

# **CHILDREN'S COMMISSIONER AND CHILDREN'S SERVICES APPEALS TRIBUNALS BILL 1996**

## **EXPLANATORY NOTES**

### **GENERAL OUTLINE**

#### **Objectives of the legislation**

The objectives of the Bill are to establish and provide for the operation of a Children's Commission, consisting of the Children's Commissioner and the staff of the Commission, and to consolidate mechanisms for appeal of administrative decisions made under children's services legislation.

#### **Reasons for the Bill**

On 1st May 1996 the Queensland Parliament resolved to call upon the Government to establish immediately an independent authority to fully investigate accusations of paedophilia in this State. During the debate leading to the resolution, repeated reference was made to the concept of a children's commission which amongst other functions would accept and investigate complaints of paedophilia and child abuse.

Experience with a Child Sexual Abuse Hotline, established shortly after the resolution of the Parliament, has demonstrated, as already revealed in New South Wales in the Wood Royal Commission proceedings, that the extent of child abuse in Queensland was perhaps greater than might have been expected. In its first eight weeks of operation, the Hotline received some 270 allegations of child abuse. Significantly many of the callers to the Hotline have reported that they have never previously reported the alleged child abuse as they regard the available mechanisms as inappropriate.

The resolution of the Parliament occurred against the background of increasing concern for children's issues at both the national and international levels.

At the national level, the proceedings of the Wood Royal Commission in New South Wales have focussed public attention closely on paedophile activity. Similarly the launching of an enquiry by the Department of Foreign Affairs and Trade into paedophile activity within that Department along with media reports of sex tours to overseas countries have served to heighten public awareness.

As stated in the June 1996 issue of "Trends and Issues in Crime and Criminal Justice" by the Australian Institute of Criminology, paedophilia is part of a very complex web. Along with other forms of child abuse it can result in later social problems such as youth homelessness, childhood prostitution, juvenile offending, mental health problems and drug and alcohol abuse.

In the Institute's view, although appropriate sentencing and treatment programs are a necessary part of criminal justice response to sex offenders, programs which prevent all types of child abuse need to be co-ordinated.

The nature of paedophilia is such that its prevention, punishment and treatment cannot be addressed as a single issue. Being a multi-faceted issue, child abuse in its various forms calls for a multi-faceted response from society. In keeping with growing international practice it seems preferable that allegations of paedophilia in Queensland be addressed within the context of a Children's Commission with responsibilities for a comprehensive range of children's issues.

In his 1985 report into sexual offences involving children, Mr DG Sturgess QC noted that strengthening of the criminal laws is an insufficient response to protect our children from sexual harm. He advocated that the matter be approached from a number of directions. High on his list of other approaches was strengthening traditional family life. The present Bill is designed to give legislative expression within the present context to the spirit of Chapter 8 of the Sturgess Report.

Norway was the first country in the world to appoint an official in 1981 to address the interests of children although a non-government agency in Sweden had appointed a similar person in 1971. At present some eight jurisdictions, including New Zealand and British Columbia, have followed in their steps. South Australia in 1983 established a Children's Interests Bureau with some of a Commissioner's functions.

The general role of a Children's Commissioner as summarised by Ian Hassall, born of experience in New Zealand, is to serve as a pivot in a

“network of agencies and interests incorporating:

- a complaints mechanism;
- a research programme;
- lobbying both within government and without;
- a public articulation of children's rights; and
- a public presence of children.”

A Children's Commissioner is expected to be active either directly in all of these areas or by encouraging and sponsoring others.

Ratification by some 180 members of the United Nations, including Australia, of the UN Convention on the Rights of the Child since 1989 has quickened demands in such member countries for the introduction of bodies akin to the Children's Commission pioneered in Norway. In Australia the President of the NSW Court of Appeal and the Chief Justice of the Family Court of Australia have been consistent advocates of such development.

### **Ways in which the objectives are to be achieved in the Bill**

The Children's Commission is to conduct its affairs independently. It is not subject to the control or direction of a Minister or a Department. The Commissioner may, however, be attached to a Department to ensure it is given administrative support services for the effective and efficient conduct of its functions.

The Commission is required to perform its functions within a framework of recognition that it is the parents, or legal guardians, of children who have the primary responsibility for the upbringing and development of their children; the role of the State is to support and assist.

The Children's Commissioner will deal with complaints from children (and young people and adults seeking to help them) by seeking to remedy their grievances and promote their interests. In this context the Children's Commissioner will have the specific task of monitoring the processing by public and private entities of complaints about child abuse and neglect and initiating appropriate consequent action. Such action may involve reference of complaints to the Police if criminal actions appear to be involved.

