

South Australia

# Children and Young People (Safety) Act 2017

An Act to protect children and young people from harm; to provide for children and young people who are in care; and for other purposes.

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## Legislative history

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### The Parliament of South Australia enacts as follows:

## Chapter 1—Preliminary

### 1—Short title

This Act may be cited as the *Children and Young People (Safety) Act 2017*.

### 3—Act to bind, and impose criminal liability on, the Crown

- (1) This Act binds the Crown in right of this jurisdiction and, in so far as the legislative power of the Parliament permits, the Crown in all its other capacities.
- (2) The Crown is liable for an offence against this Act.
- (3) If the Crown is guilty of an offence against this Act, the penalty that may be imposed on the Crown is the penalty that may be imposed on a body corporate.

## Chapter 2—Guiding principles for the purposes of this Act

### Part 1—The importance to the State of children and young people

#### 4—Parliamentary declaration

- (1) The Parliament of South Australia recognises and acknowledges that—
  - (a) children and young people are valued citizens of the State; and

- (b) the future of the State is inextricably bound to the wellbeing of all its children and young people; and
  - (c) it is of vital importance to the State, and all of its citizens, that all children and young people are given the opportunity to thrive.
- (2) The Parliament of South Australia recognises that, as a State, we want each child and young person to benefit from (at least) the following outcomes:
  - (a) to be safe from harm;
  - (b) to do well at all levels of learning and to have skills for life;
  - (c) to enjoy a healthy lifestyle;
  - (d) to be active citizens who have a voice and influence,and the Parliament of South Australia accordingly commits to promoting these outcomes.
- (3) The Parliament of South Australia acknowledges that outcomes for Aboriginal and Torres Strait Islander children and young people in care have historically been poor, and that it is unacceptable for outcomes for those children and young people to be any different to those for children and young people in care generally.
- (4) It is the intention of the Parliament of South Australia that the performance of functions in the administration and operation of this Act be done in collaboration with, and with the cooperation of, children and young people and their families rather than simply being done to or for them.

## **5—Duty to safeguard and promote the welfare of children and young people**

The Parliament of South Australia recognises that—

- (a) it is the duty of every person in the State to safeguard and promote the outcomes set out in section 4(2); and
- (b) the provisions of this Act, and compliance with its provisions, form only a small part of the way in which the State, the agencies of the State, the Commonwealth and every citizen of the State discharge that duty.

## **6—Interaction with other Acts**

- (1) This Act is to work in conjunction with all of the laws of the State, and, in particular, the *Child Safety (Prohibited Persons) Act 2016* and the *Children and Young People (Oversight and Advocacy Bodies) Act 2016*, to further and achieve the aims set out in this Chapter.
- (2) This Act is in addition to, and does not derogate from, any other Act or law.

## **Part 2—Priorities in the operation of this Act**

### **7—Safety of children and young people paramount**

The paramount consideration in the administration, operation and enforcement of this Act must always be to ensure that children and young people are protected from harm.



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## 8—Other needs of children and young people

- (1) In addition to the paramount consideration set out in section 7, and without derogating from that section, the following needs of children and young people are also to be considered in the administration, operation and enforcement of this Act:
  - (a) the need to be heard and have their views considered;
  - (b) the need for love and attachment;
  - (c) the need for self-esteem;
  - (d) the need to achieve their full potential.
- (2) To avoid doubt, the requirement under this section applies to the Court.
- (3) Without derogating from any other provision of this Act, it is desirable that the connection of children and young people with their biological family be maintained.

## 9—Early intervention

Without limiting a provision of this or any other Act or law, State authorities whose functions and powers include matters relating to the safety and welfare of children and young people must have regard to the fact that early intervention in matters where children and young people may be at risk is a priority.

# Part 3—Principles to be applied in operation of this Act

## 10—Principles of intervention

- (1) The *principles of intervention* are as follows:
  - (a) decisions and actions (if any) under this Act should be taken in a timely manner (and, in particular, should be made as early as possible in the case of young children in order to promote permanence and stability);
  - (b) if a child or young person is able to form their own views on a matter concerning their care, the child or young person should be given an opportunity to express those views freely and those views are to be given due weight in the operation of this Act in accordance with the developmental capacity of the child or young person and the circumstances;
  - (c) account should be taken of the culture, disability, language and religion of children or young people and, if relevant, those in whose care children and young people are placed;
  - (d) in each case, consideration should be given to making arrangements for the care of a child or young person by way of a family group conference if possible and appropriate.
- (2) Each person or body engaged in the administration, operation or enforcement of this Act must exercise their powers and perform their functions so as to give effect to the principles of intervention.
- (3) However, this section and the principles of intervention do not displace, and cannot be used to justify the displacement of, section 7.
- (4) To avoid doubt, the requirement under this section applies to the Court.

## 11—Placement principles

- (1) The *placement principles* are as follows:
  - (a) all children and young people who have been removed from the care of a person under this Act should be placed in a safe, nurturing, stable and secure environment;
  - (b) the preferred option in relation to such placement of a child or young person is to place the child or young person with a person with whom they have an existing relationship;
  - (c) approved carers are entitled to be, and should be, involved in decision-making relating to children and young people in their care.
- (2) Each person or body engaged in the administration, operation or enforcement of this Act must exercise their powers and perform their functions so as to give effect to the placement principles.
- (3) However, this section and the placement principles do not displace, and cannot be used to justify the displacement of, section 7.
- (4) To avoid doubt, the requirement under this section applies to the Court.

## 12—Aboriginal and Torres Strait Islander Child Placement Principle

- (1) Subject to the placement principles, the objects and principles set out in this section apply to the placement of Aboriginal and Torres Strait Islander children and young people under this Act.
- (2) The objects of this section include—
  - (a) maintaining the connection of Aboriginal and Torres Strait Islander children and young people with their family and culture; and
  - (b) enabling Aboriginal and Torres Strait Islander people to participate in the care and protection of their children and young people; and
  - (c) achieving the objects set out in the preceding paragraphs (as well as reducing the incidence of the removal of Aboriginal and Torres Strait Islander children and young people) by encouraging Aboriginal and Torres Strait Islander people, their children and young people and State authorities to act in partnership when making decisions about the placement of Aboriginal and Torres Strait Islander children and young people under this Act.
- (3) The *Aboriginal and Torres Strait Islander Child Placement Principle* is as follows:
  - (a) if an Aboriginal or Torres Strait Islander child or young person is to be placed in care under this Act, the child or young person should, if reasonably practicable, be placed with 1 of the following persons (in order of priority):
    - (i) a member of the child or young person's family;
    - (ii) a member of the child or young person's community who has a relationship of responsibility for the child or young person;
    - (iii) a member of the child or young person's community;
    - (iv) a person of Aboriginal or Torres Strait Islander cultural background (as the case requires),

- (determined in accordance with Aboriginal or Torres Strait Islander traditional practice or custom);
- (b) if an Aboriginal or Torres Strait Islander child or young person is unable to be placed with a person referred to in paragraph (a), or it is not in the best interests of the child or young person to do so, the child or young person should be given the opportunity for continuing contact with their family, community or communities and culture (determined in accordance with Aboriginal or Torres Strait Islander traditional practice or custom);
  - (c) before placing an Aboriginal or Torres Strait Islander child or young person under this Act, the Chief Executive or the Court (as the case requires) must, where reasonably practicable, consult with, and have regard to any submissions of, a recognised Aboriginal or Torres Strait Islander organisation.
- (4) This section and the Aboriginal and Torres Strait Islander Child Placement Principle do not displace, and cannot be used to justify the displacement of, section 7.
  - (5) The Minister may, by notice in the Gazette, after consulting with the relevant community or a section of the relevant community, vary or revoke a declaration relating to a recognised Aboriginal or Torres Strait Islander organisation.
  - (6) The regulations may make further provision in relation to the placement of Aboriginal children and Torres Strait Islander children under this Act.
  - (7) To avoid doubt, the requirements under this section apply to the Court.
  - (8) In this section—  
***recognised Aboriginal or Torres Strait Islander organisation*** means—
    - (a) in relation to the placement of an Aboriginal child or young person—an organisation that the Minister, after consulting with the Aboriginal community or a section of the Aboriginal community, declares by notice in the Gazette to be a recognised Aboriginal organisation for the purposes of this section; or
    - (b) in relation to the placement of a Torres Strait Islander child or young person—an organisation that the Minister, after consulting with the Torres Strait Islander community or a section of the Torres Strait Islander community, declares by notice in the Gazette to be a recognised Torres Strait Islander organisation for the purposes of this section.

## **Part 4—Charter of Rights for Children and Young People in Care**

### **13—Charter of Rights for Children and Young People in Care**

- (1) The Guardian for Children and Young People must prepare and maintain a *Charter of Rights for Children and Young People in Care*.
- (2) The Guardian for Children and Young People—
  - (a) may vary the Charter at any time; and
  - (b) must review the Charter at least every 5 years.

- (3) In preparing, varying or reviewing the Charter, the Guardian for Children and Young People must invite submissions from, and consult with, to such extent as may be reasonable, interested persons (including persons who are, or have been, under the guardianship, or in the custody, of the Minister or the Chief Executive) with a view to obtaining a wide range of views in relation to the matters under consideration.
- (4) The Guardian for Children and Young People must submit the Charter or variation to the Minister for approval.
- (5) The Minister may—
  - (a) approve the Charter or variation; or
  - (b) require an alteration to the Charter or variation, after consultation with the Guardian for Children and Young People, and then approve the Charter or variation as altered.
- (6) The Charter, and any variation, has effect from the day on which it is approved by the Minister.
- (7) The Minister must cause the Charter to be published on a website determined by the Minister.
- (8) The Minister must, within 6 sitting days after approving the Charter or variation, cause a copy of the Charter, or the Charter as varied, (as the case requires) to be laid before both Houses of Parliament.
- (9) Each person or body engaged in the administration, operation or enforcement of a relevant law must, to the extent that it is consistent with section 7 to do so in a particular case, exercise their powers and perform their functions so as to give effect to the Charter.
- (10) However, the Charter does not create legally enforceable rights or entitlements.
- (11) To avoid doubt, the requirements under this section apply to the Court.
- (12) For the purposes of this section, a reference to a variation of the Charter will be taken to include a reference to the substitution of the Charter.
- (13) In this section—

**relevant law** means—

  - (a) this Act; and
  - (b) the *Family and Community Services Act 1972*; and
  - (c) any Act relating to the detention of a youth in a training centre; and
  - (d) any other Act declared by the regulations to be included in the ambit of this definition.

## **Part 5—Additional functions of Minister**

### **14—Additional functions of Minister**

- (1) In addition to any other functions the Minister may have under this Act, the Minister must, in order to promote the wellbeing of children and young people and early intervention where they may be at risk of harm—
  - (a) promote a partnership approach between the Government, local government, non-government agencies and families; and
  - (b) promote and assist in the development of co-ordinated strategies for early intervention in cases where children and young people may be at risk of harm; and
  - (c) promote, support and adequately resource evidence-based programs delivering preventative and support services directed towards strengthening and supporting families, reducing the incidence of child abuse and neglect and maximising the wellbeing of children and young people; and
  - (d) promote, encourage or undertake research into matters affecting children and young people; and
  - (e) generally do such other things as the Minister believes will promote the wellbeing of children and young people, and promote and support early intervention where they may be at risk of harm.
- (2) Without limiting a provision of any other Act or law, the Minister must, in relation to the operation of this Act—
  - (a) collaborate with and assist Aboriginal and Torres Strait Islander communities to develop and implement strategies to ensure that Aboriginal and Torres Strait Islander children and young people are, so far as is reasonably practicable, protected from harm; and
  - (b) ensure that education relating to the operation of section 31 is made available to persons who are required under that section to report a suspicion that a child or young person is, or may be, at risk; and
  - (c) promote and support the provision of courses of instruction relating to the prevention of child abuse and neglect by tertiary institutions in this State; and
  - (d) collect and publish statistical data in relation to the protection of children and young people in this State.
- (3) Without limiting a preceding subsection, the Minister must also ensure that—
  - (a) assistance is provided to evidence-based programs delivering services directed towards strengthening and supporting families and maximising the wellbeing of children and young people; and
  - (b) those services are offered to children and young people and their families; and
  - (c) genuine efforts are made to encourage children and young people and their families to avail themselves of the services.

