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**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**ABORIGINAL AND TORRES STRAIT ISLANDER CHILDREN AND YOUNG
PEOPLE COMMISSIONER BILL 2022**

**EXPLANATORY STATEMENT
and
HUMAN RIGHTS COMPATIBILITY STATEMENT
(*Human Rights Act 2004, s 37*)**

**Presented by
Tara Cheyne MLA
Minister for Human Rights**

ABORIGINAL AND TORRES STRAIT ISLANDER CHILDREN AND YOUNG PEOPLE COMMISSIONER BILL 2022

The Bill is a Significant Bill. Significant Bills are bills that have been assessed as likely to have significant engagement of human rights and require more detailed reasoning in relation to compatibility with the *Human Rights Act 2004*.

OVERVIEW OF THE BILL

The Bill establishes an Aboriginal and Torres Strait Islander Children and Young People Commissioner as an independent statutory authority to promote the rights of Aboriginal and Torres Strait Islander children and young people.

The Bill implements a recommendation from the Our Booris, Our Way Review to establish an Aboriginal and Torres Strait Islander Children's Commissioner to undertake individual and systemic advocacy in relation to Indigenous children in the child protection system as well as other areas where Aboriginal and Torres Strait Islander children and families are disproportionately represented.

The Protection of Rights Services Review further considered the Our Booris, Our Way recommendation and found that while there would necessarily be some overlap in functions and powers, the role of the new Commissioner would complement existing statutory oversight roles relating to children and families, including the ACT Public Advocate and Children and Young People Commissioner. Importantly, this role would respect and strengthen self-determination and increase cultural safety for Aboriginal and Torres Strait Islander people.

The Bill gives effect to the proposed model for the Commissioner developed through a co-design process, facilitated by the Jumbunna Institute for Indigenous Education and Research led by Distinguished Professor Larissa Behrendt and involving local Aboriginal community-controlled organisations and government stakeholders.

The Aboriginal and Torres Strait Islander Children and Young People Commissioner will have a broad mandate to advocate for the rights of Aboriginal and Torres Strait Islander children and young people, individually and collectively; identify and examine issues that affect the human rights and wellbeing of Aboriginal and Torres Strait Islander children and young people; and make recommendations to government and non-government agencies on legislation, policies, practices and services that affect this cohort.

The Aboriginal and Torres Strait Islander cultural principles set out in the Bill give effect to a proposal developed through the co-design process that the legislation include an explicit requirement for the Commissioner to focus on Aboriginal and Torres Strait Islander children and young people, from a cultural standpoint, and noting the importance of connectedness – to family, community, culture and Country - as critical to best interests. The cultural principles are intended to provide guidance to the Commissioner on how they exercise their functions.

The Commissioner will be an Aboriginal and/or Torres Strait Islander person who is appointed by the Executive through a process that involves members of the Aboriginal and Torres Strait Islander community.

The Bill provides for the Commissioner to have a mix of individual and systemic advocacy functions. These functions are supported by powers to make recommendations in relation to individual advocacy and systemic inquiries and powers to access and share information.

In line with the recommendation in the Our Booris, Our Way Review and proposal developed through the co-design process, the Commissioner will have a function to intervene on behalf of Aboriginal and Torres Strait Islander children and young people in relation to decisions that will affect their rights or interests. To give effect to this function, amendments to the *Court Procedures Act 2004* and *Children and Young People Act 2008* will allow the Aboriginal and Torres Strait Islander Children and Young People Commissioner to join proceedings (including care and protection proceedings) in the Children's Court.

Continuous engagement with the Aboriginal and Torres Strait Islander community has been identified in the co-design process and Our Booris, Our Way Review as a priority for the new Commissioner. The Bill provides that the Commissioner may establish advisory committees to assist them, in line with the co-design proposal for the legislation to include enablers for the Commissioner to establish an Aboriginal and Torres Strait Islander Community advisory body and/or children and young people advisory body at their discretion. The Bill also requires that, in exercising their functions, the commissioner must engage regularly with the Aboriginal and Torres Strait Islander community; and consult Aboriginal and Torres Strait Islander children, young people and their families in ways that promote their participate in decision-making.

To promote transparency, the Bill requires the Commissioner to prepare an annual statement about their operations, to be given to the Aboriginal and Torres Strait Islander community and Speaker of the Legislative Assembly.

The Commissioner will operate independently and will complement other statutory roles, including the ACT Human Rights Commission. The Bill encourages cooperation and the avoidance of duplication between these two agencies.

CONSULTATION ON THE PROPOSED APPROACH

The model for the Aboriginal and Torres Strait Islander Children and Young People Commissioner was developed through a co-design process, facilitated by the Jumbunna Institute for Indigenous Education and Research at the University of Technology Sydney. The co-design process aimed to develop and refine the proposed Commissioner's scope, functions, governance, arrangements, and recruitment process. Community dialogues, individual conversations, and a final refinement workshop were held in late 2021.

The Our Booris, Our Way Implementation Oversight Committee, Aboriginal and Torres Strait Islander Elected Body, and Aboriginal community-controlled organisations as well as the ACT Human Rights Commission and government stakeholders were all involved in the co-design process.

A final report set out the outcomes of the process including a proposed model for an Aboriginal and Torres Strait Islander Children's Commissioner for the ACT. This Bill gives effect to the proposed legislative model.

CONSISTENCY WITH HUMAN RIGHTS

Rights engaged

Rights Promoted

Protection of the family and children

Children have special rights under human rights law taking into account their particular vulnerabilities. This right to special protection is in addition to all other rights, which children enjoy as individuals.

The right to protection of the family recognises the importance of the family unit in making up society and the benefits that come from preserving family relations. It further recognises that families should not be subject to arbitrary interference or separation by public authorities.

The right to protection of the family and children is promoted through the establishment of the Aboriginal and Torres Strait Islander Children and Young People Commissioner who will provide individual and systemic advocacy that promotes the rights of Aboriginal and Torres Strait Islander children, including those engaged in the child protection system.

Cultural and other rights of Aboriginal and Torres Strait Islander peoples and other minorities

Aboriginal and Torres Strait Islander peoples have the right to maintain, control and develop their cultural heritage and traditional knowledge. This right recognises that initiatives or policies affecting Aboriginal and Torres Strait Islander peoples and their cultural should be developed in conjunction with affected communities.

The Bill promotes the cultural and other rights of Aboriginal and Torres Strait Islander peoples by giving effect to the recommendation and proposed model for the Commissioner developed through Aboriginal and Torres Strait Islander led and co-designed processes. It establishes an independent statutory authority who is required to act in accordance with defined Aboriginal and Torres Strait Islander cultural principles, consistently with relevant human rights instruments, and transparently by engaging regularly with the Aboriginal and Torres Strait Islander community and providing an annual statement on their operations to the community annually. The Commissioner will promote the cultural rights of Aboriginal and Torres

Strait Islander children and young people through their individual and systemic advocacy functions, including providing recommendations to government and non-government agencies about the promotion of these rights.

Recognition and equality before the law

The right to equality and non-discrimination provides that everyone is entitled to enjoy their rights without discrimination of any kind, and that everyone is equal before the law and entitled to the equal protection of the law without discrimination.

The establishment of the Aboriginal and Torres Strait Islander Children and Young People Commissioner promotes this right by providing avenues for issues of bias and discrimination to be identified, at an individual and systemic level, and for potential changes to be advocated for by a statutory officer with specific and relevant expertise.

Fair trial

The right to fair trial encompasses the right to fair hearing which is concerned with procedural fairness, and equal access to proceedings.

