

CHILDREN'S COMMISSION ACT 1975

No. 51 of 1975

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CHILDREN'S COMMISSION ACT 1975

No. 51 of 1975

An Act for and in relation to the establishment of a Children's Commission.

BE IT ENACTED by the Queen, the Senate and the House of Representatives of Australia, as follows:—

PART I—PRELIMINARY

- Short title. 1. This Act may be cited as the *Children's Commission Act 1975*.¹
- Commence-
ment. 2. (1) Subject to sub-section (2), this Act shall come into operation on a date to be fixed by Proclamation.
- (2) Sections 1, 2, 9 and 35 shall come into operation on the day on which this Act receives the Royal Assent.¹
- Interpret-
ation. 3. (1) In this Act, unless the contrary intention appears—
- “approved bank” means the Reserve Bank of Australia or any other bank for the time being approved by the Treasurer;
- “Chairman” means the Chairman of the Commission;
- “child” means a pre-school aged child, a child who is attending a primary or secondary school or a child who has not attained the age of 18 years and is prevented by reason of a physical or mental disability or handicap from attending a school;
- “services for children” includes—
- (a) the care of pre-school aged children at a time or times of the day when they are not being cared for in their own homes;
 - (b) the education of pre-school aged children;
 - (c) the care of children other than pre-school aged children at a time or times of the day when they are not being provided with an educational service and are not being cared for in their own homes;
 - (d) the care of physically or mentally disabled or handicapped children at a time or times of the day when they are not being provided with a prescribed service and are not being cared for in their own homes;
 - (e) assistance to parents in connexion with the care of their sick children in their own homes at a time or times of the day when the parents are engaged in employment;

- (f) assistance to, and counselling of, parents in relation to the raising of children; and
- (g) other services, not being educational services or other services prescribed for the purposes of this paragraph, provided to children, or to the parents of children, that will be conducive to meeting the needs of children having special needs or to promoting the physical, social or mental development of children;

“Commission” means the Children's Commission established by this Act;

“Deputy Chairman” means the Deputy Chairman of the Commission;

“full-time member” means a person appointed as a full-time member of the Commission;

“home” includes an orphanage or like institution;

“member” means a full-time member or a part-time member;

“organization” means a body or association of persons, whether corporate or unincorporate;

“part-time member” means a person appointed as a part-time member of the Commission;

“pre-school aged child” means a child who has not attained the age at which he is required by law to attend a school, but does not include a child who is attending a school for the purposes of undertaking a course of primary instruction;

“prescribed service” means an educational service, hospital care, nursing care, a service that is a prescribed service within the meaning of the *Handicapped Persons Assistance Act 1974* or such other service as is prescribed by the regulations.

(2) A reference in this Act to a parent of a child includes a reference to a person other than a parent of a child who has the general care and control of the child.

(3) For the purposes of this Act, a child who is undertaking, otherwise than at a school, a course of instruction of a kind ordinarily undertaken at a primary or secondary school shall be deemed to be attending a school.

(4) A reference in this Act to a time or times of the day when a child is not being cared for in his own home includes a reference to a time or times of the day when the parents of the child are prevented, by reason of being engaged in employment, of illness or of an emergency, from caring for the child adequately in his own home.

**PART II—ESTABLISHMENT, FUNCTIONS AND POWERS OF
CHILDREN'S COMMISSION**

Establish-
ment of
Commission.

4. There is established by this Act a Commission by the name of the Children's Commission.

Functions of
Commission.

5. (1) The functions of the Commission are—

(a) to ascertain the needs of the Australian community for services for children and to make recommendations to the Minister in respect of those needs, including recommendations in relation to—

(i) organized means of providing and financing services for children;

(ii) the financial assistance to be provided by Australia to, or to organizations established by, the governments of the States and Territories and local government authorities, and to charitable organizations and other organizations and persons, for the establishment, development and maintenance of means of providing services for children or for research and planning in relation to those services; and

(iii) the education and training of persons involved, or to be involved, in the provision of services for children;

(b) with the approval of the Minister, to arrange for, the representation of Australia or of the Commission on organizations established by the government of any State or Territory or by a local government authority, being organizations that are involved in services for children;

(c) to take part in planning in relation to services for children, including planning to achieve—

(i) the availability, throughout Australia, of a comprehensive range of services for children;

(ii) the co-ordination and integration of services for children; and

(iii) the involvement, to the greatest extent practicable, of members of local and other communities in the provision of services for children; and

(d) with the approval of the Minister, to make grants out of the moneys of the Commission, on such conditions, if any, as the Commission determines, of financial assistance of the kind referred to in sub-paragraph (a) (ii).

