

Passed by both Houses



New South Wales

Commission for Children and Young People Amendment (Child Death Review Team) Bill 2003

Contents

| | Page |
|---|------|
| 1 Name of Act | 2 |
| 2 Commencement | 2 |
| 3 Amendment of Commission for Children and Young People Act 1998 No 146 | 2 |
| 4 Amendment of other Acts | 2 |
| Schedules | |
| 1 Amendment of Commission for Children and Young People Act 1998 | 3 |
| 2 Amendment of other Acts | 16 |

I certify that this PUBLIC BILL, which originated in the LEGISLATIVE COUNCIL, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

Legislative Council
2003

Clerk of the Parliaments



New South Wales

Commission for Children and Young People Amendment (Child Death Review Team) Bill 2003

Act No , 2003

An Act to amend the *Commission for Children and Young People Act 1998* with respect to the constitution, functions, procedures and other matters relating to the Child Death Review Team; to make consequential amendments to other Acts; and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Commission for Children and Young People Amendment (Child Death Review Team) Act 2003*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Commission for Children and Young People Act 1998 No 146

The *Commission for Children and Young People Act 1998* is amended as set out in Schedule 1.

4 Amendment of other Acts

Each Act specified in Schedule 2 is amended in the manner set out in that Schedule.

Schedule 1 Amendment of Commission for Children and Young People Act 1998

(Section 3)

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

Child Death Review Team or *Team* means the Child Death Review Team established under Part 7A.

Convenor means Convenor of the Child Death Review Team.

[2] Section 11 Principal functions of Commission

Insert after section 11 (j):

(k) to support and assist the Child Death Review Team in the exercise of its functions under Part 7A.

[3] Section 11, note

Omit the note.

[4] Section 15 Referral of matters to police and other investigative agencies

Insert “(other than its functions under section 11 (k))” after “functions” in section 15 (1).

[5] Section 28 Functions of Committee

Insert after section 28 (3):

(4) A reference in this section to the Commission includes a reference to the Child Death Review Team.

[6] Part 7A

Insert after Part 7:

Part 7A Child Death Review Team

Division 1 Object of Part

45A Object of Part

The object of this Part is to prevent and reduce the deaths of children in New South Wales through the constitution of the Child Death Review Team which is to exercise the functions conferred or imposed on it under this Part.

Division 2 Constitution and procedure of the Team

45B Constitution of the Team

There is established by this Act a corporation to be known as the Child Death Review Team.

45C Composition of the Team

- (1) The Team is to consist of:
 - (a) the Commissioner, who is to be the Convenor of the Team, and
 - (b) persons appointed by the Minister.
- (2) The Team is to include representatives of each of the following:
 - (a) the Department of Community Services,
 - (b) the Department of Health,
 - (c) NSW Police,
 - (d) the Department of Education and Training,
 - (e) the Attorney General's Department,
 - (f) the Office of the Coroner,
 - (g) the Department of Ageing, Disability and Home Care.
- (3) Each representative referred to in subsection (2) is to be nominated by the Minister responsible for the organisation concerned.

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- (4) In addition, the Team is to include persons recommended by the Convenor and who, in the opinion of the Minister, are:
 - (a) experts in health care, research methodology, child development or child protection, or
 - (b) persons who, because of their qualifications or experience, or both, are likely to make a valuable contribution to the work of the Team.
 - (5) The Minister is to appoint 2 persons who are Aboriginal (within the meaning of the *Aboriginal Land Rights Act 1983*) as members of the Team.
 - (6) The Team must consist of not less than 14 members (in addition to the Convenor) and not more than 20 members (in addition to the Convenor) at any one time.
 - (7) A person who is a member of the Legislative Council or the Legislative Assembly is not eligible to be a member of the Team.

45D Deputy Convenor

- (1) The members of the Team are to elect one of their number as the Deputy Convenor of the Team.
- (2) The member so elected holds office as Deputy Convenor for the balance of the member's term of office, subject to subsection (3).
- (3) A person holding the office of Deputy Convenor vacates that office if the person:
 - (a) is removed from that office by the Minister under section 45H, or
 - (b) resigns that office by instrument in writing addressed to the Minister, or
 - (c) ceases to be a member.