## 15—Additional annual reporting obligations

- (1) The Minister must, not later than 30 September in each year, prepare a report—
  - (a) detailing the role of the Minister, and the extent to which the Minister has performed the Minister's functions, in respect of the operation of this Act for the financial year ending on the preceding 30 June; and
  - (b) setting out the following information relating to the provision of family support services and intensive family support services to children and young people who are at risk and their families:
    - (i) the extent to which such services were provided by, or on behalf of, the State (including statistical data relating to the number of times such services were provided) during the financial year ending on the preceding 30 June;
    - (ii) the amount of resources allocated for the provision of such services by or on behalf of the State—
      - (A) during the financial year ending on the preceding 30 June; and
      - (B) during the current financial year;
    - (iii) the extent to which the allocated resources were, in fact, spent on the provision of such services during the financial year ending on the preceding 30 June;
    - (iv) bench-marking the resources referred to in subparagraph (ii) and (iii) against those allocated and spent by other States and Territories in the provision of such services during the financial year ending on the preceding 30 June; and
  - (c) providing any other information required by the regulations for the purposes of this paragraph.
- (2) The Minister must, as soon as is reasonably practicable after preparing a report under this section, cause a copy of the report to be published on a website determined by the Minister.
- (3) The Minister must, within 6 sitting days after preparing a report under this section, cause a copy of the report to be laid before each House of Parliament.
- (4) The requirements of this section are in addition to any other reporting obligation of the Minister.

## Chapter 3—Interpretation

### 16—Interpretation

- (1) In this Act, unless the contrary intention appears—

***Aboriginal child or young person*** means a child or young person who—

  - (a) is a descendant of the indigenous inhabitants of Australia; and
  - (b) regards themselves as Aboriginal or, if they are a young child, is regarded as Aboriginal by at least 1 of their parents;

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**approved carer** means a person who is the subject of an approval under section 72 that is in force;

**business day** means any day other than a Saturday or a Sunday or other public holiday;

**case plan**, in respect of a child or young person—see section 28;

**Chief Executive** means the Chief Executive of the Department;

**Child and Young Person's Visitor** means the Child and Young Person's Visitor established under Chapter 9;

**child or young person** means a person who is under 18 years of age;

**child protection officer**—see section 147;

**contact arrangements**, in respect of a child or young person, means contact arrangements determined by the Chief Executive under section 93 in respect of the child or young person, as in force from time to time;

**Court** means the Youth Court of South Australia;

**dentist** means a person who is registered as a dental practitioner under the *Health Practitioner Regulation National Law (South Australia)*;

**Department** means the administrative unit of the Public Service specified by the Minister by notice in the Gazette for the purposes of this definition;

**family**, in relation to a child or young person, includes—

- (a) the child or young person's extended family; and
- (b) members of the child or young person's family who are not biologically related to the child or young person; and
- (c) in relation to an Aboriginal or Torres Strait Islander child or young person—any person related to the child or young person in accordance with Aboriginal or Torres Strait Islander traditional practice or custom (as the case requires);

**family group conference** means a family group conference convened in accordance with section 22;

**guardian**, of a child or young person, means the guardian or guardians of the child or young person pursuant to an order of the Court under this Act;

**instrument of guardianship** means an instrument of guardianship issued under section 45;

**legal practitioner** has the same meaning as in the *Legal Practitioners Act 1981*;

**legal profession rules** has the same meaning as in the *Legal Practitioners Act 1981*;

**licensed children's residential facility** means a children's residential facility in respect of which a licence is in force under Chapter 7 Part 7;

**licensed foster care agency** means a foster care agency carried on pursuant to a licence under Chapter 7 Part 6 that is in force;

**medical practitioner** means a person who is registered as a medical practitioner under the *Health Practitioner Regulation National Law (South Australia)*;

**out of home care**—see section 69;

**parent**, of a child or young person, includes—

- (a) a step-parent of the child or young person; and
- (b) a person who stands *in loco parentis* to the child or young person;

**pharmacist** means a person who is registered as a pharmacist under the *Health Practitioner Regulation National Law (South Australia)*;

**placement principles**—see section 11;

**principles of intervention**—see section 10;

**psychologist** means a person who is registered as a psychologist under the *Health Practitioner Regulation National Law (South Australia)*;

**registered or enrolled nurse** means a person who is registered or enrolled as a nurse under the *Health Practitioner Regulation National Law (South Australia)*;

**restraining notice** means a restraining notice issued under section 46;

**reunification**, in relation to a child or young person, means a reunification of the child or young person and a person or persons from whom the child is removed under this Act;

**State authority** means—

- (a) a person who holds an office established by an Act; or
- (b) a public sector agency; or
- (c) South Australia Police; or
- (d) a local council constituted under the *Local Government Act 1999*; or
- (e) any incorporated or unincorporated body—
  - (i) established for a public purpose by an Act; or
  - (ii) established for a public purpose under an Act (other than an Act providing for the incorporation of companies or associations, co-operatives, societies or other voluntary organisations); or
  - (iii) established, or subject to control or direction, by the Governor, a Minister of the Crown or any instrumentality or agency of the Crown or a local council (whether or not established by or under an Act or an enactment); or

(f) any other person or body declared by the regulations to be a State authority, but does not include a person or body declared by the regulations to be excluded from the ambit of this definition;

**Torres Strait Islander child or young person** means a child or young person who—

- (a) is a descendant of the indigenous inhabitants of the Torres Strait Islands; and
- (b) regards themselves as Torres Strait Islander or, if they are a young child, is regarded as Torres Strait Islander by at least 1 of their parents;

**working with children check** means a working with children check under the *Child Safety (Prohibited Persons) Act 2016*.



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- (2) For the purposes of this Act, a reference to a person being ***found guilty*** of an offence will be taken to include a reference to—
- (a) a finding of a court under Part 8A of the *Criminal Law Consolidation Act 1935* that the objective elements of an offence are established (whether or not the person was found not guilty of the offence, or was found to be mentally unfit to stand trial, pursuant to Division 2 or 3 of that Part); or
  - (b) any finding of a court of another jurisdiction that corresponds to a finding referred to in paragraph (a).
- (3) For the purposes of this Act, a reference to care being residential in nature, or being provided on a residential basis, will be taken to include a reference to such care provided to a child or young person for a limited period only.
- (4) For the purposes of this Act, a reference to the ***Chief Executive*** in their capacity as guardian of a child or young person will be taken to be a reference to the person for the time being holding or acting in the office of Chief Executive.

### 17—Meaning of ***harm***

- (1) For the purposes of this Act, a reference to ***harm*** will be taken to be a reference to physical harm or psychological harm (whether caused by an act or omission) and, without limiting the generality of this subsection, includes such harm caused by sexual, physical, mental or emotional abuse or neglect.
- (2) In this section—
- psychological harm*** does not include emotional reactions such as distress, grief, fear or anger that are a response to the ordinary vicissitudes of life.

### 18—Meaning of ***at risk***

- (1) For the purposes of this Act, a child or young person will be taken to be ***at risk*** if—
- (a) the child or young person has suffered harm (being harm of a kind against which a child or young person is ordinarily protected); or
  - (b) there is a likelihood that the child or young person will suffer harm (being harm of a kind against which a child or young person is ordinarily protected); or
  - (c) there is a likelihood that the child or young person will be removed from the State (whether by their parent or guardian or by some other person) for the purpose of—
    - (i) being subjected to a medical or other procedure that would be unlawful if performed in this State (including, to avoid doubt, female genital mutilation); or
    - (ii) taking part in a marriage ceremony (however described) that would be a void marriage, or would otherwise be an invalid marriage, under the *Marriage Act 1961* of the Commonwealth; or

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- (iii) enabling the child or young person to take part in an activity, or an action to be taken in respect of the child or young person, that would, if it occurred in this State, constitute an offence against the *Criminal Law Consolidation Act 1935* or the *Criminal Code* of the Commonwealth; or
  - (d) the parents or guardians of the child or young person—
    - (i) are unable or unwilling to care for the child or young person; or
    - (ii) have abandoned the child or young person, or cannot, after reasonable inquiry, be found; or
    - (iii) are dead; or
  - (e) the child or young person is of compulsory school age but has been persistently absent from school without satisfactory explanation of the absence; or
  - (f) the child or young person is of no fixed address; or
  - (g) any other circumstances of a kind prescribed by the regulations exist in relation to the child or young person.
- (2) It is immaterial for the purposes of this Act that any conduct referred to in subsection (1) took place wholly or partly outside this State.
- (3) In assessing whether there is a likelihood that a child or young person will suffer harm, regard must be had to not only the current circumstances of their care but also the history of their care and the likely cumulative effect on the child or young person of that history.
- (4) In this section—
- female genital mutilation*** means—
- (a) clitoridectomy; or
  - (b) excision of any other part of the female genital organs; or
  - (c) a procedure to narrow or close the vaginal opening; or
  - (d) any other mutilation of the female genital organs,
- but does not include a sexual reassignment procedure or a medical procedure that has a genuine therapeutic purpose;
- sexual reassignment procedure*** means a surgical procedure to give a female, or a person whose sex is ambivalent, genital characteristics, or ostensible genital characteristics, of a male.
- (5) A medical procedure has a genuine therapeutic purpose only if directed at curing or alleviating a physiological disability or physical abnormality.

## 19—Minister may publish policies

- (1) The Minister may, by notice in the Gazette, publish policies for the purposes of this Act.
- (2) The Minister may, by subsequent notice in the Gazette, vary, substitute or revoke a policy published under subsection (1).

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- (3) A policy published under subsection (1) must be kept available for public inspection, without charge and during ordinary office hours, at an office or offices specified by the Minister.
  - (4) Each person or body engaged in the administration, operation or enforcement of this Act must, to the extent that it is consistent with section 7 to do so in a particular case, comply with any relevant policy published under subsection (1).

## **Chapter 4—Managing risks without removing child or young person from their home**

### **Part 1—Child and Family Assessment and Referral Networks**

#### **20—Minister may establish Child and Family Assessment and Referral Networks**

- (1) The Minister may, in the Minister's absolute discretion, establish such Child and Family Assessment and Referral Networks as the Minister thinks fit.
- (2) A Child and Family Assessment and Referral Network consists of such persons or bodies (whether State authorities or otherwise) as may be specified by the Minister.
- (3) A Child and Family Assessment and Referral Network has the functions assigned to it under this Act or by the Minister.
- (4) The members of a Child and Family Assessment and Referral Network may, despite any other Act or law, collaborate with each other without restriction in the course of performing its functions.
- (5) The regulations may make further provision relating to Child and Family Assessment and Referral Networks.

