filling of those vacancies,
- (e) excluding the application of the *Government Sector Employment Act 2013* to members,
- (f) voting and quorum for a meeting of the Council.

Schedule 2 Parliamentary Joint Committee

Schedule 2 contains provisions relating to the composition, procedure and reporting requirements of the Parliamentary Joint Committee.

Schedule 3 Savings, transitional and other provisions

Schedule 3 contains savings, transitional and other provisions consequent on the enactment of the proposed Act, including the abolition of the Commission for Children and Young People and a provision to continue the appointment under the proposed Act of existing members of the Youth Advisory Council established under the *Youth Advisory Council Act 1989* for the remainder of their terms of appointment.

Schedule 4 Amendment of Acts

Schedule 4 makes amendments to Acts specified in the Schedule as a consequence of the proposed Act.

Schedule 5 Repeal of existing Acts and Regulation

Schedule 5 repeals the *Commission for Children and Young People Act 1998*, the *Commission for Children and Young People Regulation 2009* and the *Youth Advisory Council Act 1989*.