45E Term of office of members

A member, other than the Convenor, holds office for such period (not exceeding 2 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

45F Remuneration

A member, other than the Convenor or a representative of a department of the government, NSW Police or a statutory body, is entitled to be paid such remuneration and allowances (including travelling or subsistence allowances) as may be determined by the Minister.

45G Vacancy in office of member

- (1) The office of a member, other than the Convenor, becomes vacant if the member:
 - (a) dies, or
 - (b) completes a term of office and is not re-appointed, or
 - (c) resigns the office by instrument in writing addressed to the Minister, or
 - (d) is absent from 4 consecutive meetings of the Team of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Team or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Minister for having been absent from those meetings, or
 - (e) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
 - (f) becomes a mentally incapacitated person, or
 - (g) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or
 - (h) is removed from office by the Minister under section 45H, or
 - (i) is the subject of a communication in writing to the Minister by the Minister that nominated the member, stating that he or she no longer represents that organisation.

- (2) If the office of any member becomes vacant, another person is, subject to this Part, to be appointed to fill the vacancy.

45H Removal from office

The Minister may remove a member, other than the Convenor, from office for incapacity, incompetence or misbehaviour.

45I Effect of certain other Acts

- (1) Chapter 2 of the *Public Sector Employment and Management Act 2002* does not apply to or in respect of the appointment of a person as a member.
- (2) If by or under any Act provision is made:
- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
- (b) prohibiting the person from engaging in employment outside the duties of that office,
- that provision does not operate to disqualify that person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Part as a member.

45J General procedure

- (1) The procedure for the calling of meetings of the Team and for the conduct of business at those meetings is to be as determined by the Convenor.
- (2) The Team is to meet not less than 4 times in each calendar year.

45K Quorum for meetings

A majority of persons for the time being holding office as members of the Team constitutes a quorum for any meeting of the Team.

45L Presiding member

- (1) The Convenor, or in the absence of the Convenor, the Deputy Convenor, is to preside at any meeting of the Team.

- (2) If both the Convenor and the Deputy Convenor are absent from any meeting, a member elected by the members present at the meeting is to preside at that meeting.
- (3) The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

45M Voting

A decision supported by a majority of the votes cast at a meeting of the Team at which a quorum is present is the decision of the Team.

Division 3 Functions of the Team

45N Functions of the Team

- (1) The Team has the following functions:
 - (a) to maintain the register of child deaths occurring in New South Wales that has recorded such deaths since 1 January 1996,
 - (b) to classify those deaths according to cause, demographic criteria and other relevant factors,
 - (c) to analyse data to identify patterns and trends relating to those deaths,
 - (d) with the approval of the Minister, to undertake, alone or with others, research that aims to help prevent or reduce the likelihood of child deaths,
 - (e) to make recommendations, arising from the Team's maintenance of the register of child deaths and from its research, as to legislation, policies, practices and services for implementation by government and non-government agencies and the community to prevent or reduce the likelihood of child deaths,
 - (f) to identify areas requiring further research by the Team or other agencies or persons.
- (2) The Team may not undertake a review of a reviewable death (within the meaning of Part 6 of the *Community Services (Complaints, Reviews and Monitoring) Act 1993*) but may:
 - (a) include a reviewable death in research that examines a sample or population of child deaths, and

- (b) with the approval of the Minister, conduct research about reviewable deaths.
- (3) Before granting an approval for the purposes of subsection (2) (b), the Minister is to consult with and consider the advice of the Ombudsman.

45O Appointment of expert advisers

- (1) The Convenor may, otherwise than under a contract of employment, appoint persons with relevant qualifications and experience to advise the Team in the exercise of its functions.
- (2) A person so appointed is entitled to be paid such remuneration and allowances (including travelling and subsistence allowances) as may be determined by the Minister in respect of the person.

45P Annual report to Parliament

- (1) The Team is required to prepare, within the period of 4 months after 30 June in each year, a report of its operations during the year ended on that 30 June and furnish the report to the Presiding Officer of each House of Parliament.
- (2) A report by the Team under this section must include the following:
 - (a) a description of its activities during that year in relation to each of its functions,
 - (b) details of the extent to which its previous recommendations have been accepted,
 - (c) whether any information has been authorised to be disclosed by the Convenor as referred to in section 45U (1) (b),
 - (d) if the Team has not presented a report to Parliament under section 45R within the previous 3 years, the reasons why such a report has not been presented.
- (3) A report by the Team under this section may include, in relation to any details referred to in subsection (2) (b), comment on the extent to which those recommendations have been implemented in practice.