### **Part 2—Family group conferences**

#### **21—Purpose of family group conferences**

- (1) The purpose of a family group conference is to provide an opportunity for a child or young person and their family, in accordance with this Part—
  - (a) to make informed decisions as to the arrangements for the care of the child or young person; and
  - (b) to make voluntary arrangements for the care of the child or young person that are consistent with sections 7 and 8, as well as this Act generally; and
  - (c) to review those arrangements from time to time.
- (2) To avoid doubt, a failure to hold a family group conference does not, of itself, invalidate an application for an order of the Court under this Act, nor any such order.

#### **22—Chief Executive or Court may convene family group conference**

- (1) If the Chief Executive or the Court suspects that—
  - (a) a child or young person is at risk and that arrangements should be made in relation to their care; and

- (b) it would be appropriate in all of the circumstances to make those arrangements by means of a family group conference,
- then the Chief Executive or the Court (as the case requires) may convene a family group conference in respect of the child or young person.
- (2) A family group conference is to be conducted by a family group conference co-ordinator (the *co-ordinator*) nominated by—
    - (a) if the conference is convened by the Chief Executive—the Chief Executive; or
    - (b) if the conference is convened by the Court—the Judge of the Court.

### **23—Who may attend a family group conference**

- (1) Subject to this Part, the following people are entitled to attend a family group conference convened in respect of a child or young person:
  - (a) the child or young person;
  - (b) the parents and guardians of the child or young person;
  - (c) members of the child or young person's family;
  - (d) persons who have a close association with the child or young person and who should, in the opinion of the co-ordinator, attend the conference;
  - (e) a person who, in accordance with subsection (4)(c), is arranged to act as advocate for the child or young person at the conference;
  - (f) a person authorised by the Chief Executive for the purposes of this section;
  - (g) if an investigation into the child or young person's circumstances has been carried out under this Act—a person nominated by the co-ordinator who has examined, assessed, counselled or treated the child or young person in the course of the investigation;
  - (h) if the child or young person is an Aboriginal or Torres Strait Islander child or young person—a person nominated by an Aboriginal organisation or Torres Strait Islander organisation (as the case requires) of a kind that is, in the opinion of the co-ordinator, relevant to the subject of the conference;
  - (i) if persistent absenteeism from school is involved—
    - (i) if the child or young person is enrolled at a Government school—an employee of the administrative unit of the Public Service assisting a Minister with the administration of the *Education Act 1972* nominated by the Chief Executive of that administrative unit; or
    - (ii) if the child or young person is enrolled at a non-Government school—a person nominated by the head teacher of the school;
  - (j) any other person (not being a legal practitioner) who the child or young person, or their parents or guardians, wish to support them at the conference and who, in the opinion of the co-ordinator, would be of assistance in that role;
  - (k) any other person, or person of a class, prescribed by the regulations for the purposes of this paragraph.

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- (2) However, the co-ordinator of a family group conference may exclude a person referred to in subsection (1) (including, to avoid doubt, the child or young person to whom the conference relates) from attending a family group conference if the co-ordinator is satisfied that to do so would be in the best interests of the child or young person.
  - (3) The co-ordinator of a family group conference must, as far as is reasonably practicable, consult with the child or young person and their parents and guardians as to the attendees at, or persons to be excluded from attending, the conference.
  - (4) The co-ordinator of a family group conference must, as far as is reasonably practicable, ensure that—
    - (a) the conference is held at a time and place that is suitable to the child or young person and their parents and guardians; and
    - (b) a person who is entitled to be at the conference is given notice in accordance with the regulations of the time and place at which the conference is to be held; and
    - (c) a suitable person (who, to avoid doubt, need not be a legal practitioner) is arranged to act as advocate for the child or young person at the conference.
  - (5) However, the co-ordinator of a family group conference need not comply with subsection (4)(c) if they are satisfied that the child or young person has made an informed and independent decision to waive their right to be so represented.

## **24—Procedures at family group conference**

- (1) The co-ordinator of a family group conference must ensure that information as to the child or young person's circumstances, and any grounds for suspecting the child or young person may be at risk, is presented to the conference.
- (2) The co-ordinator of a family group conference must allow the child or young person's parents, guardians and family members present at the conference, and the child or young person if the co-ordinator thinks it appropriate to do so, an opportunity to hold discussions in private for the purpose of formulating recommendations as to the arrangements for the care of the child or young person.
- (3) If a person referred to in section 23(1) is excluded from, or is unable to attend, a family group conference, the co-ordinator of the conference must take reasonable steps to ascertain the views of the person and present those views to the conference.
- (4) The following provisions relate to the making of decisions in respect of a family group conference:
  - (a) decisions should, if possible, be made by consensus of the persons present at the conference (and, in particular, by that of the child or young person and their parents, guardians and family members);
  - (b) a written record must be prepared of the decisions made at the conference;
  - (c) a decision will only be valid for the purposes of this Act if the child or young person, their parents and guardians and the Chief Executive each accept the decision in accordance with any requirements set out in the regulations;
  - (d) the making of decisions must comply with any other requirements set out in the regulations.

- (5) The co-ordinator of the family group conference—
- (a) must cause a copy of the written record of the decisions to be provided to each person present at the conference (and may provide a copy of the written record to any other person the co-ordinator thinks fit); and
  - (b) must cause a copy of the written record of the decisions to be included as part of the case plan for the child or young person to whom the conference relates.
- (6) Subject to this Act, the co-ordinator of a family group conference may determine the procedures of the conference.

## **25—Review of arrangements**

A family group conference co-ordinator (whether or not they were the co-ordinator of the original family group conference) must convene a family group conference for the purpose of reviewing the arrangements made for the care of a child or young person at a previous conference if—

- (a) they are required to do so pursuant to a valid decision made at the previous conference; or
- (b) 2 or more members of the child or young person's family who attended the previous conference request such a conference,

and may convene such a conference at any other time the co-ordinator thinks necessary or desirable.

## **26—Chief Executive etc to give effect to decisions of family group conference**

- (1) Subject to this Act, the Chief Executive and State authorities should, to the extent that it is consistent with section 7 to do so, exercise their powers and perform their functions so as to give effect to valid decisions made at a family group conference.
- (2) However, if valid decisions are made at a family group conference but not implemented or complied with, the Chief Executive may apply for such orders of the Court under section 53 in relation to the care of the child or young person as the Chief Executive considers appropriate.
- (3) Nothing in this section—
  - (a) requires or authorises the Chief Executive or any other person to do something that is unlawful; or
  - (b) requires or authorises the Chief Executive or any other person to not do something that is required to be done under another Act or law; or
  - (c) creates legally enforceable rights or obligations on the part of the Crown, the Chief Executive, the child or young person or any other person.

## **27—Statements made at family group conference not admissible**

- (1) Subject to subsection (2), evidence of any statement made at a family group conference is not admissible in any proceedings.
- (2) The written record of the decisions made at a family group conference is admissible in any proceedings for the purpose of establishing that those decisions were made.

## Part 3—Case planning

### 28—Chief Executive to prepare case plan in respect of certain children and young people

- (1) The Chief Executive must cause a plan (a *case plan*) to be prepared and maintained in respect of each prescribed child or young person.
- (2) Without limiting the matters that may be included in a case plan, each case plan must include such of the following parts as may be relevant to the prescribed child or young person's circumstances:
  - (a) a part setting out decisions made at a family group conference;
  - (b) a part setting out a cultural maintenance plan;
  - (c) a part setting out a reunification plan;
  - (d) a part setting out contact arrangements in respect of the child or young person;
  - (e) a part setting out how disputes as to the matters included in the child or young person's case plan are to be resolved;
  - (f) any other part required by any other provision of this Act or the regulations.
- (3) The Chief Executive may from time to time vary, substitute or revoke a case plan.
- (4) The regulations may make further provision in relation to the preparation of case plans (including, to avoid doubt, provisions requiring the Chief Executive to take certain steps in the course of preparing a case plan).
- (5) In this section—

***prescribed child or young person***—each of the following is a prescribed child or young person:

  - (a) a child or young person who is under the guardianship of the Chief Executive pursuant to this Act;
  - (b) a child or young person who is under the guardianship of a person other than the Chief Executive pursuant to this Act (other than a child or young person in relation to whom an order contemplated by section 91 placing the child or young person into the long-term guardianship of a person has been made);
  - (c) a child or young person who is in the custody of the Chief Executive or another person pursuant to this Act;
  - (d) a child or young person who is in the care of an approved carer pursuant to this Act;
  - (e) any other child or young person prescribed by the regulations for the purposes of this definition.

## **29—Chief Executive etc to give effect to case plan**

- (1) Each person or body engaged in the administration, operation or enforcement of this Act must, to the extent that it is consistent with section 7 to do so, exercise their powers and perform their functions so as to give effect to a prescribed child or young person's case plan.
- (2) However, a case plan does not create legally enforceable rights or obligations on the part of the Crown, the Chief Executive, a child or young person or any other person.

## **Chapter 5—Children and young people at risk**

### **Part 1—Reporting of suspicion that child or young person may be at risk**

#### **30—Application of Part**

- (1) The requirements under this Part are in addition to the duty of every person to safeguard and promote the outcomes set out in section 4(2), and in particular the outcome that children and young people be kept safe from harm.
- (2) To avoid doubt, compliance with the requirements of this Part does not necessarily exhaust a duty of care that may be owed to a child or young person by a person to whom this Part applies.
- (3) This Part applies to the following persons:
  - (a) prescribed health practitioners;
  - (b) police officers;
  - (c) community corrections officers under the *Correctional Services Act 1982*;
  - (d) social workers;
  - (e) ministers of religion;
  - (f) employees of, or volunteers in, an organisation formed for religious or spiritual purposes;
  - (g) teachers employed as such in a school (within the meaning of the *Education and Early Childhood Services (Registration and Standards) Act 2011*) or a pre-school or kindergarten;
  - (h) employees of, or volunteers in, an organisation that provides health, welfare, education, sporting or recreational, child care or residential services wholly or partly for children and young people, being a person who—
    - (i) provides such services directly to children and young people; or
    - (ii) holds a management position in the organisation the duties of which include direct responsibility for, or direct supervision of, the provision of those services to children and young people;
  - (i) any other person of a class prescribed by the regulations for the purposes of this subsection.



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- (4) For the purposes of this Part, a reference to a person being ***employed*** will be taken to include a reference to a person who—
- (a) is a self-employed person; or
  - (b) carries out work under a contract for services; or
  - (c) carries out work as a minister of religion or as part of the duties of a religious or spiritual vocation; or
  - (d) undertakes practical training as part of an educational or vocational course; or
  - (e) carries out work as a volunteer,
- and a reference to something occurring in the course of the person's employment is to be construed accordingly.
- (5) In this section—
- prescribed health practitioners*** means—
- (a) medical practitioners; and
  - (b) pharmacists; and
  - (c) registered or enrolled nurses; and
  - (d) dentists; and
  - (e) psychologists; and
  - (f) any other person prescribed by the regulations for the purposes of this definition.

### **31—Reporting of suspicion that child or young person may be at risk**

- (1) A person to whom this Part applies must, if—
- (a) the person suspects on reasonable grounds that a child or young person is, or may be, at risk; and
  - (b) that suspicion was formed in the course of the person's employment,
- report that suspicion, in accordance with subsection (4), as soon as is reasonably practicable after forming the suspicion.
- Maximum penalty: \$10 000.
- (2) However, a person need not report a suspicion under subsection (1)—
- (a) if the person believes on reasonable grounds that another person has reported the matter in accordance with that subsection; or
  - (b) if the person's suspicion was due solely to having been informed of the circumstances that gave rise to the suspicion by a police officer or child protection officer acting in the course of their official duties; or
  - (c) in any other circumstances prescribed by the regulations for the purposes of this subsection.