(2) In addition to the functions of the Commission under sub-section (1), the Commission shall have such other functions as are conferred on it by or under any other Act.

(3) The Commission shall exercise its functions with a view to—

- (a) ensuring that priority is given to the provision of services for children in circumstances where the greatest need for those services exists;
- (b) subject to paragraph (a), ensuring that services for children are available to meet all needs for such services;
- (c) improving the range of services for children available in Australia;
- (d) ensuring that services for children provided in Australia are of an adequate standard;
- (e) meeting the needs of children suffering disadvantages for social, economic, health, ethnic, locational, cultural, lingual or other reasons; and
- (f) encouraging diversity, flexibility and innovation in the provision of services for children.

(4) In the performance of its functions, the Commission shall, to the greatest extent practicable, consult and co-operate with Departments of State and with authorities established by or under laws of Australia, being Departments or authorities responsible for aspects of the planning of, the provision of, the training of persons to provide, and the provision of financial assistance for, services for children.

6. The Commission may do all things that are necessary or convenient to be done for or in connexion with the performance of its functions and, in particular, without limiting the generality of the foregoing, the Commission—

Powers of Commission.

- (a) may conduct an inquiry, including a public inquiry, into any matter being investigated by the Commission; and
- (b) may engage, or make other arrangements with, a person to carry out planning or research for, or to supply information or make submissions to, the Commission.

7. (1) The Commission may, by instrument under its seal, delegate to a member, or to a member of the staff referred to in sub-section 20 (1), either generally or otherwise as provided by the instrument of delegation, all or any of its powers under this Act (except this power of delegation).

Delegation.

(2) A delegation under this section is revocable at will and does not prevent the exercise of a power by the Commission.

PART III—CONSTITUTION AND MEETINGS OF THE COMMISSION

8. (1) The Commission—

Nature of Commission.

- (a) is a body corporate with perpetual succession;
- (b) shall have a common seal;

- (c) may acquire, hold and dispose of real and personal property; and
- (d) may sue and be sued in its corporate name.

(2) All courts, judges and persons acting judicially shall take judicial notice of the common seal of the Commission affixed to a document and shall presume that it was duly affixed.

Membership
of
Commission.

9. (1) The Commission consists of such number of members, not being less than 4 nor more than 9, as is from time to time prescribed.

(2) Of the members of the Commission, 4, or such greater number as is from time to time prescribed, shall be appointed as full-time members and the remaining members (if any) shall be appointed as part-time members.

(3) A member shall be appointed by the Governor-General.

Period of
appointment.

10. (1) A member shall be appointed for such period, not exceeding 5 years, as is specified in the instrument of appointment, but is eligible for re-appointment.

(2) A person who has attained the age of 65 years shall not be appointed or re-appointed as a full-time member and a person shall not be appointed or re-appointed as a full-time member for a period that extends beyond the date at which he will attain the age of 65 years.

Remunera-
tion and
allowances.

11. (1) A member shall be paid such remuneration as is determined by the Remuneration Tribunal, but, if no determination of that remuneration by the Tribunal is in operation, he shall be paid such remuneration as is prescribed.

(2) A member shall be paid such allowances as are prescribed.

(3) This section has effect subject to the *Remuneration Tribunals Act* 1973-1974.

Chairman
and Deputy
Chairman of
Commission.

12. (1) The Governor-General shall appoint a full-time member to be the Chairman of the Commission and another full-time member to be the Deputy Chairman of the Commission.

(2) The member appointed to be the Chairman or Deputy Chairman holds office as Chairman or Deputy Chairman until the expiration of his term of office as a member that is current, or commences, at the time of his appointment, but ceases to be Chairman or Deputy Chairman if he ceases to be a member.

(3) The member appointed to be the Chairman or Deputy Chairman may resign his office of Chairman or Deputy Chairman by writing under his hand delivered to the Governor-General, but the resignation does not have effect until it is accepted by the Governor-General.

(4) A member is eligible to be re-appointed as the Chairman or Deputy Chairman.

13. The Minister may grant leave of absence to a member upon such terms and conditions as to remuneration or otherwise as the Minister determines. Leave of absence.

14. A member may resign his office by writing under his hand delivered to the Governor-General, but the resignation does not have effect until it is accepted by the Governor-General. Resignation of member.