45Q Annual child death review report

- (1) The Team is required to prepare, within the period of 4 months after 30 June in each year, a report consisting of data collected and analysed in relation to child deaths registered during the previous calendar year and furnish the report to the Presiding Officer of each House of Parliament.
- (2) A report by the Team under this section may include any recommendations made for the purposes of section 45N (1) (e) or (f).

45R Other reports

The Team may, at any time, make a report containing the results of research undertaken in exercise of its research functions under section 45N and furnish the report to the Presiding Officer of each House of Parliament.

45S Preparation and presentation of reports

- (1) Section 25 applies to a report under section 45P, 45Q or 45R in the same way as it applies to a report of the Commission under Part 5.
- (2) Section 26 applies to a report under section 45P, 45Q or 45R in the same way as it applies to a report of the Commission under Part 5.
- (3) A report of the Team under section 45P, 45Q or 45R may be presented separately from any other such report or together with any other such report or as part of a report of the Commission under Part 5.

Division 4 Access to and confidentiality of information

45T Duty of persons to assist the Team

- (1) It is the duty of each of the following persons, namely:
 - (a) the Director-General, the Department Head, chief executive officer or senior member of any department of the government, statutory body or local authority,
 - (b) the Commissioner of Police,
 - (c) the State Coroner,

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- (d) a medical practitioner or health care professional who, or the head of a body which, delivers health services to children,
 - (e) a person who, or the head of a body which, delivers welfare services to children (including family support services, children's services, foster care or residential out-of-home care, and disability services),
 - (f) the principal of a non-government school (within the meaning of the *Education Act 1990*),

to provide the Team with full and unrestricted access to records that are under the person's control, or whose production the person may, in an official capacity, reasonably require, being records to which the Team reasonably requires access for the purpose of exercising its functions.

- (2) Access to which the Team is entitled under subsection (1) includes the right to inspect and, on request, to be provided with copies of, any record referred to in that subsection and to inspect any non-documentary evidence associated with any such record.
- (3) A provision of any Act or law that restricts or denies access to records does not prevent a person to whom subsection (1) applies from complying, or affect the person's duty to comply, with that subsection.
- (4) In this section, *record* means any document or other source of information compiled, recorded or stored in written form or on film, or by electronic process, or in any other manner or by any other means.

45U Confidentiality of information

- (1) A Team-related person must not make a record of, or directly or indirectly disclose to any person, any information (including the contents of any document) that was acquired by the person by reason of being a Team-related person, unless:
 - (a) the record or disclosure is made in good faith for the purpose of exercising a function under this Part, or

- (b) the record or disclosure is authorised to be made by the Convenor in connection with research that is undertaken for the purpose of helping to prevent or reduce the likelihood of deaths of children in New South Wales, or
- (c) the record or disclosure is made by the Convenor for the purpose of:
 - (i) providing information to the Commissioner of Police in connection with a possible criminal offence, or
 - (ii) reporting to the Director-General of the Department of Community Services that a child or class of children may be at risk of harm, or
 - (iii) providing information to the State Coroner that may relate to a death that is within the jurisdiction of the State Coroner, whether or not the death has been the subject of an inquest under the *Coroners Act 1980*, or
 - (iv) providing information to the Ombudsman concerning the death of a child that is relevant to the exercise of any of the Ombudsman's functions, or
- (d) the record or disclosure is made by a member of the Team to a Minister, or to a Department Head, chief executive officer or senior member of any department of the government or a statutory body, in connection with a draft report prepared for the purpose of section 45P, 45Q or 45R.

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

- (2) A Team-related person is not required:
 - (a) to produce to any court any document or other thing that has come into the person's possession, custody or control, or
 - (b) to reveal to any court any information that has come to the person's notice,by reason of being a Team-related person.

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- (3) Any authority or person to whom any information referred to in subsection (1) is revealed, and any person or employee under the control of that authority or person:
- (a) is subject to the same obligations and liabilities under subsection (1), and
 - (b) enjoys the same rights and privileges under subsection (2),

in respect of that information as if he or she were a Team-related person who had acquired the information for the purpose of the exercise of the functions of the Team. Failure to comply with obligations and liabilities referred to in this subsection is taken to be a contravention of subsection (1).