This right is promoted in the Bill through the protection for officials from liability when engaging in good faith with the commissioner such as by providing information or answering questions.

Rights Limited

Right to take part in public life

- ***Nature of the right and the limitation (ss 28(2)(a) and (c))***

Section 17, Human Rights Act protects the right to take part in public life. It states that everyone has the right to have access, on general terms of equality, for appointment to the public service and public office. Compliance with this right should be ensured through observing that criteria and processes for appointment, suspension, dismissal and promotion are non-discriminatory, objective and reasonable.

Section 10(2) of the Aboriginal and Torres Strait Islander Children and Young People Commissioner Bill places conditions on a person's eligibility to be appointed as the commissioner. The person must be either (or both) an Aboriginal person or a Torres Strait Islander person. These restrictions may engage and limit the right to participate in public life.

- ***Legitimate purpose (s 28(2)(b))***

Establishing the commissioner is intended to promote and protect the rights of Aboriginal and Torres Strait Islander children and young people, with a broad scope across all systems affecting this cohort. Consistent with the principles of self-

determination, the Bill engages the Aboriginal and Torres Strait Islander community in decision making processes on issues that directly affect their human rights and cultural and family interests.

- ***Rational connection between the limitation and the purpose (s 28(2)(d))***

Making the commissioner an identified Aboriginal and/or Torres Strait Islander position means that their functions and powers can be exercised with a strong and genuine appreciation of the cultural principles set out in section 7. Connection to Aboriginal and Torres Strait Islander communities, including children and young people, will allow the commissioner to operate with the trust of the children and families it is designed to serve. These relationships will ensure the commissioner is best placed to advocate for the rights of Aboriginal and Torres Strait Islander children and young people, identify and examine the issues that affect them, and recommend reforms to government and non-government agencies.

- ***Proportionality (s 28(2)(e))***

The policy intent of requiring that the commissioner be an Aboriginal and/or Torres Strait Islander person would be frustrated if the Executive had discretion in appointing a person who did not meet the criteria in section 10(2). Requiring that the Executive consider a person's connection to or experience in the local Aboriginal and Torres Strait Islander community, for example, may privilege Aboriginal and Torres Strait Islander candidates, but does not go far enough in ensuring that the commissioner is an identified position, and therefore a genuine act of self-determination.

Right to privacy

1. Nature of the right and the limitation (ss 28(2)(a) and (c))

Section 12 of the Human Rights Act protects individuals from unlawful or arbitrary interference with privacy, family, home or correspondence.

The commissioner's information gathering powers in Part 5 of the Bill may engage and limit the right to privacy. Section 27 requires a person to provide information, documents or other things to the commissioner. Where this information is personal information of another person, particularly in instances where the information is obtained without their consent, this may engage and limit that person's right to privacy.

Section 31 is a power to require attendance. Relevant people for an entity may be required to attend and answer questions relevant to an inquiry conducted under section 20 of the Bill. This is an interference with their right to privacy.

Section 34 permits information sharing between the commissioner and the human rights commission. Where this enables the sharing of personal information, in some instances without consent, that is another limitation on the right to privacy.

Consequential amendments to the *Children and Young People Act* and *Official Visitor Act* will limit the right to privacy by giving the commissioner access to personal information that the Public Advocate currently has access to, increasing the number of office holders who have access.

Limitations on the right to privacy must be lawful and must not be arbitrary. Therefore, each of these limitations needs to be sufficiently confined and reasonable, to avoid arbitrariness. The legislation must specify in detail the precise circumstances in which these interferences with the right are permitted.

2. Legitimate purpose (s 28(2)(b))

Establishing the commissioner is intended to promote and protect the rights of Aboriginal and Torres Strait Islander children and young people, with a broad scope across all systems affecting this cohort.

3. Rational connection between the limitation and the purpose (s 28(2)(d))

Conferring information gathering powers on the commissioner will give them access to the information and documents necessary to exercise their functions, particularly for individual advocacy, systemic advocacy and inquiries.

Similarly, requiring people who may have information relevant to an inquiry to appear and answer questions is rationally connected to the investigative and fact-finding nature of these inquiries, and is necessary for the commissioner to uncover issues that affect, or may affect, the rights, development, safety and wellbeing of Aboriginal and Torres Strait Islander children and young people.

Facilitating information sharing between the commissioner and the ACT Human Rights Commission will assist the commissioner to work collegiately, utilise the specialist knowledge and skills of each agency, and avoid a duplication of functions wherever possible.

4. Proportionality (s 28(2)(e))

Part 5 of the Bill has been crafted so as to ensure that these limitations on the right to privacy are proportionate to the legitimate purpose and the measures are the least restrictive means of ensuring the commissioner is able to discharge their functions in an effective and timely manner.

In addition to the analysis below on the specific information gathering and sharing powers, the *Information Privacy Act 2014* applies to the handling of personal information by public sector agencies and has inherent safeguards. Further, section

35 of Bill makes it an offence for information holders to mishandle protected information, providing a further protection to the right to privacy as limited by the commissioner's powers.

Where the powers in Part 5 are being sought to be applied in relation to personal or identifying information, more often than not it will be in relation to Aboriginal and Torres Strait Islander children or young people in out of home care. As this is a particularly vulnerable cohort, the safeguards in the Bill have necessarily been designed to be as strong as possible, whilst still permitting limitation to the right to privacy that are necessary for effective individual and systemic advocacy in line with the policy intent of the Bill.

Power to require information, documents and other things (section 27)

The power to require information and documents in section 27 is only enlivened where the commissioner believes on reasonable grounds that a person can give information or produce a document or other thing that the commissioner considers necessary to exercise the commissioner's functions under section 11 (1) (a), (b) and (c).

The commissioner's information gathering powers will assist the commissioner to undertake comprehensive individual advocacy as part of their functions in s 11 (1) (a) and (b). They will be able to access information about a child or young person's circumstances, interactions with services and systems, and assessments and decisions made in relation to the child/young person. This information will inform the advocacy and interventions that the commissioner may make on behalf on behalf of that child/young persons. The information gathering powers are also valuable to the commissioner's inquiry function under s 11 (1) (c), as the commissioner will need to access information held by government and non-government agencies to make assessments and recommendations relating to the rights, development, safety and wellbeing of Aboriginal and Torres Strait Islander children and young people.

Requests must be in writing and state how, and the time within which, the person must comply with the requirement, which promotes compliance with the requirement.

The power to require documents does not apply to sensitive information, which the commissioner will be able to request under the *Children and Young People Act 2008*, meaning that the information continues to be protected by the secrecy provisions in that legislation. This includes offences for recording or divulging information and protection of identifying information including information that would allow a person's identity as someone who made a report or notification about a child to be worked out.

The commissioner's power to require documents does not extend to an Aboriginal or Torres Strait Islander child or young person, or a member of the child or young person's family.

There are safeguards, set out in section 28, for when the power is used to require information in relation to the conduct of an inquiry under section 20. If that information, document or other things contained identifying information about an individual, the commissioner must ask the person to remove the identifying information, if practicable, before giving the information, or producing a document or other thing. This is intended to limit information shared for the conduct of an inquiry to de-identified information, if possible, given inquiries under the Bill relate to matters affecting Aboriginal and Torres Strait Islander children and young people generally, or a particular group of Aboriginal and Torres Strait Islander children and young people.