The Children's Commission is mandated to co-operate with the Police in

investigating allegations of offences against children. It is to confer and collaborate with other relevant authorities. These include the Police, Criminal Justice Commission and Parliamentary Commissioner for Administrative Investigations.

Additionally the Children's Commission will be responsible for a program of official visitors to residential facilities such as the Challinor Centre and for establishing Appeal Tribunals to hear appeals of decisions, specified by proposed amendments to three existing children's services acts.

This consolidated appeals mechanism will replace the existing separate appeal mechanisms under the *Adoption of Children Act 1964*, *Child Care Act 1991* and proposed *Children's Protection Act* to replace the *Children's Services Act 1965*.

### **Alternatives to the Bill**

An enquiry into paedophilia in Queensland could have been established in response to the Parliament's resolution under the Commissions of Inquiry Act 1950. This approach was not pursued by the Government since it would have constituted a piecemeal response to a complex of inter-related issues, it may have focussed media and public attention on a single issue to the neglect of other important issues, and it would have been out of step with growing national and international practice. It would also have largely repeated the work of the Sturgess Report.

The Government believes that nothing short of world best practice is deserved by Queensland children and accordingly has decided to establish the office of Children's Commissioner whose functions will permit the investigation of allegations of paedophilia but will encompass other issues also important for the children of Queensland.

### **Estimated cost for government implementation**

Provision of \$750,000 has been made for in the 1996-97 Budget of the Department of Families, Youth and Community Care to cover the costs of the Commission and Appeal Tribunals.

**Consistency with fundamental legislative principals**

Sections 6, 8 and 9 of the *Criminal Law (Rehabilitation of Offenders) Act 1986* do not apply to the appointment of the Children's Commissioner or members of the Children's Services Appeals Tribunal.

**Consultation**

The resolution of the Parliament has been taken to represent community views through their elected representation. The public discussion that has occurred since Australia ratified the UN Convention the Rights of the Child in 1990 is also taken to support the proposal, especially the numerous calls by authoritative persons and organisations during that period.

Nevertheless discussions have occurred with a range of interested persons and organisations. To date these have included the Deputy Leader and some other members of the Opposition who have indicated bipartisan support for the Bill, the Member for Gladstone, Office of the Parliamentary Commissioner for Administrative Investigations, Departments of Education, Health, Justice and Police, President of the Children's Court, Lady Gowrie Child Care Centre, and Creche and Kindergarten Association. The Bill has been cleared by the Litigation Reform Commission.

**NOTES ON PROVISIONS****PART 1—PRELIMINARY**

*Clause 1* provides that the short title of the Act will be the *Children's Commissioner and Children's Services Appeals Tribunals Act 1996*.

*Clause 2* provides for the commencement of the Act to be fixed by proclamation.

*Clause 3* provides for a dictionary of terms as set out in schedule 2.

*Clause 4* provides that the Act binds the Crown.

## **PART 2—CHILDREN'S COMMISSIONER AND CHILDREN'S COMMISSION**

*Clause 5* provides for a Children's Commission to consist of the Children's Commissioner and the staff of the Commission.

*Clause 6* provides that the Children's Commissioner controls the Commission but that the Commission may be attached to a Department to ensure administrative support services for the Commission.

*Clause 7* provides for the independence of the Children's Commissioner.

*Clause 8* provides for the functions of the Children's Commissioner.

*Clause 9* provides that the Children's Commissioner may obtain assistance from anyone whom the Children's Commissioner considers appropriately qualified or experienced to give such advice.

*Clause 10* provides for the appointment of the Children's Commissioner by the Governor in Council. It details the qualifications and disqualifications for appointment and excludes the Children's Commissioner from the public service.

*Clause 11* provides that the Children's Commissioner is to be appointed for a term not longer than 5 years.

*Clause 12* provides for the terms and conditions of appointment of the Children's Commissioner to be determined by the Governor in Council.

*Clause 13* provides that in the event of an officer of the public service being appointed Children's Commissioner, that officer retains all rights to which the officer would otherwise be entitled within the public service.

*Clause 14* provides that the Minister may grant leave of absence to the Children's Commissioner.

*Clause 15* provides that the Children's Commissioner may resign by notice to the Minister.

*Clause 16* provides that the Governor in Council may terminate the Children's Commissioner's appointment on certain grounds but must terminate such appointment on a number of other grounds.

*Clause 17* provides for the appointment of an acting Children's Commissioner in certain circumstances.

*Clause 18* provides for staff of the Children's Commissioner to be employed under the *Public Service Act 1996* and permits arrangements with other state authorities for services of their staff to be made available to the Commissioner.

### **PART 3—COMPLAINTS AND INVESTIGATIONS**

*Clause 19* provides that a person may make a complaint to the Children's Commissioner about an alleged offence involving a child or the delivery of children's services.