- (3) A person to whom this Part applies may (but need not), if—
- (a) the person suspects on reasonable grounds that the physical or psychological development of an unborn child is at risk (whether due to an act or omission of the mother or otherwise); and
  - (b) that suspicion was formed in the course of the person's employment,
- report that suspicion in accordance with subsection (4).
- (4) A person reports a suspicion under this section by doing 1 or more of the following:
- (a) making a telephone notification to a telephone number determined by the Minister for the purposes of this subsection;
- Note—**
- This telephone line is currently known as the ***Child Abuse Report Line*** or ***CARL***.
- (b) making an electronic notification on an electronic reporting system determined by the Minister for the purposes of this subsection;
  - (c) by reporting their suspicion to a person of a class, or occupying a position of a class, specified by the Minister by notice in the Gazette;
  - (d) reporting their suspicion in any other manner set out in the regulations for the purposes of this paragraph,
- and, in each case, providing—
- (e) —
    - (i) in the case of an unborn child—the name and address (if known) of the mother of the unborn child; or
    - (ii) in any other case—the name and address (if known) of the child or young person; and
  - (f) information setting out the grounds for the person's suspicion; and
  - (g) such other information as the person may wish to provide in relation to their suspicion.
- (5) Nothing in this section prevents a person from also reporting or referring a matter to any other appropriate person or body under any other Act.
- (6) This section does not limit or derogate from any other provision of this or any other Act.

## **Part 2—Responding to reports etc that child or young person may be at risk**

### **32—Chief Executive must assess each report indicating child or young person may be at risk**

- (1) The Chief Executive must cause—
- (a) each report under section 31; and

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- (b) any other report or notification made to the Department that a child or young person may be at risk (however described and whether or not received under this Act),
- to be assessed in accordance with any requirements set out in the regulations.
- (2) The Chief Executive may, in the course of an assessment under this section, make use of or rely on such systems of information gathering, collating or reporting as the Chief Executive thinks fit (whether or not the system is operated or provided by a State authority).
- (3) Without limiting any other action that may be taken by the Chief Executive, the Chief Executive must, on completion of an assessment under this section, cause at least 1 of the following actions to be taken:
- (a) an investigation into the circumstances of the child must be carried out under section 34;
  - (b) if the Chief Executive is satisfied that an investigation under section 34 is unnecessary, having regard to such of the circumstances of the child as may already be known to the Chief Executive, an alternative response that, in the opinion of the Chief Executive, more appropriately addresses the risk to the child or young person must be implemented;
  - (c) the matter must be referred to an appropriate State authority under section 33;
  - (d) if the Chief Executive is satisfied that—
    - (i) the matter has previously been dealt with under this or any other Act and there is no reason to reexamine the matter; or
    - (ii) the matter is trivial, vexatious or frivolous; or
    - (iii) there is good reason why no action should be taken in respect of the matter,
 the Chief Executive may decline to take further action.
- (4) The Chief Executive must, in accordance with any requirements set out in the regulations—
- (a) cause a record of each action taken under this section, and the reasons for the action, to be kept in relation to each report or notification made to the Department; and
  - (b) include statistical information relating to action taken under this section to be included in the annual report of the Chief Executive under the *Public Sector Act 2009*.
- (5) The regulations may make further provision in relation to an assessment under this section (including provisions relating to a system referred to in subsection (2) and the disclosure and confidentiality of information gathered, collated or provided under the system).

### **33—Chief Executive may refer matter**

- (1) If, following an assessment of a matter under section 32, the Chief Executive determines that it is more appropriate that a State authority other than the Department deal with the matter, or with a particular aspect of the matter, the Chief Executive must refer the matter to that State authority.
- (2) To avoid doubt—
  - (a) a matter may be referred to more than 1 State authority; and
  - (b) a matter may be dealt with under this section even if it is referred to a State authority under another Act.
- (3) The Chief Executive may, if the Chief Executive considers it appropriate, give directions or guidance in relation to a matter to a State authority to which the matter is referred.
- (4) Without limiting this section or any other Act or law, a State authority to which a matter is referred must deal with the matter in a timely manner, having regard to the need to ensure that children and young people are protected from harm.

### **34—Chief Executive may investigate circumstances of a child or young person**

- (1) Subject to this Act, the Chief Executive may cause an investigation into the circumstances of a child or young person to be carried out—
  - (a) if a report is made under section 31 and the Chief Executive suspects on reasonable grounds that the child or young person may be at risk; or
  - (b) in any other circumstances that the Chief Executive thinks appropriate.
- (2) The Chief Executive must cause an investigation into the circumstances of a child or young person to be carried out if the Chief Executive issues an instrument of guardianship or a restraining notice in relation to a child or young person.
- (3) The regulations may make further provisions in relation to an investigation under this section.

### **35—Chief Executive may direct that child or young person be examined and assessed**

- (1) This section applies to a child or young person—
  - (a) who is, having been removed under section 41, in the custody of the Chief Executive; or
  - (b) in relation to whom an order of the Court under section 53 authorising examination or assessment is in force; or
  - (c) in relation to whom an instrument of guardianship or a restraining notice is in force; or
  - (d) in any other circumstances prescribed by the regulations.
- (2) If the Chief Executive is of the opinion that it is necessary or desirable that a child or young person to whom this section applies be professionally examined or assessed, the Chief Executive may, by notice in writing, direct the child or young person to undergo such examination or assessment as may be specified in the notice.

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- (3) If the Chief Executive gives a direction under subsection (2), an employee of the Department may take the child or young person to such persons or places (including admitting the child or young person to hospital) as may be specified in the notice for the purpose of having the child or young person professionally examined, assessed or treated.
  - (4) Without otherwise limiting any Act or law regulating a particular health profession, a person to whom a child or young person is taken under this section may give such treatment to the child or young person as the person thinks necessary for alleviating any immediate injury or suffering of the child or young person.
  - (5) Without otherwise limiting the *Consent to Medical Treatment and Palliative Care Act 1995*, a person who is to examine, assess or treat a child or young person in accordance with this section may do so despite the absence or refusal of the consent of the child or young person's parents or guardians.
  - (6) A person who examines, assesses or treats a child or young person in accordance with this section must, as soon as practicable after doing so, provide to the Chief Executive a written report on the examination, assessment or treatment.  
Maximum penalty: \$10 000.

### 36—Chief Executive may direct person to undergo certain assessments

- (1) If the Chief Executive reasonably suspects that a child or young person is at risk as a result of the abuse of a drug or alcohol (or both) by a parent, guardian or other person, the Chief Executive may, by notice in writing, direct the parent, guardian or other person to undergo an approved drug and alcohol assessment.
- (2) If the Chief Executive reasonably suspects that a child or young person is at risk as a result of a lack of parenting capacity on the part of a parent, guardian or other person who has, or is responsible for, the care of the child or young person, the Chief Executive may, by notice in writing, direct the parent, guardian or other person to undergo an approved parenting capacity assessment.
- (3) A person must not refuse or fail to comply with a direction under this section.  
Maximum penalty: Imprisonment for 6 months.
- (4) A notice under this section must set out the information required by the regulations for the purposes of this subsection.
- (5) The regulations may make further provision in relation to assessments under this section (including, to avoid doubt, provisions requiring the results of an assessment to be provided to the Chief Executive or some other specified person or body).
- (6) For the purposes of this section, a reference to an ***approved drug and alcohol assessment*** will be taken to be a reference to a drug and alcohol assessment of a kind approved by the Chief Executive by notice in the Gazette.
- (7) For the purposes of this section, a reference to an ***approved parenting capacity assessment*** will be taken to be a reference to a parenting capacity assessment of a kind approved by the Chief Executive by notice in the Gazette.

### **37—Random drug and alcohol testing**

- (1) This section applies to—
  - (a) a person who has, in the preceding 5 years, been directed by the Chief Executive to undergo an approved drug and alcohol assessment under section 36(1); or
  - (b) a person who was, in the preceding 5 years, the subject of an application for an order under section 20(2) of the *Children's Protection Act 1993* (whether or not the application was granted); or
  - (c) any other person of a class declared by the regulations to be included in the ambit of this subsection.
- (2) A person to whom this section applies must, in accordance with the scheme set out in the regulations, take part in random drug and alcohol testing.
- (3) Without limiting any other regulations that may be made in relation to the scheme for random drug and alcohol testing, the regulations must include provisions—
  - (a) authorising the taking of forensic material consisting of hair or blood for the purposes of this Act; and
  - (b) requiring such forensic material to be tested to identify any drug or alcohol that may be present in the material; and
  - (c) requiring or authorising the results of such testing to be provided to the Chief Executive or other specified person or body.
- (4) The Chief Executive may, in relation to random drug and alcohol testing under this section, by notice in writing, require a person to whom this section applies to take the action, and within the period, specified in the notice.
- (5) A person to whom this section applies must not, without reasonable excuse, refuse or fail to comply with a requirement under this section.  
Maximum penalty: Imprisonment for 6 months.
- (6) A person is not entitled to refuse or fail to comply with a requirement under this section on the ground that the person would, or might, by complying with that requirement, provide evidence that could be used against the person.
- (7) To avoid doubt, for the purposes of the *Criminal Law (Forensic Procedures) Act 2007*, the taking of forensic material in the course of a random drug and alcohol test is authorised under this Act.

### **38—Chief Executive may direct certain persons to undertake rehabilitation program**

- (1) The Chief Executive may, by notice in writing, direct a person to whom section 37 applies to undertake an approved drug and alcohol rehabilitation program of a kind specified in the notice.
- (2) A person must not, without reasonable excuse, refuse or fail to comply with a direction under subsection (1).  
Maximum penalty: Imprisonment for 6 months.

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- (3) A notice under subsection (1) must set out the information required by the regulations for the purposes of this subsection.
  - (4) For the purposes of this section, a reference to an *approved drug and alcohol rehabilitation program* will be taken to be a reference to a drug and alcohol rehabilitation program of a kind approved by the Chief Executive by notice in the Gazette.

### **39—Forensic materials not to be used for other purposes and test results inadmissible in other proceedings**

- (1) Forensic material obtained in the course of an approved drug and alcohol assessment, a random drug and alcohol test or an approved drug and alcohol rehabilitation program must not be used for a purpose other than a purpose contemplated by this Act.
- (2) The results of an approved drug and alcohol assessment, a random drug and alcohol test or an approved drug and alcohol rehabilitation program—
  - (a) will not be admissible in evidence against the person to whom the results relate, other than in proceedings for an order of the Court under this Act; and
  - (b) may not be relied on as grounds for the exercise of any search power or the obtaining of any search warrant.

### **40—Destruction of forensic material**

The Chief Executive must ensure that any forensic material obtained in the course of an approved drug and alcohol assessment, a random drug and alcohol test or an approved drug and alcohol rehabilitation program is destroyed in accordance with any requirements set out in the regulations.

## **Part 3—Removal of child or young person**

### **41—Removal of child or young person**

- (1) Subject to this section, if a child protection officer believes on reasonable grounds that—
  - (a) a child or young person has suffered, or there is a significant possibility that a child or young person will suffer, serious harm; and
  - (b) it is necessary to remove the child or young person from that situation in order to protect them from suffering serious harm or further serious harm; and
  - (c) there is no reasonably practicable alternative to removing the child or young person in the circumstances,the child protection officer may remove the child or young person from any premises, place, vehicle or vessel using such force (including breaking into the premises, place, vehicle or vessel) as is reasonably necessary for the purpose.
- (2) Without limiting the generality of subsection (1), the regulations may set out circumstances in which 1 or more of the requirements under that subsection will be taken to have been satisfied.