- (4) In this section:

court includes any tribunal or person having power to require the production of documents or the answering of questions.

produce includes permit access to.

Team-related person means a member of the Team, a member of staff of the Team and any person engaged to assist the Team in the exercise of its functions, including persons appointed under section 45O.

45V Dishonestly obtaining information

A person who dishonestly obtains information (including the contents of any document) that was acquired by a person by reason of being a Team-related person (within the meaning of section 45U) is guilty of an offence.

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

Division 5 Miscellaneous

45W Execution of documents

A document required to be executed by the Team in the exercise of its functions is sufficiently executed if it is signed by the Convenor or another member authorised by the Convenor.

45X Review of Part

- (1) The Minister is to review this Part to determine whether the policy objectives of this Part remain valid and whether the terms of this Part remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the commencement of this Part.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.
- (4) A review of this Part may also be undertaken as part of the review required under section 53 and the report on the outcome of the review may be included in the report under that section.

[7] Section 48 Protection from liability

Insert “, or the Child Death Review Team, a member of the Team or a person acting under the direction of the Team” after “advisory committee” where thirdly occurring.

[8] Section 48

Insert “, member of the Team” after “advisory committee” where fourthly occurring.

[9] Section 51 Regulations

Insert after section 51 (1):

- (1A) Without limiting subsection (1), the regulations may make provision for or with respect to the constitution, functions, procedure and other matters relating to the Child Death Review Team.

[10] Schedule 2 Amendment of other Acts and regulations

Omit Schedule 2.1.

[11] Schedule 3 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

*Commission for Children and Young People Amendment
(Child Death Review Team) Act 2003*

[12] Schedule 3, Part 3

Insert after Part 2:

Part 3 Provisions consequent on enactment of Commission for Children and Young People Amendment (Child Death Review Team) Act 2003

3 Continuation of existing entity

The Child Death Review Team established by section 45B is taken to be a continuation of, and the same legal entity as, the Child Death Review Team established under section 102 of the *Children (Care and Protection) Act 1987*.

4 Continuation of existing members

A person who, immediately before the repeal of section 102 of the *Children (Care and Protection) Act 1987*, held office as a member of the Child Death Review Team established by that section continues to hold office as a member of the Child Death Review Team established by section 45B for the balance of his or her term of office, subject to sections 45G and 45H.

5 Furnishing of annual reports of Child Death Review Team for year ended 30 June 2003

Sections 45P and 45Q extend to the preparation and presentation of the annual reports of the Child Death Review Team for the year ended 30 June 2003.

Schedule 2 Amendment of other Acts

(Section 4)

2.1 Children and Young Persons (Care and Protection) Act 1998 No 157

[1] Section 3 Definitions

Omit the definition of *Child Death Review Team*.

[2] Chapter 11 Child Death Review Team

Omit the Chapter.

[3] Schedule 1 Child Death Review Team

Omit the Schedule.

2.2 Children (Care and Protection) Act 1987 No 54

[1] Section 3 Definitions

Omit the definition of *Child Death Review Team* from section 3 (1).

[2] Part 7A Child Death Review Team

Omit the Part.

[3] Schedule 2A Child Death Review Team

Omit the Schedule.

2.3 Community Services (Complaints, Reviews and Monitoring) Act 1993 No 2

[1] Section 43 Reports

Omit “the period covered by the report” from section 43 (2) (a).

Insert instead “the previous calendar year”.

[2] Schedule 1 Savings and transitional provisions

Insert after the heading to Schedule 1:

Part 1 Regulations

[3] Schedule 1, clause 1

Insert at the end of clause 1 (1):

*Commission for Children and Young People Amendment
(Child Death Review Team) Act 2003*

[4] Schedule 1, Part 2, heading

Insert after clause 1:

**Part 2 Community Services Legislation
Amendment Act 2002**

[5] Schedule 1, Part 3

Insert after clause 13:

**Part 3 Commission for Children and Young
People Amendment (Child Death Review
Team) Act 2003**

**14 Ombudsman's report under Part 6 for year ending 30 June
2003**

Section 43, as amended by the *Commission for Children and Young People Amendment (Child Death Review Team) Act 2003*, extends to the preparation and presentation of the annual report of the Ombudsman under Part 6 for the year ended 30 June 2003.