15. (1) The Governor-General may terminate the appointment of a member by reason of the misbehaviour, or of the physical or mental incapacity, of the member. Termination of appointments.

(2) If a member—

(a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit;

(b) fails to comply with his obligations under sub-section (3);

(c) being a full-time member—

(i) engages in paid employment outside the duties of his office without the approval of the Minister; or

(ii) is absent from duty, except on leave of absence granted by the Minister, for 14 consecutive days, or for 28 days in any 12 months; or

(d) being a part-time member—is absent, except on leave of absence granted by the Minister, from 3 consecutive meetings of the Commission,

the Governor-General shall terminate the appointment of the member.

(3) A member who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Commission, otherwise than as a member, and in common with other members, of an incorporated company which consists of not less than 25 persons and of which he is not a director, shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a meeting of the Commission.

(4) A disclosure under sub-section (3) shall be recorded in the minutes of the Commission, and the member—

(a) shall not take part after the disclosure in any deliberation or decision of the Commission with respect to the matter; and

(b) shall be disregarded for the purposes of constituting a quorum of the Commission for any such deliberation or decision.

Acting
members.

16. (1) Where a full-time member is, or is expected to be, absent from duty or from Australia or there is a vacancy in the office of a full-time member, the Minister may appoint a person to act as a full-time member during the absence or vacancy.

(2) A person appointed to act as a full-time member in the event of a vacancy shall not continue in office after the expiration of 12 months after the occurrence of the vacancy.

(3) Where a part-time member is, or is expected to be, unable (whether on account of illness or otherwise) to attend meetings of the Commission or there is a vacancy in the office of a part-time member, the Minister may appoint a person to act as a part-time member during that inability or vacancy.

(4) Where a part-time member is appointed to act as a full-time member, his office shall, during the period of his so acting, be deemed for the purposes of sub-section (3) to be vacant.

(5) The Minister may—

- (a) determine the terms and conditions of appointment of a person appointed under this section; and
- (b) at any time terminate such an appointment.

(6) A person appointed under this section to act as a full-time member or as a part-time member has all the powers and functions of a full-time member or of a part-time member, as the case may be.

(7) The validity of a decision of the Commission shall not be questioned in any proceedings on a ground arising from the fact that the occasion for the appointment of a person purporting to be appointed under this section had not arisen or that an appointment of a person under this section had ceased to have effect.

Acting
Chairman
and Deputy
Chairman.

17. (1) Where the Chairman is absent from duty or from Australia or there is a vacancy in the office of Chairman, the Deputy Chairman shall act as the Chairman during the absence or until the filling of the vacancy.

(2) Where the Deputy Chairman is, or is expected to be, absent from duty or from Australia or there is a vacancy in the office of Deputy Chairman, the Minister may appoint another full-time member to act as the Deputy Chairman during the period of the absence or until the filling of the vacancy.

(3) If the Deputy Chairman is at any time acting as the Chairman, his office of Deputy Chairman shall, during the period of his so acting, be deemed, for the purposes of sub-section (2), to be vacant.

(4) A reference in sub-section (1) to the Deputy Chairman includes a reference to a member acting as the Deputy Chairman in pursuance of an appointment under sub-section (2).

18. (1) The Chairman shall convene such meetings of the Commission as he considers necessary for the performance of its functions, but so that an interval longer than 3 months does not occur between any 2 consecutive meetings. Meetings.

(2) The Chairman shall, when requested by the Minister, convene a meeting of the Commission.

(3) The Chairman shall, on receipt of a request in writing signed by 3 members, convene a meeting of the Commission.

(4) A quorum at a meeting of the Commission is such number of members as is from time to time prescribed.

(5) The Chairman shall preside at all meetings of the Commission at which he is present.

(6) If, at a meeting of the Commission, the Chairman is not present but the Deputy Chairman is present, the Deputy Chairman shall preside at the meeting.

(7) If, at a meeting of the Commission, neither the Chairman nor the Deputy Chairman is present, the members present shall appoint one of their number to preside at the meeting.

(8) Questions arising at a meeting of the Commission shall be determined by a majority of the votes of the members present and voting.

(9) The member presiding at a meeting of the Commission has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

(10) A reference in this section to the Chairman or the Deputy Chairman includes a reference to the member acting as the Chairman or as the Deputy Chairman, as the case may be.

19. (1) The Commission may, with the approval of the Minister, appoint a Committee to assist the Commission in relation to a matter. Committees.