- (3) A child protection officer who is a police officer below the rank of inspector may only remove a child or young person under this section with the prior approval of a police officer of or above the rank of inspector.
- (4) A child protection officer who is an employee of the Department may only remove a child or young person from the custody of a parent or guardian of the child or young person with the Chief Executive's prior approval.
- (5) Subsections (3) and (4) do not apply if the child protection officer believes on reasonable grounds that the delay involved in seeking prior approval would significantly increase the risk of serious harm, or further serious harm, being caused to the child or young person.

#### **42—Action following removal of child or young person**

A child protection officer who removes a child or young person under section 41 must return them to the custody of a parent or guardian unless—

- (a) the child or young person is already under the guardianship, or in the custody, of the Chief Executive; or
- (b) the child protection officer reasonably suspects that, if they were returned to the custody of a parent or guardian, the child or young person would be at risk,

in which case the child protection officer must deliver the child or young person into the care of a person or persons determined by the Chief Executive.

#### **43—Custody of removed child or young person**

- (1) If the Chief Executive does not already have custody of a child or young person who is removed under section 41, the Chief Executive, by force of this section, has custody of the child or young person until—
  - (a) the child or young person is returned to the custody of a parent or guardian, or delivered into the care of a person determined by the Chief Executive, under section 42; or
  - (b) the end of the fifth business day following the day on which the child or young person was removed,(whichever is the earlier).
- (2) However, subject to the regulations, the Chief Executive may exercise a power under this Act in respect of a child or young person delivered into the care of a person determined by the Chief Executive under section 42 as if the child or young person were in the custody of the Chief Executive.



## Part 4—Chief Executive to assume guardianship of child or young person where parent found guilty of certain offences

### 44—Interpretation

In this Part—

***guardianship period*** means the period commencing at the time an instrument of guardianship—

- (a) is served on the offender in accordance with section 45(4)(a); or
- (b) is lodged with the Court in accordance with section 45(4)(b),

whichever occurs first, and ending 60 days later (or such longer period as may be allowed by the Court on an application under section 47);

***instrument of guardianship***—see section 45(1);

***parent***, of a child or young person, does not include a step-parent of the child or young person;

***qualifying offence*** means any of the following offences (whether committed before or after the commencement of this Part) where the victim was a child or young person and the offender was a parent or guardian of the child or young person:

- (a) murder;
- (b) manslaughter;
- (c) an offence against section 14 of the *Criminal Law Consolidation Act 1935* (criminal neglect);
- (d) an offence against section 23 of the *Criminal Law Consolidation Act 1935* (causing serious harm);
- (e) an offence against section 29(1) or (2) of the *Criminal Law Consolidation Act 1935* (acts endangering life or creating risk of serious harm);
- (f) an offence constituted of an attempt to commit an offence referred to in a preceding paragraph;
- (g) an offence prescribed by the regulations for the purposes of this paragraph;
- (h) an offence under the law of another jurisdiction that corresponds to an offence referred to in a preceding paragraph;

***restraining notice***—see section 46(1);

***restraining notice period*** means the period commencing at the time at which the restraining notice is served on the offender in accordance with section 46(4)(a) and ending 60 days later (or such longer period as may be allowed by the Court on an application under section 47).

## **45—Temporary instruments of guardianship**

- (1) The Chief Executive must, if the Chief Executive becomes aware that a child or young person born after the commencement of this subsection is residing with a parent of the child or young person who has been found guilty of a qualifying offence (the *offender*), issue an instrument under this section (an *instrument of guardianship*) in respect of the child or young person.
- (2) If the Chief Executive issues an instrument of guardianship, the child or young person specified in the instrument will, for all purposes, be under the guardianship of the Chief Executive during the guardianship period.
- (3) Subsection (2) applies subject to an order of the Court under this Act to the contrary.
- (4) An instrument of guardianship issued in relation to an offender—
  - (a) must be served on the offender as soon as practicable after it has been issued; and
  - (b) must be lodged with the Court in accordance with the rules of the Court (and may be so lodged whether or not it has been served in accordance with paragraph (a)).
- (5) Subject to subsection (6), this Act applies to an instrument of guardianship, while it remains in force, as if it were an order of the Court under section 53 and as if the parties to that order were—
  - (a) the parents of the child or young person to whom the instrument relates; and
  - (b) the child or young person to whom the instrument relates; and
  - (c) a person who would, but for the instrument, have had custody or guardianship of the child or young person to whom the instrument relates; and
  - (d) the Chief Executive.
- (6) Until the application required under section 50(1) in relation to an instrument of guardianship is made to the Court, any application to the Court under section 55 in relation to the instrument may only seek to vary arrangements for the care of the child or young person.
- (7) For the purposes of this section, a newborn child who has not yet been discharged from hospital will be taken to be residing with a person if the child is likely to reside with the person on being discharged.

## **46—Restraining notices**

- (1) The Chief Executive must, if the Chief Executive becomes aware that a child or young person is residing, or is about to reside, with a person (not being a parent of the child or young person) who has been found guilty of a qualifying offence (the *offender*), issue a notice under this section (a *restraining notice*) to the offender, unless the Chief Executive is of the opinion that it is inappropriate to do so in the circumstances.
- (2) A restraining notice may prohibit the offender from doing 1 or more of the following:
  - (a) residing in the same premises as the child or young person;
  - (b) coming within a specified distance of the residence of the child or young person;

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- (c) having any contact with the child or young person (except in the presence of a specified person or class of person);
  - (d) having any contact at all with the child or young person,  
during the restraining notice period.
- (3) Subsection (2) applies subject to an order of the Court under this Act to the contrary.
- (4) A restraining notice issued in relation to an offender—
- (a) must be served on the offender as soon as practicable after it has been issued;  
and
  - (b) must be lodged with the Court in accordance with the rules of the Court (and may be so lodged whether or not it has been served in accordance with paragraph (a)).
- (5) A person who contravenes or fails to comply with a restraining notice is guilty of an offence.  
Maximum penalty: Imprisonment for 2 years.
- (6) A person does not commit an offence against subsection (5) in respect of an act or omission unless the person knew that the act or omission constituted a contravention of, or failure to comply with, the notice or was reckless as to that fact.
- (7) For the purposes of this section, a newborn child who has not yet been discharged from hospital will be taken to be residing with a person if the child is likely to reside with the person on being discharged.

#### **47—Court may extend period**

The Court may, on application by the Chief Executive, extend the guardianship period or the restraining notice period if satisfied that it is appropriate to do so.

#### **48—Certain information to be provided to Chief Executive**

A court that finds a person guilty of a qualifying offence must ensure that the prescribed information relating to the finding of guilt is provided to the Chief Executive as soon as practicable after the person is found guilty.

## **Chapter 6—Court orders relating to children and young people**

### **Part 1—Applications for Court orders**

#### **49—Who may make application for Court orders**

An application for an order under section 53 may be made by—

- (a) the Minister; or
- (b) the Chief Executive; or
- (c) a person authorised by the Chief Executive to apply for such orders.

## **50—When application can be made for Court orders**

- (1) An application for an order under section 53 must be made if an instrument of guardianship or a restraining notice in relation to a child or young person has been issued.
- (2) An application under subsection (1) must be made as soon as is practicable after the issue of the instrument of guardianship or restraining notice (and in any case within the applicable guardianship period or restraining notice period).
- (3) An application for an order under section 53 may be made—
  - (a) if the applicant—
    - (i) reasonably suspects that a child or young person is at risk; and
    - (ii) is of the opinion that the making of such orders is necessary or appropriate to protect the child or young person from harm, or to allow the exercise of powers or the performance of functions under this Act in respect of the child or young person; or
  - (b) if the applicant is of the opinion that—
    - (i) proper arrangements exist for the care and protection of a child or young person (whether pursuant to a decision of a family group conference or an exercise of administrative powers under the *Family and Community Services Act 1972*); and
    - (ii) the child or young person would be likely to suffer psychological harm if the arrangements were to be disturbed; and
    - (iii) it would be in the best interests of the child or young person for the arrangements to be the subject of such orders; or
  - (c) if the applicant is acting in accordance with Chapter 7 Part 3; or
  - (d) if the order is to be made with the consent of the parties to the proceeding; or
  - (e) in any other circumstances with the permission of the Court.
- (4) Before applying for a prescribed Court order in relation to a child or young person removed from a person under this Act, the Chief Executive must assess the likelihood of a reunification occurring and, if reunification is likely, the period within which reunification is likely to occur.
- (5) In this section—

**prescribed Court order** means an order of the Court under section 53—

  - (a) placing a child or young person under the guardianship of the Chief Executive; or
  - (b) placing a child or young person under the guardianship of a person other than the Chief Executive; or
  - (c) granting custody of a child or young person to the Chief Executive or another person; or
  - (d) of a kind specified by the regulations for the purposes of this definition.

## **51—Parties to proceedings**

- (1) The following persons are parties to an application for an order under section 53, or for the variation, extension or revocation of such an order:
  - (a) the applicant;
  - (b) the child or young person who is the subject of the application;
  - (c) each parent or guardian of the child or young person.
- (2) If the Court is satisfied in any proceedings that it should make an order under section 53 binding on a person who is not a party to the proceedings, the Court—
  - (a) may join that person as a party to the proceedings; and
  - (b) must allow the person a reasonable opportunity to make representations to the Court as to why such an order should not be made.
- (3) Without limiting subsection (2), the Court should, unless the Court is of the opinion that it would not be in the interests of the child to do so, allow—
  - (a) in the case of an application for the placement of a child or young person under the guardianship of a person or persons other than the Chief Executive—the person or persons; or
  - (b) if the child or young person is in the care of an approved carer—the approved carer,

a reasonable opportunity to make representations to the Court in any relevant proceedings.

## **52—Copy of application to be served on parties**

- (1) A copy of an application for an order under section 53, or for the variation, extension or revocation of such an order, must be served personally on—
  - (a) if the child or young person who is the subject of the application is of or above the age of 10 years—the child or young person; and
  - (b) each other party to the application.
- (2) A copy of an application must be endorsed with a notification of the place, date and time for the hearing of the application.
- (3) If it is not reasonably practicable to serve a copy of an application personally on a party, or the whereabouts of such a party cannot, after reasonable enquiries, be ascertained, the copy of the application may be served on that person in accordance with section 168 or in any other manner authorised by the Court.
- (4) The Court must not proceed to hear an application for an order under section 53 unless each party served with the application has had at least 3 business days of notice of the hearing.
- (5) The Court may, for any proper reason, dispense with service under this section, or reduce the period between service and the time for the hearing of the application.