*Clause 20* provides that a complaint about an alleged offence involving a child is to be referred immediately to the police or another entity and a complaint about the delivery of children's services is to be assessed to decide whether the complaint warrants further investigation.

*Clause 21* provides that the Children's Commissioner may require further information from a complainant.

*Clause 22* provides that the Children's Commissioner must assess a complaint within 28 days.

*Clause 23* provides that after assessing a complaint, the Children's Commissioner may do one of the following:

- (a) if it concerns an offence involving a child give the assessment to the commissioner of police or other entity requesting the assessment;
- (b) if it concerns the delivery of children's services, investigate it further or refer it to another entity;
- (c) decide the matter does not warrant further investigation if the Children's Commissioner reasonably believes the complaint falls within a number of specified categories.

*Clause 24* provides for the process to be followed if the Children's Commissioner decides to investigate further a complaint about the delivery of children's services.

*Clause 25* provides that the Children's Commissioner must prepare a report on any such further investigation and supply a copy of such report to

the Minister.

*Clause 26* provides that in the event that a report requires a service provider to take certain actions and such action is not undertaken the Children's Commissioner may recommend that the Minister present a report on the matter to the Parliament along with any other submission made by the service provider in relation to the report.

*Clause 27* provides that on referral of a complaint to the police or another entity or on completion of an assessment or investigation the Children's Commissioner is to notify the complainant of the action taken.

*Clause 28* provides that performance of the Ombudsman's functions is not prevented by part 3 of the Bill.

## **PART 4—OFFICIAL VISITORS**

*Clause 29* provides for the appointment of official visitors.

*Clause 30* provides that the official visitors exercise their powers subject to the Children's Commissioner and for powers to be prescribed by various means including Regulation.

*Clause 31* provides that the official visitors' appointment conditions are as stated in the instrument of appointment.

*Clause 32* provides that the Children's Commissioner will supply an identity card to each official visitor.

*Clause 33* provides that an official visitor must produce an identity card before exercising a power in relation to another person.

*Clause 34* obliges the Children's Commissioner to train official visitors adequately and appropriately.

*Clause 35* provides that the functions of official visitors are to inspect residential facilities and to suggest ways of improving the effectiveness and quality of care therein.

*Clause 36* outlines the powers of an official visitor.



## **PART 5—CHILDREN'S SERVICES APPEALS TRIBUNALS**

*Clause 37* provides for appointment by the Minister of qualified individuals as members of a panel of children's services appeals tribunal members and provides for the qualifications and disqualifications for appointment.

*Clause 38* provides that appointment to the tribunal panel must not be longer than 3 years.

*Clause 39* provides for remuneration and allowances to be paid to a tribunal member as determined by the Governor in Council.

*Clause 40* provides that a member of the tribunal can be removed in writing by the Minister.

*Clause 41* provides that a tribunal has jurisdiction to hear an appeal against a reviewable decision.

*Clause 42* provides for the Children's Commissioner to establish an appeal tribunal to hear an appeal against a reviewable decision and to give appropriate notices of its membership.

*Clause 43* provides that tribunals will have 3 members.

*Clause 44* provides for the Children's Commissioner or tribunal panel member nominated by the Commissioner to chair a sitting of a tribunal.

*Clause 45* provides that appeals must be made within 28 days of the decision appealed or within any further time the Children's Commissioner allows.

*Clause 46* specifies the parties to an appeal.

*Clause 47* provides for representative appeals under certain conditions.

*Clause 48* provides that appeals are by way of deciding a matter afresh.

*Clause 49* provides for the powers of a tribunal in relation to a decision being appealed.

*Clause 50* provides for a stay of a decision pending outcome of an appeal.

*Clause 51* provides conditions to be observed in conducting an appeal.

*Clause 52* provides that a preliminary conference may be held by a tribunal member before an appeal is heard.

*Clause 53* provides that a tribunal sits at times and places determined by the chairperson.

*Clause 54* provides that proceedings before a tribunal are to be held in private.

*Clause 55* provides that names of parties to an appeal are not to be published except under certain conditions.

*Clause 56* provides that a person may appear in person at a tribunal hearing but be represented by a lawyer or agent only by leave of the tribunal.

*Clause 57* provides that a question before a tribunal is to be decided by a majority of tribunal members.

*Clause 58* specifies the procedural powers of a tribunal at a hearing.

*Clause 59* provides that a tribunal may inspect and make copies of any documents or things produced to the tribunal.

*Clause 60* provides that a person called to attend a tribunal hearing is to comply and provides a penalty for failure to do so.

