

PARLIAMENTARY COMMISSIONER FOR CHILDREN BILL

EXPLANATORY NOTE

THIS bill confers independence on the Commissioner for Children by making the Commissioner an Officer of Parliament.

The status of Officer of Parliament is rarely created and currently there are only two Officers of Parliament, the Ombudsman and the Parliamentary Commissioner for the Environment. The Audit Office is seen to have the same status in practice but not in statute.

An Officer of Parliament reports directly to the House of Representatives and is in essence an arm of Parliament, outside the public service and not subject to ministerial control. An Officer of Parliament is there to carry out functions that Parliament would do itself, such as ensuring accountability and provide a check on the arbitrary use of power by the Executive.

The Parliamentary Commissioner for the Environment, for example, is charged with ensuring that sustainable management of the environment is being achieved for the future of this nation. The Commissioner of Children is the chief advocate for our nation's future, our children, and as such there is a need for independence from ministerial control to ensure accountability of the Executive in the area of child welfare. To keep the Office of the Commissioner for Children as it is, New Zealand is placing a lesser value on children's interests.

This bill remedies the current situation by giving the Commissioner for Children the independence and autonomy that is needed to fulfil this very valuable duty of promoting the welfare and interests of children and young persons in New Zealand.

The Office of the Commissioner for Children was established under the Children, Young Persons, and Their Families Act 1989, and not only was it established without the independent status of an Officer of Parliament, it was in fact required to share the ownership of responsibility for the practices and policies under the Children, Young Persons, and Their Families Act 1989, with the Department of Social Welfare.

Under the current legislation, the Office of the Commissioner for Children must negotiate funding and performance agreements including the terms and conditions of the Commissioner's own employment, directly with the Minister of Social Services, Work and Income.

This level of involvement with the Minister and department tends to diminish any public perception of objectivity on the part of the Commissioner for Children and thereby diminishes the status of the Office itself.

Since the establishment of the Office in 1989, the recommendation that the Commissioner be made independent has been advanced by a number of respected bodies and individuals.

This bill amends the Children, Young Persons, and Their Families Act 1989 by conferring Officer of Parliament status on the Commissioner for Children and thereby ensures that independence and consequentially ensures that the Office of the Commissioner for Children will be accorded the public confidence attached to other Officers of Parliament such as the Ombudsman and the Parliamentary Commissioner for the Environment.

John Wright

PARLIAMENTARY COMMISSIONER FOR CHILDREN

ANALYSIS

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A BILL INTITULED

An Act to amend the Children, Young Persons, and Their Families Act 1989 by making the Commissioner for Children an Officer of Parliament

5 BE IT ENACTED by Parliament of New Zealand as follows:

1. **Short Title**—This Act may be cited as the Parliamentary Commissioner for Children Act 1998, and is part of the Children, Young Persons, and Their Families Act 1989 (“the principal Act”).

10 2. **Parliamentary Commissioner for Children**—The principal Act is amended by repealing section 410, and substituting the following section:

“410. (1) There is to be appointed, as an Officer of Parliament, a Parliamentary Commissioner for Children.

15 “(2) The Commissioner is to be appointed by the Governor-General on the recommendation of the House of Representatives.”

3. **Power to obtain information**—The principal Act is amended by inserting after section 412, the following section:

“412A. (1) The Commissioner may from time to time require any person, who in the Commissioner’s opinion is able to give any information relating to any matter which is being investigated or inquired into by the Commissioner, to furnish to the Commissioner any such information and to produce any documents or papers or things which in the Commissioner’s opinion relate to any such matter and which may be in the possession or under the control of that person. 5

“(2) The Commissioner may summon before the Commissioner and examine on oath any person who in the Commissioner’s opinion is able to give any such information, and for that purpose may administer an oath. Every such examination by the Commissioner is deemed to be a judicial proceeding within the meaning of section 108 of the Crimes Act 1961 (which relates to perjury). 10 15

“(3) Any person who is bound by the provisions of any enactment (other than the State Sector Act 1988 and the Official Information Act 1982) to maintain secrecy in relation to any matter or not to disclose any matter is not required to—

“(a) Supply any information to the Commissioner; or 20

“(b) Answer any question put by the Commissioner; or

“(c) Produce any document, paper, or thing to the Commissioner—

if compliance with the requirement would be in breach of the obligation of secrecy or non-disclosure. 25

“(4) Every person has the same privileges in relation to the giving of information, the answering of questions, and the production of documents and papers and things in accordance with this section as witnesses have in any Court.

“(5) Except on the trial of any person for perjury within the meaning of the Crimes Act 1961 in respect of his or her sworn testimony, no statement made or answer given by that or any other person in the course of any inquiry by or any proceedings before the Commissioner is admissible in evidence against any person in any Court or at any inquiry or in any other proceedings, and no evidence in respect of proceedings before the Commissioner can be given against any person. 30 35

“(6) No person is liable to prosecution for an offence against any enactment, other than this Act, by reason of compliance with any requirement of the Commissioner under this section. 40

“(7) Where any person is required by the Commissioner to attend before the Commissioner for the purposes of this section, that person is entitled to the same fees, allowances, and expenses as if he or she were a witness in a Court, and the provision of any regulations in force under the Summary 45

Proceedings Act 1957 apply accordingly. For the purposes of this subsection, the Commissioner has the powers of a Court under any such regulations to fix or disallow, in whole or in part, or increase the amounts payable thereunder.”