Where information is requested other than for the purpose of an inquiry under section 20, a number of elevated safeguards apply (section 29). In the first instance, the individual to which the information relates must give consent. However, the commissioner may require the person give the information, produce the document or other thing without the relevant individual's consent if the commissioner reasonably believes there may be a significant risk to the wellbeing of an Aboriginal or Torres Strait Islander child or young person; and accessing the information is necessary to effectively advocate for the child or young person. The requirement that the commissioner reasonably believe that they *may be* a significant risk, rather than that there *is* a significant risk, is included because in many cases it is likely that the commissioner won't be able to accurately assess the risk without access to the information that they are requesting.

These elevated safeguards apply in relation to the commissioner's individual advocacy functions, but do not apply in relation to the commissioner's systemic advocacy function. This is because personal information requested for the purposes of individual advocacy will often be at the request of the child, young people or their family and may lead to the commissioner advocating for, or intervening on behalf of, an Aboriginal or Torres Strait Islander child or young person. In this context, the individual's consent is important. However, for inquiries, the commissioner will be seeking information to understand systemic issues and have a broader view of matters affecting Aboriginal and Torres Strait Islander children and young people. In many cases, this information will be de-identified (as required in section 28).

Power to require attendance (section 31)

The power to require a person to attend before an official and answer questions is only enlivened if the commissioner believes on reasonable grounds that a relevant person can give information relevant to the conduct of an inquiry. It does not apply to the commissioner's individual advocacy functions.

The requirement to attend must be given in writing and the person can only be required to attend at a reasonable time and place. Additionally, the power does not apply to an Aboriginal or Torres Strait Islander child or young person, or a member of the child or young person's family. The power is limited to 'relevant persons',

meaning a person who is or was employed by, or involved in the management of administration of, an entity.

Information sharing with Human Rights Commission (section 34)

The Bill includes the capacity for the commissioner to disclose information to a member of the human rights commission. Information may only be disclosed where the commissioner is reasonably satisfied that the information is relevant to the exercise of the members functions under the *Human Rights Commission Act 2005*.

If the information is personal information about an individual, the Bill requires that the individual has given consent for their information to be shared. However, the commissioner may disclose personal information without an individual's consent if the commissioner believes on reasonable grounds that the disclosure is necessary to ensure that the commissioner and the human rights commission are able to take a coordinated approach in relation to a matter affecting an Aboriginal or Torres Strait Islander child or young person, or effective advocacy is able to be undertaken for the child or young person.

Minimum guarantee in criminal process

1. Nature of the right and the limitation (ss 28(2)(a) and (c))

Section 22 of the Human Rights Act provides for minimum guarantees in the criminal process. Among these are the right to be presumed innocent and the right not to be compelled to testify against himself or herself, or to confess guilt.

The right to be presumed innocent may be engaged by sections 30 and 32 which create an exception or a defence of 'reasonable excuse' for failing to give information or attend before an official. Provisions that operate as a defence or an exception to an element of an offence have the effect of reversing the onus of proof. Reverse burdens of proof engage and limit the right to be presumed innocent.

The right against self-incrimination may be engaged and limited by section 33 of the Bill which effects an abrogation of the privilege against self-incrimination. Section 33 provides that a person is not excused from answering a question, or providing information or a document or other thing on the ground that the answer to the question, or the information, document or thing, may tend to incriminate the person or expose the person to a penalty. Because this works to compel a person to give evidence and answer questions that may incriminate them, this may engage and limit section 22 of the Human Rights Act.

2. Legitimate purpose (s 28(2)(b))

Establishing the commissioner with effective information gathering powers is intended to promote and protect the rights of Aboriginal and Torres Strait Islander children and young people, with a broad scope across all systems affecting this cohort.

3. Rational connection between the limitation and the purpose (s 28(2)(d))

Sections 30, 32 and 33 have been included to support the commissioner's powers to compel information and require attendance to answer questions. These powers are deployed to support the exercise of commissioner's functions, particularly individual advocacy and conducting systemic inquiries. These functions require the commissioner to be able to gather relevant information, even if that information may incriminate the person giving it.

4. Proportionality (s 28(2)(e))

Section 30 and 32 clearly specify that the defence carries an evidential burden, which is appropriate as the nature of the defendant's reasonable excuse for not providing information, or not attending when required, is information that would be reasonably within the knowledge of the defendant. The prosecution retains the legal burden of proof in all other elements of the offence.

In relation to protection against self-incrimination, a use immunity safeguard has been included, to ensure this limitation is the least restrictive means possible of achieving the legitimate purpose. Section 33(2) prevents the admission as evidence in a civil or criminal proceeding of any information, document or other thing obtained, directly or indirectly, because of the giving of the answer or the production of the document or other thing. Information is only admissible as evidence in a proceeding for an offence against part 5 of the Act or any other offence arising out of the false or misleading nature of the answer, information, document or other thing.

This ensures that the information gathered is used primarily to support the commissioner's functions and could only be further used against a person in very limited circumstances. These exceptions are necessary to ensure that failure to give information, document or other thing, failure to attend, giving false or misleading information to the commissioner, and secrecy offences, can be enforced.

ABORIGINAL AND TORRES STRAIT ISLANDER CHILDREN AND YOUNG PEOPLE
COMMISSIONER Bill 2022

Human Rights Act 2004 - Compatibility Statement

In accordance with section 37 of the *Human Rights Act 2004* I have examined the **Aboriginal and Torres Strait Islander Children and Young People Commissioner Bill 2022**. In my opinion, having regard to the Bill and the outline of the policy considerations and justification of any limitations on rights outlined in this explanatory statement, the Bill as presented to the Legislative Assembly is consistent with the *Human Rights Act 2004*.

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Shane Rattenbury MLA
Attorney-General

CLAUSE NOTES

Part 1 Preliminary

Part 1 comprises clauses 1 to 5 dealing with formal matters including commencement and key definitions for the purposes of the Bill.

Clause 1 Name of Act

The clause provides that the name of the Act is the *Aboriginal and Torres Strait Islander Children and Young People Commissioner Act 2022* (the Act).

Clause 2 Commencement

The clause provides for the commencement of the Act on the day after its notification day.

Clause 3 Dictionary

This clause is a formal provision identifying the dictionary and explaining conventions used to define words and terms for the purposes of the act.

Clause 4 Notes

This clause is a formal provision explaining the status of notes in the Act.

Clause 5 Offences against Act – application of Criminal Code etc

This clause clarifies that other legislation applies to offences against this Act including the *Criminal Code 2002*, which applies to all offences against the Act, and the *Legislation Act 2001*, which deals with the meaning of offence penalties that are expressed in penalty units.

Part 2 Objects and important concepts

Part 2 comprises clauses 6 and 7 setting out the objects of the Act and principles to be applied when exercising functions under the Act.

Clause 6 Objects of Act

Clause 6 outlines the main objects of the Act, which are to promote and protect the rights of Aboriginal and Torres Strait Islander children and young people; establish the office of the Aboriginal and Torres Strait Islander Children and Young People Commissioner. This clause also provides for the commissioner to functions in line with these objects – to advocate for the rights of Aboriginal and Torres Strait Islander children and young people; identify and examine issues that affect the human rights and wellbeing of this cohort; and make recommendations to government and non-government agencies.

The objects are intended to operate consistently with the *Human Rights Act 2004* and the principles set out in the *Convention on the Rights of the Child* and *Declaration on the Rights of Indigenous Peoples*.

Clause 7 Aboriginal and Torres Strait Islander cultural principles

Clause 7 sets out the Aboriginal and Torres Strait Islander cultural principles, which must be applied when a person exercises a function under the Act. These principles that must be applied are that it is important for Aboriginal and Torres Strait Islander children and young people to maintain their cultural and linguistic environment their set of values; it is important to respect the kinship rules of Aboriginal and Torres Strait Islander people; and it is important to acknowledge the spiritual, social, historical, cultural and economic importance of Country to Aboriginal and Torres Strait Islander children and young people.