(2) A Committee appointed under this section shall consist of such persons, whether members of the Commission or not, as the Commission thinks fit.

(3) A member of a Committee shall be paid such remuneration as is determined by the Remuneration Tribunal, but, if no determination of that remuneration by that Tribunal is in operation, he shall be paid such remuneration as is prescribed.

(4) A member of a Committee shall be paid such allowances as are prescribed.

(5) This section has effect subject to the *Remuneration Tribunals Act* 1973-1974.

(6) A Committee shall make such investigations, and furnish to the Commission such reports, in connexion with the matter in relation to which it has been appointed as the Commission directs.

Rights of
public
servant
appointed as
full-time
member.

20. If a person appointed as a full-time member was, immediately before his appointment, an officer of the Australian Public Service or a person to whom the *Officers' Rights Declaration Act 1928-1973* applied—

- (a) he retains his existing and accruing rights;
- (b) for the purposes of determining those rights, his service as a full-time member shall be taken into account as if it were service in the Australian Public Service; and
- (c) that Act applies as if this Act and this section had been specified in the Schedule to that Act.

PART IV—STAFF

Staff of
Commission.

21. (1) The staff necessary to assist the Commission shall be persons appointed or employed under the *Public Service Act 1922-1974*.

(2) For the purposes of this Part, the Chairman has all the powers of, or exercisable by, a Permanent Head under the *Public Service Act 1922-1974* so far as those powers relate to the branch of the Public Service comprising the staff referred to in sub-section (1) as if that branch were a separate Department of the Public Service.

(3) For the purposes of sub-sections 25 (5) and (6) of the *Public Service Act 1922-1974*, the Chairman shall be deemed to be a Permanent Head.

State officers
and
employees.

22. The Governor-General may enter into an arrangement with the Governor of a State for the services of officers or employees of the Public Service of the State or of an authority of the State to be made available to the Commission.

PART V—FINANCE

Moneys
payable to
Commission.

23. (1) There are payable to the Commission such moneys as are appropriated by the Parliament for the purposes of the Commission.

(2) The Treasurer may give directions as to the amounts in which, and the times at which, moneys referred to in sub-section (1) are to be paid to the Commission.

24. (1) The Commission shall prepare estimates, in such form as the Minister directs, of its expenditure for each financial year, and, if so directed by the Minister, for any other period and shall submit those estimates to the Minister not later than such date as the Minister directs. Estimates.

(2) Moneys shall not be expended by the Commission otherwise than in accordance with estimates of expenditure approved by the Minister.

25. (1) The Commission may open and maintain an account or accounts with an approved bank or approved banks and shall maintain at all times at least one such account. Bank accounts.

(2) The Commission shall pay all moneys received by it into an account referred to in this section.

26. The moneys of the Commission shall be applied only— Application of moneys.

- (a) in payment or discharge of the costs, expenses and other obligations of the Commission under this Act;
- (b) in payment of grants under paragraph 5 (1) (d); and
- (c) in payment of any remuneration (including fees and allowances) payable under this Act.

27. The Commission shall not, without the approval of the Minister— Restrictions on contracts.

- (a) enter into any contract involving the payment or receipt by the Commission of an amount exceeding \$20,000 or, if a higher amount is prescribed, that higher amount; or
- (b) enter into a lease of land for a period exceeding 10 years.

28. The Commission shall cause to be kept proper accounts and records of the transactions and affairs of the Commission and shall do all things necessary to ensure that all payments out of the moneys of the Commission are correctly made and properly authorized and that adequate control is maintained over the assets of, or in the custody of, the Commission and over the incurring of liabilities by the Commission. Proper accounts to be kept.

29. (1) The Commission shall, as soon as practicable after each 30 June, prepare and furnish to the Minister a report of the operations of the Commission during the year ended on that date, together with financial statements in respect of that year in such form as the Treasurer approves. Annual reports.

(2) Before furnishing financial statements to the Minister, the Commission shall submit them to the Auditor-General, who shall report to the Minister—

- (a) whether the statements are based on proper accounts and records;

- (b) whether the statements are in agreement with the accounts and records;
- (c) whether the receipt and expenditure of moneys, and the acquisition and disposal of assets, by the Commission during the year have been in accordance with this Act; and
- (d) as to such other matters arising out of the statements as the Auditor-General considers should be reported to the Minister.

(3) The Minister shall cause the report and financial statements of the Commission, together with the report of the Auditor-General, to be laid before each House of the Parliament within 15 sitting days of that House after their receipt by the Minister.