## **Part 2—Orders that can be made by Court**

### **53—Orders that may be made by Court**

- (1) If, on an application under this Act, the Court is satisfied that it is appropriate to do so, the Court may make 1 or more of the following orders in relation to a child or young person:
- (a) an order requiring—
    - (i) the child or young person; or
    - (ii) a parent or guardian of the child or young person; or
    - (iii) any other person who has the care of the child or young person, to enter into a written undertaking (for a specified period not exceeding 12 months) to do a specified thing, or to refrain from doing a specified thing, and, if the Court thinks fit, requiring the child or young person to be under the supervision of the Chief Executive or some other specified person or body during the period of the undertaking;
  - (b) an order authorising or requiring examination and assessment of the child or young person;
  - (c) an order authorising or directing the assessment, by such person as the Court may specify, of a parent, guardian or other person who has, or is responsible for, the care of the child or young person to determine the capacity of that person to care for the child or young person (including, to avoid doubt, a drug and alcohol assessment);
  - (d) in the case of a child or young person who is at risk of being removed from the State for a purpose referred to in section 18(1)(c)—such orders as the Court thinks necessary or appropriate to prevent the child or young person from being so removed, including (without limiting the generality of this paragraph)—
    - (i) an order preventing a specified person from removing the child or young person from the State; or
    - (ii) an order requiring that the child or young person's passport be held by the Court for a period specified in the order or until further order;
  - (e) an order placing the child or young person, for a specified period not exceeding 12 months, under the guardianship of the Chief Executive;
  - (f) an order placing the child or young person, for a specified period not exceeding 12 months, under the guardianship of a specified person or persons (not exceeding 2);
  - (g) an order placing the child or young person under the guardianship of the Chief Executive until they attain 18 years of age;
  - (h) an order placing the child or young person under the guardianship of a specified person or persons (not exceeding 2) until they attain 18 years of age;
  - (i) an order granting custody of the child or young person, for a specified period not exceeding 12 months, to—

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- (i) a parent or guardian of the child or young person; or
    - (ii) a member of the child or young person's family; or
    - (iii) any other person that the Court thinks appropriate in the circumstances of the case;
  - (j) an order granting custody of the child or young person to the Chief Executive;
  - (k) an order directing a person to do 1 or more of the following:
    - (i) to cease or refrain from residing in the same premises as the child or young person;
    - (ii) to refrain from coming within a specified distance of a specified place;
    - (iii) to do any specified thing, or to refrain from doing any specified thing, in order to minimise the risk of harm to the child or young person;
  - (l) an order revoking an instrument of guardianship or a restraining notice;
  - (m) such consequential or ancillary orders as the Court thinks fit, including (without limiting the generality of this paragraph) an order—
    - (i) requiring a person who has guardianship or custody of the child or young person pursuant to an order of the Court to care for the child or young person in a specified way; or
    - (ii) requiring a parent, guardian or other person who has the care of a child or young person to undertake specified courses of instruction, or programmed activities, in order to increase their capacity to care for the child or young person.
- (1a) Without limiting the orders that can be made under subsection (1), the Court may make an order placing a child or young person under the guardianship of a specified parent of the child or young person.
- Note—**
- Such an order would confer guardianship on the specified parent to the exclusion of the rights of any other parent of the child or young person—see section 68.
- (1b) Without limiting the orders that can be made under subsection (1), the Court may, if the Court makes an order placing a child or young person under the guardianship of the Chief Executive or a specified person or persons—
- (a) until the child or young person attains 18 years of age; or
  - (b) such that the child or young person has been under the guardianship of the Chief Executive, or the person or persons, for a period of at least 24 continuous months,
- make a declaration of the name by which the child or young person is to be known.
- (1c) However, the Court may only make a declaration under subsection (1b) if the Court is satisfied that it is in the best interests of the child or young person to do so.

- (1d) If the Court makes a declaration under subsection (1b)—
- (a) the Registrar of the Court must give notice of the declaration to the Registrar of Births, Deaths and Marriages in accordance with any requirements in the regulations; and
  - (b) the Registrar of Births, Deaths and Marriages must, as soon as is reasonably practicable after receiving the notice, register the change of name under section 28(1) of the *Births, Deaths and Marriages Registration Act 1996*.
- (1e) Sections 26, 27 and 28(2) and (3) of the *Births, Deaths and Marriages Registration Act 1996* do not apply in relation to a change of name under this section.
- (1f) Nothing in this section prevents the name of a child or young person being later changed in accordance with the law of the State.
- (2) The Court may make such interim orders in relation to an application under this Act as the Court thinks fit.
- (3) Subject to this section, an order under this section has effect for the period specified in the order.
- (4) An order under this section ceases to have effect when the child or young person to whom the order relates turns 18 years of age.

#### **54—Consent orders**

- (1) The Court may, in proceedings under this Act, make an order under section 53 with the consent of the parties to the proceeding.
- (2) An order may be made without consideration of the matters that the Court must otherwise consider in the proceeding.

#### **55—Variation, revocation or discharge of orders**

- (1) The Court may, on an application by a party to the proceedings, vary or revoke an order under section 53.
- (2) The Court may, on an application by the Chief Executive, discharge an order under section 53.

#### **56—Adjournments**

- (1) All proceedings under this Act must be dealt with expeditiously, with due regard to the degree of urgency of each particular case.
- (2) Without limiting subsection (1), once a trial under this Act commences—
  - (a) it should, as far as is practicable, continue without adjournment until all evidence has been presented; and
  - (b) judgement should be delivered as soon as is practicable after all evidence has been presented.
- (3) The Court may, on an adjournment, make such of the orders it is empowered to make under section 53 as it thinks appropriate (and such an order will have effect for the period of the adjournment).



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- (4) A person who, having been served personally with an order made under this section, contravenes or fails to comply with the order is guilty of an offence.

Maximum penalty: Imprisonment for 2 years.

- (5) Subsection (4) does not apply to a child or young person to whom the order relates.

### **57—Court not bound by rules of evidence**

Subject to this Act, in any proceedings under this Act the Court—

- (a) is not bound by the rules of evidence but may inform itself as it thinks fit; and
- (b) must act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms.

### **58—Standard of proof**

A fact to be proved in proceedings under this Act (other than proceedings for an offence) is to be proved on the balance of probabilities.

### **59—Onus on objector to prove order should not be made**

- (1) This section applies to proceedings on an application to the Court for orders relating to a child or young person who is, pursuant to an order of the Court, under the guardianship, or in the custody, of the Chief Executive or another person or persons.
- (1a) However, this section does not apply to proceedings of a kind prescribed by the regulations.
- (2) If in proceedings to which this section applies a person objects to the making of an order by the Court, the onus is on the person to prove to the Court that the order should not be made.
- (3) However, subsection (2) does not apply where the person objecting to the making of the order is—
  - (a) the Crown; or
  - (b) if the Court is satisfied that the child or young person to whom the proceedings relate is not being unduly influenced by any person to object to the making of the order—the child or young person.

### **60—Orders for costs**

If the Court dismisses an application for an order under section 53 (not being an application for a variation or revocation of an order), the Court may make such order for costs against the Crown in favour of any other party to the proceedings as the Court thinks fit.

### **61—Non-compliance with orders**

A person who, having been personally served with an order made by the Court under section 53, contravenes or fails to comply with the order is guilty of an offence.

Maximum penalty: Imprisonment for 2 years.

## **Part 3—Child or young person to be heard in proceedings**

### **62—Views of child or young person to be heard**

- (1) In any proceedings under this Act, a child or young person to whom the proceedings relate must be given a reasonable opportunity to personally present to the Court their views related to their ongoing care and protection.
- (2) However, subsection (1) does not apply if the Court is satisfied that—
  - (a) the child or young person is not capable of doing so; or
  - (b) to do so would not be in the best interests of the child or young person.
- (3) Subsection (1) applies whether or not the child or young person is represented by a legal practitioner in the proceedings.

## **Part 4—Representation of children and young people**

### **63—Legal practitioners to comply with this section when representing child or young person**

- (1) In acting for a child or young person under this Act, a legal practitioner must, to the extent that it is consistent with the legal practitioner's duty to the court to do so, comply with the following provisions:
  - (a) the legal practitioner must, as far as is reasonably practicable, act in accordance with any instructions given by the child or young person;
  - (b) to the extent that the child or young person has not given, or is not capable of giving, instructions, the legal practitioner must act in accordance with the legal practitioner's own view of the best interests of the child or young person;
  - (c) the legal practitioner must, in a manner appropriate to the capacity of the child or young person to understand, explain to the child or young person the nature of the legal practitioner's role in relation to the child or young person (including any limitations on the legal practitioner's ability to act in accordance with their instructions);
  - (d) in any proceedings before the Court, the legal practitioner must explain to the Court the basis on which submissions are made, having regard to the preceding paragraphs.
- (2) A legal practitioner cannot, in complying with this section, be held to have breached any code of professional etiquette or ethics, or to have departed from any accepted form of professional conduct.

### **64—Limitations on orders that may be made if child or young person unrepresented**

- (1) Subject to this section, the Court must not hear an application under this Act unless—
  - (a) the child or young person to whom the application relates is represented in the proceedings by a legal practitioner; or

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- (b) the Court is satisfied that the child or young person has made an informed and independent decision not to be so represented.
- (2) However, the Court may proceed to hear an application under this Act in the absence of legal representation if the Court is satisfied that the application should be heard as a matter of urgency (however in such a case the Court should make interim orders in respect of the application and then adjourn the proceedings so as to enable the child or young person to be represented by a properly instructed legal practitioner if they so wish).
- (3) The Court may, in interim orders under subsection (2), make any order the Court could have made under section 53 (however the interim orders will only have effect for the period of the adjournment).
- (4) A person who, having been served personally with an interim order made under subsection (2), contravenes or fails to comply with the order is guilty of an offence.  
Maximum penalty: Imprisonment for 2 years.
- (5) Subsection (4) does not apply to a child or young person to whom the interim order relates.

## **Part 5—Miscellaneous**

### **65—Conference of parties**

- (1) If the Court considers it desirable to do so, the Court may, before or during the hearing of proceedings, convene a conference between the parties to the proceedings for the purpose of determining what matters are in dispute, or resolving any matters in dispute.
- (2) A judicial officer of the Court, other than the one who is hearing or is to hear the proceedings, will preside over such a conference.
- (3) Counsel for parties to the proceedings are to be admitted to such a conference.
- (4) Evidence of anything said or done at such a conference is inadmissible, except by consent of all parties to the proceedings, in the proceedings.

### **66—Interested persons may be heard**

In any proceedings under this Act relating to a child or young person, the Court may, on the application of—

- (a) a member of the child or young person's family; or
- (b) a person who has at any time had the care of the child or young person; or
- (c) a person who has counselled, advised or aided the child or young person,

hear submissions the applicant wishes to make in respect of the child or young person, despite the fact that the applicant is not a party to the proceedings.

### **67—Court may refer a matter to a family group conference**

Without limiting the reasons for which the Court may adjourn proceedings under this Act, the Court may adjourn the hearing of an application for the purpose of referring specified matters to a family group conference for consideration and report to the Court by the conference.

## **68—Effect of guardianship order**

If the Court places a child or young person under the guardianship of the Chief Executive or any other person or persons under section 53, the Chief Executive or the other person or persons is, or are, the lawful guardian, or guardians, of the child or young person to the exclusion of the rights of any other person.

# **Chapter 7—Children and young people in care**

## **Part 1—Approved carers**

### **Division 1—Preliminary**

#### **69—Interpretation**

In this Chapter—

*out of home care* means—

- (a) care provided to a child or young person where—
  - (i) the child or young person is under the guardianship or custody of the Chief Executive; and
  - (ii) the care is provided by a person with whom the child or young person is placed pursuant to section 84; and
  - (iii) the care is provided on a residential basis in premises other than the child's home; and
  - (iv) the provider of the care receives, or may receive, payment, or financial or other assistance, in relation to the care provided; or
- (b) any other care of a kind declared by the regulations to be included in the ambit of this definition,

but does not include care of a kind declared by the regulations to be excluded from the ambit of this definition.