The co-design process which informed this Act proposed that the legislation to provide an explicit reference in the Act to the need for the commissioner to focus on Aboriginal and Torres Strait Islander children and young people, from a cultural standpoint, and noting the importance of connection to family, community, culture and Country as critical to best interests. The principles are intended to give effect to a proposal developed through the co-design process.

Part 3 Office of the Aboriginal and Torres Strait Islander Children and Young People Commissioner

Part 3 comprises clauses 8 to 19 dealing with matters relating to the commissioner's office including establishment, appointment, delegation of functions, preparation of an annual statement, and arrangements for staff and facilities and other matters.

Clause 8 Establishment of commissioner's office

This clause establishes the office of the Aboriginal and Torres Strait Islander Children and Young People Commissioner.

Clause 9 Independence of commissioner's office

This clause establishes the independence of the commissioner's office, which is not subject to the direction of anyone else except as providing in this Act or another territory law.

Clause 10 Appointment of commissioner

This clause sets out the requirements for appointment of the commissioner.

The Aboriginal and Torres Strait Islander Children and Young People Commissioner is an identified role for an Aboriginal and/or Torres Strait Islander person.

The clause requires the commissioner is to be appointed by the Executive following involvement of members of the Aboriginal and Torres Strait Islander community in the process for their selection and the Executive's satisfaction that the person has the experience or expertise necessary.

A person must be appointed for a term of no longer than 5 years. Their conditions of employment are the conditions agreed between the Minister and the commissioner stated in the instrument of appointment, subject to any determination under the *Remuneration Tribunal Act 1995*.

The appointment of the commissioner is a notifiable instrument.

Clause 11 Commissioner's functions

This clause sets out the commissioner's functions, which include a mix of individual and systemic advocacy functions, including:

- to advocate on behalf of Aboriginal and Torres Strait Islander children and young people
- to intervene on behalf of Aboriginal and Torres Strait Islander children and young people
- to inquire into matter
- to promote the enjoyment of rights
- to advise the government

This clause also provides guidance to the commissioner on the exercise of their functions, who must take all reasonable steps to consult and listen to Aboriginal and Torres Strait Islander children and young people; ensure the commissioner is accessible to Aboriginal and Torres Strait Islander children and young people; and engage regularly with the Aboriginal and Torres Strait Islander community.

Clause 12 Annual statement by commissioner

This clause requires the commissioner to prepare a statement about the operation of the commissioner's office each year and details what must be included in the statement including information about their advocacy, inquiries, activities of any advisory committee assisting the commissioner, a summary of community engagement, anything else the commissioner considers appropriate and anything else prescribed by regulation.

The annual statement must not include identifying information or information that would allow the person to be reasonably identifiable without a person's consent.

The clause requires the commissioner to give the annual statement to the Aboriginal and Torres Strait Islander community and Speaker not later than 3 months after the end of the year. The Speaker must present the annual statement to the Legislative Assembly within 5 sitting days after the day they receive it.

This clause provides for other requirements for an annual statement to be prescribed by regulation.

Clause 13 Ending commissioner's appointment

This clause sets out that the Minister may end a person's appointment as the commissioner if the person contravenes a territory law; for misbehaviour; if the person becomes bankrupt or personally insolvent; if the person is convicted in the ACT of an offence punishable by imprisonment for at least 1 year; or if the person is convicted outside the ACT, Australia or elsewhere, of an offence if, if it had been committed in the ACT, would be punishable by imprisonment for at least 1 year.

This clause requires the Minister to end the person's appointment as commissioner if the person is absent, other than on leave approved by the Minister, for 14 consecutive days or for 28 days in any 12-month period; or for physical or mental incapacity, if the incapacity substantially affects the exercise of the person's functions.

Clause 14 Delegation of commissioner's functions

This clause permits the commissioner to delegate their functions under this Act or another territory law to a member of the staff of the commissioner's office or a public servant.

Clause 15 Cooperation with human rights commission

This clause sets out that the commissioner's office should seek to work collaboratively with the human rights commission where practicable including to avoid unnecessary duplication of work.

Clause 16 Advisory committees

This clause provides that the commissioner may establish advisory committees to assist them to exercise their functions in relation to matters affecting Aboriginal and Torres Strait Islander children and young people.

Without limiting who may be appointed to an advisory committee, this clause states that the commissioner may appoint Aboriginal and Torres Strait Islander community members, including Aboriginal and Torres Strait Islander children and young people, to the committee.

Clause 17 Arrangements for staff and facilities

This clause permits the commissioner to arrange with the head of service to use the services of a public servant or territory facilities.

Clause 18 Consultants and contractors

This clause permits the commissioner to engage consultants and contractors. However, the clause states that the commissioner must not enter into a contract of employment under this section.

Clause 19 Engagement of lawyer by commissioner

This clause allows for the commissioner to engage a lawyer to appear before a court in relation to the exercise of the commissioner's functions under the Act.

Part 4 Advocacy and inquiry by commissioner

Part 4 comprises clauses 20 to 25 dealing with the commissioner's powers and requirements in relation to advocacy and inquiry.

Clause 20 Commissioner may conduct inquiry

This clause permits the commissioner to conduct an inquiry into any matter relating to the systemic issues that affect, or may affect, the rights, development, safety and wellbeing of Aboriginal and Torres Strait Islander children and young people generally, or a particular group of Aboriginal and Torres Strait Islander children and young people.

Clause 21 Conduct of inquiry

This clause provides that an inquiry under section 20 may be conducted in the way the commissioner considers most appropriate, taking in account the nature of the matter to which the inquiry relates; the wishes if, known, of any children or young people on whose behalf the commissioner is conducting the inquiry; and the rules of natural justice and procedural fairness.

However, this clause also sets out that the commissioner must not conduct an inquiry in a way that is likely to impede an investigation of proposed investigation, or the conduct of a proceeding, by the Australian Federal Police, a coroner, a court, the integrity and public sector standards commissioners, or the ACT Ombudsman.

Clause 22 Notice of inquiry

This clause requires the commissioner, before starting an inquiry relevant to an entity, to provide written notice to the person in charge of the entity setting out the nature of the inquiry and how the commissioner expects to seek information from the entity.

Clause 23 Recommendation in relation to inquiry

This clause provides the commissioner with a power relating to their conduct of an inquiry under section 20. The commissioner may give a written notice to the person in charge of an entity setting out any recommendation in relation to the rights,

development, safety and wellbeing of Aboriginal and Torres Strait Islander children and young people; and a reasonable stated time within which the entity must give the commissioner a written response to the recommendation.

This clause requires the person in charge of the entity to respond to the commissioner within the stated time unless they have a reasonable excuse.

Clause 24 Recommendation in relation to advocacy

This clause provides the commissioner with a power relating to their individual advocacy function. The commissioner may give a written notice to the person in charge of an entity setting out the matter in relation to which the commissioner is advocating or has advocated; any recommendation to the entity in relation to the safety, wellbeing and rights of the child or young person; and a reasonable stated time within which the entity must give the commissioner a written response to the recommendation.

This clause requires the person in charge of the entity to respond to the commissioner within the stated time unless they have a reasonable excuse.

Clause 25 Report in relation to inquiry or matter of public importance

This clause allows the commissioner to, on their own initiative, prepare a written report in relation to an inquiry under section 20 or any matter of public importance related to the commissioner's functions.