(4) The first report and financial statements of the Commission under this section shall be furnished as soon as practicable after 30 June 1976, and shall relate to the operations of the Commission during the period that commenced on the date fixed for the purpose of sub-section 2 (1) and ended on 30 June 1976.

Audit.

30. (1) The Auditor-General shall inspect and audit the accounts and records of financial transactions of the Commission and the records relating to assets of, or in the custody of, the Commission, and shall forthwith draw the attention of the Minister to any irregularity disclosed by the inspection and audit that, in the opinion of the Auditor-General, is of sufficient importance to justify his so doing.

(2) The Auditor-General may, at his discretion, dispense with all or any part of the detailed inspection and audit of any accounts or records referred to in sub-section (1).

(3) The Auditor-General shall, at least once in each financial year, report to the Minister the results of the inspection and audit carried out under sub-section (1).

(4) The Auditor-General or a person authorized by him is entitled at all reasonable times to full and free access to all accounts, records, documents and papers of the Commission relating directly or indirectly to the receipt or payment of moneys, or to the acquisition, receipt, custody or disposal of assets, by the Commission.

(5) The Auditor-General or a person authorized by him may make copies of, or take extracts from, any such accounts, records, documents or papers.

(6) The Auditor-General or a person authorized by him may require a person to furnish him with such information in the possession of the person or to which the person has access as the Auditor-General or authorized person considers necessary for the purposes of the functions of the Auditor-General under this Act, and the person shall comply with the requirement.

(7) A person who contravenes sub-section (6) is guilty of an offence punishable, upon conviction, by a fine not exceeding \$200.

PART VI—MISCELLANEOUS

31. (1) For the purpose of assisting the Commission in the performance of its functions by providing, in each State, in the Australian Capital Territory and in the Northern Territory, means by which suggestions, proposals and information relating to those functions can be communicated to the Commission by, and the Commission can consult with, organizations and persons (including parents), responsible for, or connected with, the provision of services for children in the State or Territory, the Minister may, in relation to each State and each of those Territories, establish a Children's Commission Advisory Board, or Children's Commission Advisory Boards, for the State or Territory.

State and
Territory
Children's
Commission
Advisory
Boards.

(2) A Board shall consist of such persons, whether members of the Commission or not, as the Minister appoints.

(3) A Board shall have such functions for the purpose referred to in sub-section (1) as the Minister directs.

(4) A member of a Board shall be paid such remuneration as is determined by the Remuneration Tribunal, but, if no determination of that remuneration by the Tribunal is in operation, he shall be paid such remuneration as is prescribed.

(5) A member of a Board shall be paid such allowances for expenses as are prescribed.

(6) This section has effect subject to the *Remuneration Tribunals Act* 1973-1974.

(7) In this section, "Board" means a Children's Commission Advisory Board established under this section.

32. (1) The Commission is an approved authority for the purposes of the *Superannuation Act* 1922-1974.

Super-
annuation.

(2) For the purposes of sub-sections 4 (3A) and (4) of that Act, a full-time member shall be taken to be a person who is required, by the terms of his appointment, to give the whole of his time to the duties of his office.

(3) For the purposes of sections 145 and 146 of that Act, a full-time member shall be deemed to be employed by the Commission.

(4) For the purposes of that Act, the termination under section 15 of the appointment of a full-time member by reason of physical or mental incapacity shall be deemed to be retirement on the ground of invalidity.

Allowances
for witnesses
at inquiries.

33. A person summoned to appear as a witness at an inquiry conducted by the Commission may be paid by the Commission such allowances for expenses in respect of his attendance before the Commission as are prescribed.

Exemption
from
taxation.

34. (1) Subject to sub-section (2), the Commission is not subject to taxation under any law (including a law of a State).

(2) The regulations may provide that the Commission is subject to taxation under a specified law of a State or Territory.

Regulations.

35. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular—

- (a) making provision for and in relation to the procedure in relation to inquiries conducted by the Commission, including provision for and in relation to the giving of evidence before, and the production of documents and articles to, the Commission, and the summoning of persons to appear before the Commission to give evidence and to produce documents and articles;
- (b) making provision with respect to the terms and conditions of appointment of persons to a Children's Commission Advisory Board; and
- (c) prescribing penalties, by way of fines not exceeding \$100, for offences against the regulations.

NOTE

1. Act No. 51, 1975; assented to 11 June 1975.