*Clause 61* provides that a person at a tribunal hearing may fail to answer a question or produce a document if to do so would tend to incriminate that person.

*Clause 62* provides a penalty for a person who provides false or misleading information to a tribunal.

*Clause 63* similarly provides a penalty for a person giving false, misleading or incomplete documentation to a tribunal.

*Clause 64* provides for contempt of the tribunal similar to contempt of a judge.

*Clause 65* provides that a tribunal's decision is final and binding but an appeal to the District Court may be made on a question of law in relation to the decision.

*Clause 66* provides for the powers of the District Court in regard to an appeal.

*Clause 67* provides that the District Court, may make an order to stay a

decision pending an appeal.

*Clause 68* provides that tribunal members in performing their duties have the same protection and immunity as a judge. Similar protection applies to a lawyer or other person appearing before a tribunal.

*Clause 69* provides for allowances to witnesses appearing before a tribunal.

*Clause 70* provides that unless a tribunal makes an order to the contrary, each party before a tribunal bears its own costs.

*Clause 71* provides that a tribunal must keep a record of its proceedings.

*Clause 72* provides that a tribunal member's signature authenticates a document.

*Clause 73* provides for judicial notice of the signature of a tribunal member on a document issued by a tribunal.

*Clause 74* provides that the Children's Commissioner may make rules for approval of the Governor in Council about the practice and procedure of tribunals.

*Clause 75* provides that the Minister may require the Children's Commissioner to report on the operation of tribunals.

## **PART 6—MISCELLANEOUS**

*Clause 76* provides that the Children's Commissioner, commission staff, official visitor, tribunal member and expert adviser are to maintain confidentiality about another person's affairs and prescribes a penalty for failure to do so.

*Clause 77* provides protection from civil liability for the Children's Commissioner, staff of the Commission, official visitors and expert advisers for an act or omission made honestly and without negligence under the Act. Any liability attaches to the State.

*Clause 78* imposes a penalty for impersonation of the Children's Commissioner or official visitor.

*Clause 79* provides for delegation of the Children's Commissioner's

powers to an appropriately qualified officer of the Commissioner.

*Clause 80* provides for approval by the Children's Commissioner of forms for use under the Act.

*Clause 81* provides for an annual report to be submitted by the Children's Commissioner to the Minister for tabling in the Parliament.

*Clause 82* provides for review by the Minister of the Act within 5 years of its commencement.

*Clause 83* provides for the making of Regulations by the Governor in Council.

## **PART 7—CONSEQUENTIAL AMENDMENTS AND TRANSITIONAL PROVISIONS**

*Clause 84* provides that Schedule 1 amends the Acts specified therein.

*Clause 85* provides that appeals not begun under the *Adoptions of Children Act 1964* and *Child Care Act 1991* are to proceed under this Act but those already begun are to proceed as if this Act had not been enacted.

### ***Schedule 1***

## **AMENDMENTS**

This Schedule provides for consequential amendments to the *Adoption of Children Act 1964* and *Child Care Act 1991*, *Children's Services Act 1965*, and *Public Service Act 1996*.

## **ADOPTION OF CHILDREN ACT 1964**

*Clause 1* omits the existing definition of "tribunal" in section 6.

*Clause 2* inserts a new definition of “tribunal” in section 6.

*Clause 3* omits section 8 and 9.

*Clause 4* renumbers section 13A(4) as 13A(5).

*Clause 5* inserts a new sub section (4) in section 13A.

*Clause 6* inserts ‘a tribunal’ for ‘the tribunal’ in section 13D(1)(b).

*Clause 7* inserts a new section 14D after section 14C.

*Clause 8* omits existing Schedule 2.

## **CHILD CARE ACT 1991**

*Clause 1* omits the existing definition of “tribunal” in section 3.

*Clause 2* inserts and a new definition of “tribunal” in section 3.

*Clauses 3 & 4* replaces certain words in section 41 with other words.

*Clauses 5 & 6* omits sections 42, 43 and Part 6.

## **CHILDREN'S SERVICES ACT 1965**

*Clause 1* inserts a number of new definitions in section 8.

*Clause 2* omits section 131 and inserts a new clause about provision of information about whereabouts of a child in care.

*Clause 3* inserts new sections 143B and 143C, after section 143A, requiring notice to be given of a reviewable decision and providing for appeal against a reviewable decision.

*Clause 4* inserts a new schedule of “Reviewable Decisions and Aggrieved Persons” after section 153.

## **PUBLIC SERVICE ACT 1996**

*Clauses 1 & 2* provide for renumbering of certain items in Schedule 1 and insertion of reference to the Children's Commission and Children's Commissioner.

## ***Schedule 2***

This Schedule defines the various terms used in the Bill.