The clause requires that the commissioner must not include an adverse comment in relation to a person in a report unless the commissioner has given the person a reasonable opportunity to respond to the proposed comment.

If a report mentioned in this clause is given by the commissioner to the Minister, the Minister must present the report to the Legislative Assembly within 6 sitting days after they receive it.

Part 5 Information gathering and sharing

Part 5 comprises clauses 26 to 35 and deals with the commissioner's information gathering and sharing powers and related offences under the Act.

Clause 26 Definitions – pt 5

This is a formal provision identifying definitions applicable to Part 5 of the Act.

Clause 27 Power to require information, documents and other things

This clause provides the commissioner with the power to require information, documents and other things necessary to exercise their functions under section 11 (1) (a), (b) and (c). The commissioner may, by written notice given to the person, require the person to give them the information, or produce the document or other

thing. The notice must state how, and the time within which, the person must comply with the requirement.

The power does not apply to sensitive information, as defined by the *Children and Young People Act 2008*. The commissioner is able to access sensitive information under that Act.

The commissioner cannot require an Aboriginal or Torres Strait Islander child, young person, or a member of the child of young person's family to give them information under this provision.

Where the commissioner is a party to court proceedings, documents would be provided under the *Court Procedures Act 2004*.

Clause 28 Limit on power to ask for information, documents and other things – identifying information

This clause sets out a limitation on the commissioner's power in section 27, where the power is used in relation to the conduct of an inquiry under section 20 and the information, document or other thing includes identifying information about an individual. This clause requires the commissioner to ask the person to remove the identifying information, if practicable, before giving the information, or producing a document or other thing.

Clause 29 Limit on power to ask for information, documents and other things – consent for personal information

This clause sets out a limitation on the commissioner's power in section 27, where the power is used other than in relation to an inquiry under section 20. This clause requires that, where the information that the commissioner is seeking to request contains personal information about an individual, the commissioner must first seek the individual's consent before requiring the information, document or other thing.

The commissioner can request information, document or other thing containing personal information without the individual's consent if they reasonably believe there may be a significant risk to the wellbeing of an Aboriginal or Torres Strait Islander child or young person; and accessing the information is necessary to effectively advocate for the child or young person.

Clause 30 Failure to give information, document or other thing

This clause provides that it is an offence if a person fails to give information or produce a document or other thing to the commissioner if required under section 27. The person has not committed an offence if they have a reasonable excuse for failing to provide the information, document or other thing.

Clause 31 Power to require attendance

This clause provides the commissioner with the power to require the attendance of a relevant person for an entity, if the commissioner believes on reasonable grounds that the person can give information relevant to the conduct of an inquiry under section 20. The commissioner may, by written notice given to the relevant person, require the person to attend before an official, at the reasonable time and place stated in the notice, to answer questions in relation to the inquiry. A person required to attend before an official under this clause must continue to attend as reasonably required by the official to answer questions in relation to the inquiry.

The clause defines a relevant person in relation to an entity as a person who is or was employed by, or involved in the management or administration of, the entity.

The commissioner cannot require an Aboriginal or Torres Strait Islander child, young person, or a member of the child of young person's family to attend under this provision.

Clause 32 Failure to attend

This clause provides that it is an offence if a person fails to attend before an official to answer questions in relation to the conduct of an inquiry as required under section 31. The person has not committed an offence if they have a reasonable excuse for failing to attend to answer questions in relation to the conduct of an inquiry.

The clause also provides that it is an offence if a person attends before the official as required under section 31 and fails to continue to attend as reasonably required by the official to answer questions in relation to the inquiry. The person has not committed an offence if they have a reasonable excuse for failing to continue to attend as required by the official.

This clause also provides that it is an offence if a person attends before the official as required under section 31, the official requires the person to answer a question and the person fails to answer the question. The person has not committed an offence if they have a reasonable excuse for failing to answer the question.

Clause 33 Abrogation of privilege against self-incrimination

This clause provides that a person is not excused for answering a question, providing information or a document or other thing, under Part 5 on the ground that the answer to this question, or the information, document or thing, may tend to incriminate the person or expose the person to a penalty.

However, the clause also provides that any information obtained, directly or indirectly, because of the giving of the answer or production of document or other thing under this Act, is not admissible in evidence against the person in a civil or criminal proceeding, other than a proceeding for an offence against Part 5 of this Act

or any other offence arising out of the false or misleading nature of the answer, information, document or other thing.

Clause 34 Information sharing – human rights commission

This clause permits the commissioner to disclose information, disclosed to or obtained by the commissioner in the exercise of a function under this Act, to the human rights commissioner. The commissioner may disclose information if the commissioner is reasonably satisfied that the information is relevant to the exercise of the member's functions under the *Human Rights Commission Act 2005*; and, if the individual is personal information about an individual, the individual has given consent.

Information containing personal information about an individual may be shared by the commissioner with a member of the human rights commission without that individual's consent if the commissioner believes on reasonable grounds that the disclosure is necessary to the two agencies taking a coordinated approach; or effective advocacy is able to be undertaken for an Aboriginal or Torres Strait Islander child or young person.

The clause provides that a secrecy requirement is taken to apply to the member of the human rights commission who uses information disclosed to them under this section, and the member is taken to be a person engaged in the administration of the provision that contains the secrecy requirement.

This clause applies despite any other territory law.

Clause 35 Secrecy

This clause sets out offences relating to secrecy.

Information holders include a person who is or has been an official; anyone who exercises or has exercised a function under this Act; a person who is required under section 27 to give the commissioner information, or produce a document or other thing; or a person who is required under section 31 to attend before an official to answer questions in relation to an inquiry.

Information holders commit an offence if they make a record of protected information about someone else; and are reckless about whether the information is protected information about someone else. It is also an offence for an information holder to do something that discloses protected information about someone else and are reckless about whether the information is protected information about someone else and doing the thing would result in the information being disclosed to someone else.

These offence provisions do not apply if the record is made, or the information is disclosed, under this Act or another territory law, or in relation to the exercise of a function, as an information holder, under this Act or another territory law.

The offence provisions do not apply to the divulging of protected information about someone with the person's consent.

This clause sets out that an information holder need not disclose protected information to a court, or produce a document containing protected information to a court, unless it is necessary to do so for this Act or another territory law.

Part 6 Miscellaneous

Part 6 comprises clauses 36 to 38 relating to protections of officials and others, and a regulation-making power under this Act.

Clause 36 Protection of officials from liability

This clause provides that an official, or anyone engaging in conduct under the direction of an official, is not personally liable for anything done or omitted to be done honestly and without recklessness in the exercise of a function under this Act, or in the reasonable belief that the conduct was in the exercise of a function under this Act.

The clause confirms that any civil liability that would, apart from subsection (1) of this clause, attach to an official attaches instead to the Territory.

Clause 37 Protection of others from liability

This clause provides that civil or criminal liability is not incurred only because of giving information, or producing a document or thing to an official, or answering a question or making a statement to an official, where these are done honestly and without recklessness.

The clause sets out that any information given honestly and without recklessness to an official is not a breach of confidence, a breach of professional etiquette or ethics, or a breach of a rule of professional conduct.

Clause 38 Regulation-making power

This is a formal provision providing the Executive with the power to make regulations for this Act.

Part 7 Legislation amended

Part 7 comprises clause 39 relating to legislation amended.

Clause 39 Legislation amended – sch 1

This is a formal provision stating that this Act amends the legislation mentioned in schedule 1.

Schedule 1 Consequential amendments

Part 1.1 Children and Young People Act 2008

[1.1] Section 137, definition of *accredited person*, new paragraph (fa)

This clause amends the *Children and Young People Act* to include the Aboriginal and Torres Strait Islander children and young people commissioner in the definition of ‘accredited person’ for Chapter 6 of the Act.