#### **70—Chief Executive may establish different categories of approved carers**

- (1) The Chief Executive may establish such categories of approved carer as the Chief Executive from time to time considers appropriate.
- (2) Subject to this Act, the Chief Executive may determine the circumstances in which children or young people are to be placed with a particular category of approved carer.
- (3) To avoid doubt, a determination under this section must be consistent with any relevant policies published under section 19.

### **Division 2—Approval of carers**

#### **71—Out of home care only to be provided by approved carers**

Subject to this Act, a person must not provide out of home care unless the person is an approved carer.

Maximum penalty: \$10 000.

## 72—Approval of carers

- (1) The Chief Executive may, on an application under this section and by notice in writing, approve a person as an approved carer for the purposes of this Act.
- (2) An application for approval—
  - (a) must be made in a manner and form determined by the Chief Executive; and
  - (b) must be accompanied by any information or documents as may be required by the Chief Executive.
- (3) In determining an application for approval, the Chief Executive must—
  - (a) act in accordance with any relevant policies published under section 19; and
  - (b) have regard to—
    - (i) the operation of the *Child Safety (Prohibited Persons) Act 2016*; and
    - (ii) whether the person is willing and able to care for each child or young person placed in their care in a manner consistent with Chapter 2 and this Act generally; and
    - (iii) if relevant, whether the person will, where appropriate—
      - (A) provide opportunities for the child or young person to maintain or recover their identity as a member of their own family and will allow the child or young person reasonable access to their own family; and
      - (B) assist the child or young person to return to their own family; and
    - (iv) any other matter prescribed by the regulations for the purposes of this paragraph,however, the Chief Executive may refuse to approve a person for any reason the Chief Executive thinks fit.
  - (4) The Chief Executive must impose on each approval—
    - (a) a condition setting out the kind of out of home care that can be provided by the approved carer; and
    - (b) the maximum number of children and young people that the approved carer is permitted to have in their care,and may impose such other conditions as the Chief Executive thinks appropriate.
  - (5) The Chief Executive may, by notice in writing, vary, substitute or revoke a condition of an approval.
  - (6) An approved carer must not refuse or fail to comply with a condition of an approval.  
Maximum penalty: \$10 000.

## 73—Ongoing reviews of approved carers

The Chief Executive must, in relation to each approved carer, ensure that—

- (a) regular assessments are undertaken of the provision of care by the approved carer under this Act; and

- (b) relevant courses of training are made available to the approved carer; and
- (c) ongoing support and guidance are provided to the approved carer; and
- (d) proper assessments are made of any requirement of the approved carer for financial or other assistance.

#### **74—Cancellation of approval**

- (1) The Chief Executive may, by notice in writing, cancel the approval of an approved carer if the Chief Executive reasonably suspects that—
  - (a) a child or young person in the care of the approved carer is not being adequately cared for; or
  - (b) the approved carer has contravened a provision of this Act; or
  - (c) the approved carer has refused or failed to comply with a condition of their approval; or
  - (d) the person is a prohibited person under the *Child Safety (Prohibited Persons) Act 2016*; or
  - (e) a working with children check has not been conducted in relation to the person within the preceding 5 years; or
  - (f) it is otherwise appropriate that the approval be cancelled.
- (2) The Chief Executive must (except in relation to a cancellation arising out of the fact that the person is a prohibited person under the *Child Safety (Prohibited Persons) Act 2016*) give an approved carer at least 28 days notice in writing of the Chief Executive's intention to cancel the person's approval.

#### **75—Certain information to be provided to Chief Executive**

- (1) An approved carer must, as soon as is reasonably practicable, advise the Chief Executive if any of the following occurs:
  - (a) there is a change in the approved carer's address;
  - (b) any other person comes to reside with the approved carer;
  - (c) the approved carer, or any person residing with the approved carer, is charged with an offence punishable by imprisonment;
  - (d) the approved carer, or any person residing with the approved carer, becomes a prohibited person under the *Child Safety (Prohibited Persons) Act 2016*.

Maximum penalty: \$10 000.

- (2) Nothing in this section limits any other power of the Chief Executive or a child protection officer to require a person to produce information.

#### **76—Delegation of certain powers to approved carer**

- (1) The Chief Executive may, in relation to a child or young person who is under the guardianship of the Chief Executive, delegate such of the Chief Executive's powers as guardian of the child or young person as the Chief Executive thinks fit to an approved carer in whose care the child or young person is placed.

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- (2) A delegation under this section—
- (a) must be by instrument in writing; and
  - (b) may be absolute or conditional; and
  - (c) does not derogate from the ability of the Chief Executive to act in any matter; and
  - (d) may be varied or revoked at will.
- (3) Nothing in this section limits the Chief Executive's power to delegate a function or power under section 146.

### **Division 3—Temporary placement of child or young person where approved carer not available**

#### **77—Temporary placement of child or young person where approved carer not available**

- (1) Despite a provision of Division 2, but subject to this section, the Chief Executive may place a child or young person who is removed under this Act, or who is in the custody or under the guardianship of the Chief Executive, in the care of a person who is not an approved carer if the Chief Executive is satisfied that—
- (a) it is a matter of urgency that the child or young person be placed in the care of a person other than a person with whom the child or young person is residing; and
  - (b) it is not, in the circumstances, reasonably practicable to place the child or young person in the care of an approved carer; and
  - (c) the risk of harm being caused to the child or young person if they are not placed in the care of a person under this section exceeds the risk that the person will cause harm to the child or young person.
- (2) Despite any other provision of this Act, the placement of a child or young person under subsection (1)—
- (a) must be of a temporary nature (and in any event must not exceed a period of 3 months); and
  - (b) must be brought to an end as soon as it is reasonably practicable to place the child in the care of an approved carer; and
  - (c) must comply with any relevant policy published under section 19.
- (3) If a child or young person is placed in the care of a person under this section—
- (a) section 71 will be taken not to apply to the person;
  - (b) sections 73, 81 and 82 are to be construed as if the person were an approved carer (but, to avoid doubt, the person will not otherwise be taken to be an approved carer).
- (4) The regulations may make further provisions in relation to the placement of a child or young person in the care of a person under this section (including by modifying the operation of a specified provision or provisions of this Act relating to the placement of children and young people).

## **Division 4—Information and involvement in decision-making**

### **78—Interpretation**

In this Division—

**placement agency**, in relation to a child or young person, means—

- (a) if the child or young person was, or is to be, placed with an approved carer by a licensed foster care agency—the licensed foster care agency; or
- (b) if the child or young person was, or is to be, placed with an approved carer other than by a licensed foster care agency—the Chief Executive.

### **79—Approved carers to be provided with certain information prior to placement**

- (1) Subject to this section, if a placement agency is considering placing a child or young person with an approved carer under this Act, the agency must, before so placing the child or young person, provide to each proposed approved carer any information in the possession of the agency that may be relevant to the person's decision whether or not to accept the placement.
- (2) In determining whether to provide particular information to an approved carer, a placement agency must have regard, and may give effect, to any wishes expressed by the child or young person relating to the disclosure of such information.

### **80—Children and young people to be provided with certain information prior to placement**

If a placement agency is considering placing a child or young person with an approved carer under this Act, the agency must, before so placing the child or young person, provide to the child or young person the prescribed information in relation to the approved carer.

### **81—Approved carers to be provided with certain information**

- (1) A placement agency must provide to each approved carer with whom a child or young person is placed any information (including, to avoid doubt, any medical reports) held by the agency that is reasonably necessary to ensure—
  - (a) that the approved carer is able to provide appropriate care to the child or young person in all of their circumstances; and
  - (b) the safety of the approved carer and any other member of the approved carer's household.
- (2) An approved carer who is provided with information under this section, and any other person who becomes aware of the information, must not disclose the information except—
  - (a) to a health professional for a purpose related to the examination, assessment or treatment of the child or young person; or
  - (b) to a child protection officer performing a function under this Act; or
  - (c) to a member of the approved carer's household; or



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- (d) with the consent of the child or young person; or
  - (e) in any other circumstances prescribed by the regulations.

Maximum penalty: \$10 000.

## **82—Approved carers entitled to participate in decision-making process**

- (1) Without limiting Chapter 2, but despite any other provision of this Act or any other Act, an approved carer in whose care a child or young person is placed is entitled to participate in any decision-making process relating to the health, safety, welfare or wellbeing of the child or young person.
- (2) Subsection (1) does not apply in relation to a particular decision if the decision-maker is satisfied that the participation of the approved carer would not be in the best interests of the child or young person.
- (3) This section applies whether the decision is made under this or any other Act or law.

## **83—Non-compliance with Division not to invalidate placement**

A refusal or failure to comply with a requirement under this Division does not, of itself, invalidate a placement of a child or young person with an approved carer.

# **Part 2—Children and young people in Chief Executive's custody or guardianship**

## **84—Chief Executive's powers in relation to children and young people in Chief Executive's custody or guardianship**

- (1) Subject to this Act, the Chief Executive may, in relation to a child or young person who is in the custody, or under the guardianship, of the Chief Executive, from time to time do 1 or more of the following:
  - (a) place the child or young person, or permit the child or young person to remain, in the care of a member of their family;
  - (b) place the child or young person in the care of any other suitable person;
  - (c) remove the child or young person from the care of a person referred to in a preceding paragraph;
  - (d) place the child or young person in a licensed children's residential facility, or a residential facility (not being a training centre) established or licensed under the *Family and Community Services Act 1972*, or in any other suitable place;
  - (e) give such directions relating to the care of a child or young person referred to in a preceding paragraph as the Chief Executive thinks fit;
  - (f) make arrangements for the education of the child or young person;
  - (g) make arrangements (including admission to hospital) for the professional examination, assessment or treatment of the child or young person;
  - (h) make such other provision for the care of the child or young person as the circumstances of the case may require.
- (2) To avoid doubt, nothing in this section limits the operation of section 71 or 77.

- (3) In exercising a power under this section, the Chief Executive—
- (a) must have regard to the principles of intervention, the placement principles and, if relevant, the Aboriginal and Torres Strait Islander Child Placement Principle; and
  - (b) must keep in mind that leaving the child or young person under the guardianship, or in the custody of, the Chief Executive is the least preferred option; and
  - (c) should exercise the power in a manner that is consistent with this Act and any relevant policy published under section 19.
- (4) To the extent that the child or young person is willing and able to do so, a child or young person who is affected by a decision of the Chief Executive under this section should be involved in the decision-making process (and, in particular, their views should be given due weight in making the decision, in accordance with their developmental capacity and the circumstances of the case).
- (5) The Chief Executive must keep each parent and guardian (if the Chief Executive is not the guardian) of a child or young person informed about where the child or young person is placed and how the child or young person is being cared for, unless the Chief Executive is of the opinion that it would not be in the best interests of the child or young person to do so.