5 **4. Annual report**—(1) Section 415 (1) of the principal Act is amended by omitting all the words after the word “year” and substituting the words “make a report to the House of Representatives on the performance of the Commissioner’s functions under this Act and on any other matter the
10 Commissioner considers appropriate.”

(2) Section 415 (2) of the principal Act is consequentially repealed.

15 **5. Term of office and conditions of employment of Commissioner**—The principal Act is amended by repealing section 417, and substituting the following section:

“417. (1) Except as provided in **section 418**, the Commissioner holds office for a term of 5 years, but may be reappointed from time to time.

20 “(2) Where the term for which the Commissioner has been appointed expires, the Commissioner, unless sooner resigning from office or removed from office, continues to hold office, by virtue of the appointment for the term that has expired, until—

25 “(a) The Commissioner is reappointed; or

“(b) A successor to the Commissioner is appointed.

“(3) The Commissioner may at any time resign from office by writing addressed to the Speaker of the House of Representatives, or to the Prime Minister if there is no Speaker or if the Speaker is absent from New Zealand.”

30 **6. Removal from office**—The principal Act is amended by repealing section 418, and substituting the following section:

35 “418. (1) Any person appointed as Commissioner may be removed or suspended from office only by the Governor-General, upon an address from the House of Representatives, for disability, bankruptcy, neglect of duty, or misconduct.

40 “(2) At any time when Parliament is not in session, the Commissioner may be suspended from office by the Governor-General in Council for disability, bankruptcy, neglect of duty, or misconduct proved to the satisfaction of the Governor-General in Council; but any such suspension will not continue in force beyond the end of the 24th sitting day of the next

ensuing session of Parliament, and the salary of the Commissioner continues to be paid notwithstanding the suspension.”

7. New sections inserted—The principal Act is amended by inserting the following new sections: 5

“418A. **Filling of vacancy**—(1) If the Commissioner dies, or resigns from office, or is removed from office, the vacancy created must be filled as soon as practicable in accordance with this section.

“(2) A vacancy in the office of Commissioner must be filled by the appointment of a Commissioner by the Governor-General on the recommendation of the House of Representatives. 10

“(3) The appointment in **subsection (2)** is subject to the condition that if— 15

“(a) A vacancy occurs while Parliament is not in session or exists at the close of a session; and

“(b) The House of Representatives has not recommended an appointment to fill the vacancy,—
the vacancy, at any time before the commencement of the next ensuing session of Parliament, may be filled by the appointment of a successor by the Governor-General in Council. 20

“(4) Any appointment made under **subsection (3)** lapses and the office again becomes vacant unless, before the end of the 24th sitting day of the House of Representatives following the date of the appointment, the House confirms the appointment. 25

“418B. **Salary and allowances of Commissioner**—
(1) There is to be paid to the Commissioner out of public money, without further appropriation than this section,— 30

“(a) A salary at such rate as the Higher Salaries Commission from time to time determines; and

“(b) Such allowances as are from time to time determined by the Higher Salaries Commission.

“(2) The salary of the Commissioner is not to be diminished during the continuance of the Commissioner’s appointment. 35

“(3) There is to be paid to the Commissioner, in respect of time spent in travelling in the exercise of the Commissioner’s functions, travelling allowances and expenses in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act apply accordingly as if the Commissioner were a member of a statutory Board and the travelling were in the service of a statutory Board. 40

“(4) The Commissioner is entitled to such annual leave, sick leave, and other leave as may be determined by the Speaker of the House of Representatives.

5 “(5) The Commissioner is not to be regarded as being employed in the service of Her Majesty for the purposes of the State Sector Act 1988 by reason of appointment as the Commissioner.

10 “418C. **Oath to be taken by Commissioner**—(1) Before entering upon the exercise of the duties of office, the Commissioner must take an oath that he or she will faithfully and impartially perform the duties of the office, and will not, except for the purposes of this Act, divulge any information received by the Commissioner under this Act.

15 “(2) The oath is to be administered by the Speaker or the Clerk of the House of Representatives.

“418D. **Employees**—(1) The Commissioner may from time to time appoint such employees as may be necessary for the efficient carrying out of the Commissioner’s functions, powers, and duties.

20 “(2) The Commissioner is responsible for negotiating, under the Employment Contracts Act 1991, every employment contract applicable to employees appointed under this section.

“(3) The Commissioner must operate a personnel policy that complies with the principle of being a good employer.

25 “(4) A person is not deemed to be employed in the service of Her Majesty for the purposes of the State Sector Act 1988 by reason of that person’s appointment under this section.”

30 **8. Superannuation or retiring allowances**—The principal Act is amended by repealing section 419, and substituting the following section:

“419. For the purpose of providing a superannuation fund or retiring allowance of the Commissioner, service as the Commissioner is deemed to be Government service for the purpose of the Government Superannuation Fund Act 1956.”

35 **9. Money to be appropriated by Parliament for purposes of this Part**—Section 422 of the principal Act is amended by inserting, before the word “All”, the words “Except as otherwise provided in this Part,”.

40 **10. Audit**—The principal Act is amended by inserting the following new section:

“422A. (1) The House of Representatives must appoint an auditor to audit the accounts of the Office of the Parliamentary Commissioner for Children.

“(2) The provisions of the Public Finance Act 1977 apply to the money and stores of the Commissioner as if they were public money and public stores within the meaning of that Act. 5

“(3) In carrying out the functions conferred by this section, the auditor has the same functions, duties, and powers as the Audit Office.”