[1.2] New section 144 (2) (b) (va)

This clause amends the *Children and Young People Act* to allow the Aboriginal and Torres Strait Islander children and young people commissioner to inspect, on request, an excluded matter from a youth detention policy or operating procedure.

[1.3] Section 153A

This clause amends the *Children and Young People Act* to allow the Aboriginal and Torres Strait Islander children and young people commissioner to, at any reasonable time, enter a detention place for the purpose of exercising their functions under this Act.

[1.4] New section 179 (da)

This clause amends the *Children and Young People Act* to protect communication at a visit between a young detainee and the Aboriginal and Torres Strait Islander children and young people commissioner.

[1.5] Section 200 (5), definition of *protected electronic communication*, new paragraph (da)

This clause amends the *Children and Young People Act* to include electronic communication between a young detainee and the Aboriginal and Torres Strait Islander children and young people commissioner in the definition of ‘protected electronic communication’ for section 200 of the Act.

[1.6] Section 201 (4), definition of *protected mail*, new paragraph (da)

This clause amends the *Children and Young People Act* to include mail between a young detainee and the Aboriginal and Torres Strait Islander children and young people commissioner in the definition of ‘protected mail’ for section 201 of the Act.

[1.7] New section 207 (2) (e)

The clause amends the *Children and Young People Act* to require that a notice prepared under section 207 (1) about a segregation direction must be given as soon as practicable to the Aboriginal and Torres Strait Islander children and young people

commissioner if the young detainee is an Aboriginal or Torres Strait Islander child or young person.

[1.8] New section 222 (3) (ea)

The clause amends the *Children and Young People Act* to allow the register of segregation directions kept under section 222 (1) to be available for inspection by the Aboriginal and Torres Strait Islander children and young people commissioner.

[1.9] Section 280 (5), definition of *protected mail*, new paragraph (ea)

This clause amends the *Children and Young People Act* to include mail between a young detainee and the Aboriginal and Torres Strait Islander children and young people commissioner in the definition of ‘protected mail’ for section 280 of the Act.

[1.10] Section 286, definition of *support person*, new example IA

This clause amends the *Children and Young People Act* to include the Aboriginal and Torres Strait Islander children and young people commissioner in the list of examples of support people for Chapter 8.

[1.11] Section 356 (3), definition of *mandated reporter*, new paragraph (na)

This clause amends the *Children and Young People Act* to include the Aboriginal and Torres Strait Islander children and young people commissioner in the definition of ‘mandated reporter’ for section 356.

[1.12] Section 359 heading

This clause amends the heading of section 359, *Children and Young People Act* to include the Aboriginal and Torres Strait Islander children and young people commissioner.

[1.13] Section 359 (1), (2) and (4)

This clause amends the *Children and Young People Act* to require the Aboriginal and Torres Strait Islander children and young people commissioner to give the director-general a copy of a report made to them about a belief or suspicion that a child or young person is being abused or neglected or is at risk of abuse or neglect.

[1.14] New section 377 (2) (e)

This clause amends the *Children and Young People Act* to require that the Aboriginal and Torres Strait Islander children and young people commissioner be given an urgent application for an appraisal order made under section 337 (1) before the application is heard by the court, if the application is made in relation to an Aboriginal or Torres Strait Islander child or young person.

[1.15] New section 379 (1) (e)

This clause amends the *Children and Young People Act* to require the director-general to give a copy of an application for an appraisal order for an Aboriginal or Torres Strait Islander child or young person to the Aboriginal and Torres Strait Islander children and young people commissioner at least 1 working day before the application is to be heard by the court.

[1.16] New section 386 (c)

This clause amends the *Children and Young People Act* to require the director-general to give a copy of an application for extension of an appraisal order relating to an Aboriginal or Torres Strait Islander child or young person to the Aboriginal and Torres Strait Islander children and young people commissioner at least 1 working day before the application is to be heard by the court.

[1.17] New section 390 (5)

This clause amends the *Children and Young People Act* to require the director-general to give a copy of an application to register a family group conference agreement that relates to an Aboriginal or Torres Strait Islander child or young person to the Aboriginal and Torres Strait Islander children and young people commissioner.

[1.18] New section 392 (1A)

This clause amends the *Children and Young People Act* to require the court to tell the Aboriginal and Torres Strait Islander children and young people commissioner, by written notice, about the registration of a family group conference by the Children's Court if it relates to an Aboriginal or Torres Strait Islander child or young person.

[1.19] New section 408 (3) (ba)

The clause amends the *Children and Young People Act* to require the director-general to, as soon as practicable, tell the Aboriginal and Torres Strait Islander children and young people commissioner that emergency action has been taken for an Aboriginal or Torres Strait Islander child or young person.

[1.20] New section 417 (2) (f)

This clause amends the *Children and Young People Act* to allow the Aboriginal and Torres Strait Islander children and young people commissioner to apply to the Children's Court for an emergency action release order if the child is an Aboriginal or Torres Strait Islander child or young person.

[1.21] New section 419 (f)

This clause amends the *Children and Young People Act* to require the applicant for an emergency action release order in relation to an Aboriginal or Torres Strait Islander child or young person to give a copy of the application to the Aboriginal and Torres Strait Islander children and young people commissioner before the application is heard by the court.

[1.22] Section 425 (3), except note

This clause amends the *Children and Young People Act* to allow the Aboriginal and Torres Strait Islander children and young people commissioner to appear and be heard in a proceeding for a care and protection order for an Aboriginal or Torres Strait Islander child or young person in which the applicant is someone other than the director-general.

[1.23] New section 427 (1) (f)

This clause amends the *Children and Young People Act* to require the applicant for a care and protection order for an Aboriginal or Torres Strait Islander child or young person to give a copy of the application to the Aboriginal and Torres Strait Islander children and young people commissioner at least 3 working days before the application is to be heard by the court.

[1.24] New section 435 (3) (d)

This clause amends the *Children and Young People Act* to require a party to the proceeding for a care and protection order for an Aboriginal or Torres Strait Islander child or young person who applies for revocation or amendment of the interim care and protection order to give a copy of the application to the Aboriginal and Torres Strait Islander children and young people commissioner at least 3 working days before the application is heard by the court.

[1.25] New section 445 (1) (e)

This clause amends the *Children and Young People Act* to require an applicant for an assessment order in relation to an Aboriginal or Torres Strait Islander child or young person to give a copy of the application to the Aboriginal and Torres Strait Islander children and young people commissioner at least 3 working days before the application is to be heard by the court.

[1.26] New section 452 (d)

This clause amends the *Children and Young People Act* to require an applicant for extension of an assessment order for an Aboriginal or Torres Strait Islander child or young person to give a copy of the application to the Aboriginal and Torres Strait Islander children and young people commissioner at least 3 working days before the application is to be heard by the court.

[1.27] New section 459 (3) (d)

This clause amends the *Children and Young People Act* to allow the Childrens Court to make a protection order or amend an existing protection order for an Aboriginal or Torres Strait Islander child or young person on application by the Aboriginal and Torres Strait Islander children and young people commissioner.

[1.28] New section 469 (d)

This clause amends the *Children and Young People Act* to require an applicant for extension, amendment or revocation of a care and protection order for an Aboriginal or Torres Strait Islander child or young person to give a copy of the application to the Aboriginal and Torres Strait Islander children and young people commissioner at least 3 working days before the application is to be heard by the court.

[1.29] Section 496 (2) (d), example

This clause amends the *Children and Young People Act* to include the Aboriginal and Torres Strait Islander children and young people commissioner in the example in subsection (2) (d) of people that the director-general may consider appropriate to consult when they are preparing an annual review report for a child or young person.

[1.30] New section 497 (1) (e)

This clause amends the *Children and Young People Act* to require the director-general to give an annual review report for a care and protection order for an Aboriginal or Torres Strait Islander child or young person to the Aboriginal and Torres Strait Islander children and young people commissioner.

[1.31] Section 500 (2) and (3)

This clause amends the *Children and Young People Act* to allow the Aboriginal and Torres Strait Islander children and young people commissioner to apply to the Childrens Court for an order requiring the director-general to give an annual report for a care and protection order for an Aboriginal or Torres Strait Islander child or young person to someone who must be given the report by the director-general under section 497 (1) but has not been given the report.

[1.32] Section 507 heading

This clause amends the heading of section 507, *Children and Young People Act* to indicate it relates to office holders in addition to the public advocate.

[1.33] New section 507 (3)

This clause amends the *Children and Young People Act* to require the director-general to give the Aboriginal and Torres Strait Islander children and young people

commissioner a copy of a report referred in to section 507 (2) that relates to an Aboriginal or Torres Strait Islander child or young person.

[1.34] Section 536, definition of *therapeutic protection plan*, new note 2

This clause amends the *Children and Young People Act* to add a note referring to the requirement in section 631 (2) for the director-general to provide a copy of a therapeutic protection plan to the Aboriginal and Torres Strait Islander children and young people commissioner on request.

[1.35] New section 541 (1) (e)

This clause amends the *Children and Young People Act* to require the director-general to give a copy of the application for a therapeutic protection order for an Aboriginal or Torres Strait Islander child or young person to the Aboriginal and Torres Strait Islander children and young people commissioner at least 1 working day before the application is to be heard by the Childrens Court.

[1.36] New section 555 (2) (ea)

This clause amends the *Children and Young People Act* to require the director-general to consider the views of the Aboriginal and Torres Strait Islander children and young people commissioner in carrying out an initial review, or ongoing review, of the operation of a therapeutic protection order for an Aboriginal or Torres Strait Islander child or young person.

[1.38] New section 560 (c)

This clause amends the *Children and Young People Act* to require the director-general to give a copy of an application for an extension of a therapeutic protection order for an Aboriginal or Torres Strait Islander child or young person to the Aboriginal and Torres Strait Islander children and young people commissioner at least 1 working day before the application is to be heard by the Childrens Court.

[1.39] New section 564 (f)

This clause amends the *Children and Young People Act* to allow the Aboriginal and Torres Strait Islander children and young people commissioner to apply for amendment or revocation of a therapeutic protection order for an Aboriginal or Torres Strait Islander child or young person if the commissioner believes on reasonable grounds that the criteria for amending or revoking the order are met.

[1.40] New section 567 (d)

This clause amends the *Children and Young People Act* to require the applicant for amendment or revocation of a therapeutic protection order for an Aboriginal or Torres Strait Islander child or young person to give a copy of the application to the

Aboriginal and Torres Strait Islander children and young people commissioner at least 1 working day before the application is to be heard by the Childrens Court.

[1.41] Section 576, definition of *accredited person*, new paragraph (fa)

This clause amends the *Children and Young People Act* to include the Aboriginal and Torres Strait Islander children and young people commissioner in the definition of ‘accredited person’ in this division of the Act.

[1.42] Section 631 heading

This clause amends the heading of section 631, *Children and Young People Act* to indicate it relates to office holders in addition to the public advocate.

[1.43] New section 631 (2)

This clause amends the *Children and Young People Act* to require the director-general to promptly give the Aboriginal and Torres Strait Islander children and young people commissioner a copy of the therapeutic protection plan for an Aboriginal or Torres Strait Islander child or young person if the commissioner asks for it.

[1.44] New section 646 (2) (e)

This clause amends the *Children and Young People Act* to require the director-general to give written notice to the Aboriginal and Torres Strait Islander children and young people commissioner about a decision to transfer a child welfare order for an Aboriginal or Torres Strait Islander child or young person to a participating State under this division of the Act.

[1.45] New section 648 (2) (c)

This clause amends the *Children and Young People Act* to require the director-general to give a copy of an application to the Childrens Court for an order transferring a child welfare order to a participating State to the Aboriginal and Torres Strait Islander children and young people commissioner, if the original order relates to an Aboriginal or Torres Strait Islander child or young person.

[1.46] New section 658 (2) (e)

This clause amends the *Children and Young People Act* to require the director-general to give a copy of an application to the Childrens Court for an order transferring a child welfare proceeding pending in the court to the State Childrens Court of a participating State to the Aboriginal and Torres Strait Islander children and young people commissioner if the order relates to an Aboriginal or Torres Strait Islander child or young person.

[1.47] Section 700 (2)

This clause amends the *Children and Young People Act* to stipulate that the Aboriginal and Torres Strait Islander children and young people commissioner is a party to a proceeding under the care and protection chapters only if the commissioner applies to be joined as a party.

[1.48] Section 704 (3)

This clause amends the *Children and Young People Act* to require the court to join the Aboriginal and Torres Strait Islander children and young people commissioner as a party to the proceeding if the commissioner applies to be joined as a party to a proceeding for a child or young person under the care and protection chapters of the Act.

[1.49] New section 706 (2) (c)

This clause amends the *Children and Young People Act* to require a party that applies to the court for an order that another party to the proceeding be removed as a party to give a copy of the application to the Aboriginal and Torres Strait Islander children and young people commissioner before the application is heard by the court, when that application relates to an Aboriginal or Torres Strait Islander child or young person.

[1.50] New section 720 (ba)

This clause amends the *Children and Young People Act* to require that, as soon as practicable after making an order under the care and protection chapters in a proceeding, the court must give a copy of the order to the Aboriginal and Torres Strait Islander children and young people commissioner when the order relates to an Aboriginal or Torres Strait Islander child or young person.

[1.51] New section 721 (2) (ca)

This clause amends the *Children and Young People Act* to require that if a court makes, amends or extends a care and protection order referred to in section 721 (1) and relating to an Aboriginal or Torres Strait Islander child or young person, the court must give a copy of the order or revised order to the Aboriginal and Torres Strait Islander children and young people commissioner.

[1.52] Section 843, definition of *information holder*, new paragraph (a) (iia)

This clause amends the *Children and Young People Act* to include the Aboriginal and Torres Strait Islander children and young people commissioner in the definition of ‘information holder’ in this chapter of the Act.

[1.53] Section 845 (2), definition of *care and protection appraisal information*, paragraph (c)

This clause amends the *Children and Young People Act* to include a report to the Aboriginal and Torres Strait Islander children and young people commissioner under section 507 of the Act in the definition of a 'care and protection appraisal information'.

[1.54] Section 874 (2) (i)

This clause amends the *Children and Young People Act* to provide protection to a person who gives information honestly and without recklessness to the Aboriginal and Torres Strait Islander children and young people commissioner under section 359 of the Act.

[1.55] Section 874 (2) (s), except note

This clause amends the *Children and Young People Act* to provide protection to a person who gives information honestly and without recklessness to the Aboriginal and Torres Strait Islander children and young people commissioner under section 879 of the Act.

[1.56] Section 879 heading

This clause amends the heading of section 879, *Children and Young People Act* to indicate it relates to multiple office holders.

[1.57] Section 879 (1)

This clause amends the *Children and Young People Act* to allow the Aboriginal and Torres Strait Islander children and young people commissioner to ask an ACT child welfare service to provide information, advice, guidance, assistance, documents, facilities or services in relation to the physical or emotional welfare of Aboriginal and Torres Strait Islander children and young people.

[1.58] Section 879 (2)

This clause amends the *Children and Young People Act* to require an ACT child welfare service to comply with a request made by the Aboriginal and Torres Strait Islander children and young people commissioner under section 879 (1).

[1.59] Dictionary, new definitions

This is a formal provision which adds definitions pertaining to the Aboriginal and Torres Strait Islander children and young people commissioner to the dictionary.

[1.60] Dictionary, definition of *investigative entity*

This clause amends the *Children and Young People Act* to include the Aboriginal and Torres Strait Islander children and young people commissioner in the definition of 'investigative entity'.

Part 1.2 Children and Young People Regulation 2009

[1.61] New sections 3AA, 3AB and 3AC

This clause amends the *Children and Young People Regulation* to require the register of searches and uses of force to state in relation to each search if the young detainee is an Aboriginal or Torres Strait Islander person.

[1.62] New dictionary

This is a formal provision which adds a dictionary to the *Children and Young People Regulation* to confirm that terms used in the regulation have the same meaning that they have in the *Children and Young People Act 2008*.

Part 1.3 Court Procedures Act 2004

[1.63] Section 68A (1), new definitions

This is a formal provision which adds definitions pertaining to the Aboriginal and Torres Strait Islander children and young people commissioner to the definitions for part 7A and Division 7A.1 of the *Court Procedures Act*.

[1.64] New section 72 (1) (ga)

This clause amends the *Court Procedures Act* to allow the Aboriginal and Torres Strait Islander children and young people commissioner (or a person authorised by the commissioner) to be present at the hearing of a proceeding if the child or young person who is the subject of the proceeding in a court is an Aboriginal or Torres Strait Islander person.

[1.65] New section 72 (3A)

This clause amends the *Court Procedures Act* to allow the Aboriginal and Torres Strait Islander children and young people commissioner to make submissions to the court about whether the court should require or permit a person to be present under subsection (1)(l) or exclude a person under subsection (2).

[1.66] Section 74C heading

This clause amends the heading of section 74C, *Court Procedures Act* to include the Aboriginal and Torres Strait Islander children and young people commissioner.

[1.67] New section 74C (2) (e)

This clause amends the *Court Procedures Act* to permit the Aboriginal and Torres Strait Islander children and young people commissioner (or a person authorised by them) to appear, be heard and call witnesses in a hearing in a court of proceeding against an Aboriginal or Torres Strait Islander child or young person in a court; or an application, proceeding or matter under the *Children and Young People Act 2008* or in relation to which that Act applies.

[1.68] New section 74K (2) (c)

This clause amends the *Court Procedures Act* to require the court to give a statement of the reasons to the Aboriginal and Torres Strait Islander children and young people commissioner for the court's dismissal of an indictment or adjournment of a proceeding for up to 15 days, where the action relates to an indictment against an Aboriginal or Torres Strait Islander child or young person.

[1.69] Section 74L heading

This clause amends the heading of section 74L, *Court Procedures Act* to include the Aboriginal and Torres Strait Islander children and young people commissioner.

[1.70] Section 74L (2)

This clause amends the *Court Procedures Act* to require the director-general to report to the Aboriginal and Torres Strait Islander children and young people commissioner about action taken or proposed to be taken (or that no action is proposed) following adjournment of a proceeding under section 74K (1) and the director-general's receipt of a statement of reasons under section 74K (2).

[1.71] New section 74L (2A)

This clause amends the *Court Procedures Act* to only require the director-general to report to the Aboriginal and Torres Strait Islander children and young people commissioner under section 74L (2) about action taken or proposed to be taken (or that no action is proposed) in relation to an Aboriginal or Torres Strait Islander child or young person.

[1.72] Section 74L (3) (b)

This clause amends the *Court Procedures Act* to confirm that the director-general is taken to have complied with section 74L (2) if the director-general makes an application under the care and protection chapters in relation to an Aboriginal or Torres Strait Islander child or young person and gives a copy of the application to the Aboriginal and Torres Strait Islander children and young people commissioner.

[1.73] Section 74LA (4)

This clause amends the *Court Procedures Act* to allow the court, during a COVID-19 emergency period, to determine a period longer than 15 days for the director-general to tell the Aboriginal and Torres Strait Islander children and young people commissioner about action taken or proposed (or that no action is proposed) as required by section 74L (2) if the court considers it appropriate in the circumstances.

[1.74] Dictionary, new definitions

This is a formal provision which adds definitions pertaining to the Aboriginal and Torres Strait Islander children and young people commissioner to the dictionary.

Part 1.4 Human Rights Commission Act 2005

[1.75] Section 51A (2)

This clause amends the *Human Rights Commission Act* to allow the disability and community services commissioner to refer a children and young people service complaint or matter to the Aboriginal and Torres Strait Islander children and young people commissioner for advocacy if satisfied that it is in the best interests of the child or young person and the complaint or matter is appropriate for advocacy by the named statutory office holders.

[1.76] New section 51A (2) (c)

This clause amends the *Human Rights Commission Act* to give effect to the ability for the disability and community services commissioner to refer a children and young people service complaint or matter to the Aboriginal and Torres Strait Islander children and young people commissioner for advocacy.

[1.77] New sections 99B and 99C

This clause amends the *Human Rights Commission Act* to permit human rights commissioners to disclose information to the Aboriginal and Torres Strait Islander children and young people commissioner, in line with a parallel provision in the Aboriginal and Torres Strait Islander Children and Young People Commissioner Act.

This clause also amends the *Human Rights Commission Act* to set out that the human rights commission should seek to work collaboratively with the Aboriginal and Torres Strait Islander children and young people commissioner's office where practicable including to avoid unnecessary duplication of work.

[1.78] Dictionary, new definitions

This is a formal provision which adds definitions pertaining to the Aboriginal and Torres Strait Islander children and young people commissioner to the dictionary.

Part 1.5 Official Visitor Act 2012

[1.79] New section 16 (2) (b) (ia)

The clause amends the *Official Visitor Act* to allow an official visitor to report a belief relating to a visitable place not being in accordance with the operational Act for the place (with respect to care, living conditions, and detention of entitled persons) to the Aboriginal and Torres Strait Islander children and young people commissioner if the entitled person is an Aboriginal or Torres Strait Islander child or young person.

[1.80] New section 17 (4) (ba)

This clause amends the *Official Visitor Act* to allow an official visitor to give a copy of a report prepared under section 17 (1) of that Act to the Aboriginal and Torres Strait Islander children and young people commissioner if it includes matters in relation to Aboriginal and Torres Strait Islander children or young people.

[1.81] Section 17 (6), definition of *investigative entity*

This clause amends the *Official Visitor Act* to include the Aboriginal and Torres Strait Islander children and young people commissioner as an example of an ‘investigative entity’ under section 17.

[1.82] Section 23DA (4), definition of *investigative entity*

This clause amends the *Official Visitor Act* to include the Aboriginal and Torres Strait Islander children and young people commissioner as an example of an ‘investigative entity’ under section 23DA.

[1.83] New section 23DB (3) (da)

This clause amends the *Official Visitor Act* to allow the Aboriginal and Torres Strait Islander children and young people commissioner to request information on the register of visitable places from the relevant director-general.

[1.84] Dictionary, new definitions

This is a formal provision which adds definitions pertaining to the Aboriginal and Torres Strait Islander children and young people commissioner to the dictionary.