## **85—Review of circumstances of prescribed child or young person**

- (1) Subject to this section, the Chief Executive must cause a review of the circumstances of each prescribed child or young person to be carried out—
- (a) if the child or young person, or another person who, in the opinion of the Minister, has a legitimate interest in the affairs of the child or young person, has requested the review—as soon as is reasonably practicable after the request; or
  - (b) in any case—at least once in each 12 month period.
- (2) However, the Chief Executive need not cause a review to be carried out under subsection (1)(a) if—
- (a) a review of the child or young person's circumstances has been carried out within the 12 months preceding the request; and
  - (b) the Chief Executive is of the opinion that the request is frivolous or vexatious, or otherwise not made in good faith.
- (3) A review must comply with the following provisions:
- (a) the review must be carried out by a panel appointed by the Chief Executive for the purpose;
  - (b) in carrying out a review, the panel must—
    - (i) having regard to Chapter 2, consider whether the existing arrangements for the care of the prescribed child or young person—
      - (A) continue to be in the best interests of the child or young person; and

- (B) provide the support necessary to meet the needs of the child or young person; and
  - (ii) notify each person who has care of the prescribed child or young person of the review and give them a reasonable opportunity to make submissions to the panel for the purposes of the review; and
  - (iii) notify the prescribed child or young person of the review and give them a reasonable opportunity to make submissions (in whatever manner the child or young person thinks fit including, if they so wish, in the absence of a person who has care of them) to the panel for the purposes of the review; and
  - (iv) have regard to any submissions made under subparagraph (ii) or (iii); and
  - (v) comply with any other requirement set out in the regulations;
- (c) on completing a review, the panel must prepare and provide to the Chief Executive a written report on the review setting out—
  - (i) the conclusions of the panel in respect of the existing arrangements for the care of the prescribed child or young person; and
  - (ii) if the panel wishes to make recommendations in relation to the care of the prescribed child or young person—those recommendations.
- (4) A child or young person may, in making submissions to a panel in the course of a review, be accompanied by a support person if they so wish.
- (5) The Chief Executive must appoint a member of a panel appointed to carry out a review (being a member who has not previously been involved with the prescribed child or young person's case) to be the presiding member of the panel.
- (6) Subject to this Act, and to any directions of the Chief Executive, a panel may determine its own procedures.
- (7) Except where the Chief Executive is of the opinion that it is inappropriate to do so, the Chief Executive must cause a copy of a report under subsection (3)(c) to be given to—
  - (a) the prescribed child or young person; and
  - (b) each person who has care of the prescribed child or young person,and may give a copy of the report to any other person the Chief Executive thinks fit.
- (8) The regulations may make further provision in relation to reviews under this section (including, to avoid doubt, provisions relating to the appointment of members to a panel).
- (9) In this section—

***prescribed child or young person*** means—

  - (a) a child or young person placed under the guardianship of the Chief Executive until they attain 18 years of age; or
  - (b) a child or young person of a class prescribed by the regulations for the purposes of this definition.

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**86—Direction not to communicate with, be in company of, harbour or conceal child or young person**

- (1) The Chief Executive may, by notice in writing, direct a specified person not to communicate, or attempt to communicate, (whether in any way or in a way specified in the notice) with a specified child or young person who is in the custody, or under the guardianship, of the Chief Executive during the period specified in the notice.
- (1a) The Chief Executive may, by notice in writing, direct a specified person not to be in the company of, or otherwise associate with, a specified child or young person who is in the custody, or under the guardianship, of the Chief Executive during the period specified in the notice.
- (2) The Chief Executive may, by notice in writing, direct a person not to harbour or conceal, or assist another person to harbour or conceal, a specified child or young person who is in the custody, or under the guardianship, of the Chief Executive during the period in the notice.
- (3) However, the Chief Executive may only give a direction under this section if the Chief Executive believes it is reasonably necessary to—
  - (a) prevent harm to the child or young person; or
  - (b) prevent the child or young person from engaging in, or being exposed to, conduct of a criminal nature.

- (4) A person who, without reasonable excuse, refuses or fails to comply with a direction under this section is guilty of an offence.

Maximum penalty:

- (a) for a first offence—Imprisonment for 3 years; or
  - (b) for a second or subsequent offence—Imprisonment for 4 years.
- (4a) Despite section 267 of the *Criminal Law Consolidation Act 1935* or any other Act or law, a child or young person—
  - (a) with whom a person communicates, or attempts to communicate, in contravention of a direction under this section; or
  - (b) in whose company a person is, or with whom a person associates, in contravention of a direction under this section; or
  - (c) who is harboured or concealed in contravention of a direction under this section,

commits no offence in relation to that conduct.

- (5) A notice under this section must be served personally on the person to whom the notice is directed (however, if it is not reasonably practicable to serve a notice personally on a person, or the whereabouts of the person cannot, after reasonable enquiries, be ascertained, the notice may be served on that person in accordance with section 168).
- (6) Despite a provision of the *Evidence Act 1929* or any other Act or law, a child or young person to whom a direction under this section relates is competent, but is not compellable, to give evidence in proceedings relating to a charge of an offence against this section.

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## 87—Offence of harbouring, concealing etc absent child or young person

- (1) A person must not—
- (a) harbour or conceal, or assist another person to harbour or conceal, a child or young person; or
  - (b) prevent, or assist another person to prevent, the return of a child or young person to a State care placement,

if the person knows that the child or young person is absent from a State care placement without lawful authority.

Maximum penalty: Imprisonment for 12 months.

- (2) In this section—

***State care placement***, in relation to a child or young person, means the placement of the child or young person in the care of a person, or in a place, by the Chief Executive pursuant to section 84(1).

## 88—Unlawful taking of child or young person

- (1) This section applies to a child or young person placed in the care of a person under this Act.
- (2) A person who, without lawful excuse—
- (a) induces or encourages a child or young person to whom this section applies to leave a place in which the child or young person has been placed under this Act; or
  - (b) takes a child or young person to whom this section applies from a place in which the child or young person has been placed under this Act; or
  - (c) harbours or conceals a child or young person contemplated by a preceding subsection,

is guilty of an offence.

Maximum penalty: Imprisonment for 12 months.

## Part 3—Transition to long-term guardianship

### 89—Certain approved carers may apply to Chief Executive to seek long-term guardianship order

- (1) An approved carer in whose care a child or young person has been for a period of at least 2 years (or such shorter period as the Chief Executive may determine) (the ***proposed guardian***) may apply to the Chief Executive for an application to be made in accordance with section 91 for a Court order placing the child or young person under the approved carer's guardianship.
- (2) An application under subsection (1)—
- (a) must be made in a manner and form determined by the Chief Executive; and
  - (b) may be made on behalf of a proposed guardian; and
  - (c) must be accompanied by such information and documents as the Chief Executive may reasonably require.

- (3) The Chief Executive must, as soon as is reasonably practicable after receiving an application, cause an assessment to be undertaken as to whether the proposed guardian is suitable to be the guardian of the child or young person to whom the application relates.

## **90—Long-term care plan to be prepared**

- (1) If, following an assessment referred to in section 89(3), the Chief Executive is satisfied that a proposed guardian is suitable to be the guardian of a particular child or young person, the Chief Executive must cause a plan (a *long-term care plan*) to be prepared in respect of the child or young person.
- (2) A long-term care plan must contain the information required by the regulations (and may contain any other information the Chief Executive thinks fit).

## **91—Chief Executive to apply to Court for order to place child or young person under long-term guardianship**

- (1) Subject to this Act, the Chief Executive must, on completion of the preparation of a long-term care plan in respect of a child or young person, apply to the Court for such orders under section 53 as the Chief Executive considers necessary or appropriate to place the child or young person under the long-term guardianship of the proposed guardian.
- (2) An application to the Court under subsection (1) must be made without undue delay.
- (2a) The Chief Executive must cause a copy of the long-term care plan in respect of the child or young person to be provided to the Court in any application under subsection (1).
- (3) The regulations may make further provision in relation to an application under this section (including, to avoid doubt, by prescribing circumstances in which the Chief Executive need not comply with subsection (1)).

## **Part 4—Contact arrangements in respect of children and young people**

### **92—Application of Part**

- (1) This Part applies to the following children and young people:
  - (a) a child or young person who is under the guardianship, or in the custody, of the Chief Executive pursuant to this Act (including, to avoid doubt, a child or young person who is placed in the care of an approved carer);
  - (b) a child or young person who is placed under the guardianship, or in the custody of, a person other than the Chief Executive pursuant to this Act;
  - (c) any other child or young person declared by the regulations to be included in the ambit of this section.
- (2) This Part does not apply to the following children and young people:
  - (a) a child or young person placed under the long-term guardianship of a person following an application under section 91;

- (b) a child or young person placed under the long-term guardianship of a person (other than the Minister) under the *Children's Protection Act 1993*;
- (c) a child or young person of a kind prescribed by the regulations.

### 93—Contact arrangements to be determined by Chief Executive

- (1) For the purposes of this Act, contact arrangements in respect of a child or young person to whom this Part applies are to be determined by the Chief Executive.
- (2) To avoid doubt, the Chief Executive may, for any reason the Chief Executive thinks fit, determine that there is to be no contact between a specified child or young person and a specified person.
- (3) In making a determination under this section, the Chief Executive must have regard to the following provisions:
  - (a) if the Chief Executive is satisfied that a reunification is likely, the primary aim of the contact arrangements should be to establish or maintain attachment relationships between the child or young person and the person or persons with whom the child or young person is to be reunited;
  - (b) if the Chief Executive is not satisfied that a reunification is likely, or is satisfied that a reunification is unlikely, particular consideration must be given to the need to not undermine or compromise the ability of the child or young person to establish or maintain attachment relationships with their guardian or guardians.
- (4) Nothing in this Part authorises or requires contact arrangements to be made in favour of a particular person if, in the opinion of the Chief Executive—
  - (a) there is a significant possibility that a child or young person would be at risk in the course of contact with the person; or
  - (b) such contact arrangements would not be consistent with a provision of Chapter 2; or
  - (c) it would otherwise not be in the child or young person's best interest to have contact with the person.
- (5) A determination under this section—
  - (a) must be by notice in writing; and
  - (b) must set out—
    - (i) the frequency of contact visits in a specified period; and
    - (ii) the duration of each contact visit; and
    - (iii) the venue or venues at which contact visits are to take place; and
    - (iv) the persons who may be present during contact visits; and
    - (v) whether contact visits are to take place under the supervision of a person or persons determined by the Chief Executive,and may make any other provision the Chief Executive thinks appropriate; and

- (c) must comply with any other requirements set out in the regulations for the purposes of this paragraph,

however a failure to comply with this subsection does not, of itself, invalidate a determination.

- (6) The Chief Executive may, from time to time and by notice in writing, vary, substitute or revoke the contact arrangements in respect of a child or young person.
- (7) The Chief Executive must cause a copy of each determination under this section, and any variation, substitution or revocation of the determination, to be included as part of the case plan for the child or young person.
- (8) The regulations may make further provision in respect of contact arrangements (including by prohibiting contact arrangements being made in specified circumstances and prescribing or limiting the kinds of conduct or activities that can be the subject of contact arrangements).

#### **94—Contact Arrangements Review Panel**

- (1) The Minister must, in accordance with the regulations, establish a panel (the ***Contact Arrangements Review Panel***) for the purposes of reviewing contact arrangements under this Part.
- (2) The Contact Arrangements Review Panel has the functions and powers conferred on it by the regulations.
- (3) The regulations may make further provisions in relation to the Contact Arrangements Review Panel (including by limiting the jurisdiction of the Contact Arrangements Review Panel to review matters of a specified kind).

#### **95—Review by Contact Arrangements Review Panel**

- (1) Subject to this Part, the following persons may apply to the Contact Arrangements Review Panel for a review of a determination of the Chief Executive under section 93 in respect of contact arrangements relating to a particular child or young person:
  - (a) the child or young person;
  - (b) a person allowed contact with the child or young person pursuant to the determination;
  - (c) a person who is refused contact with the child or young person pursuant to the determination.
- (2) An application under subsection (1)—
  - (a) must be made within 14 days after the Chief Executive's determination (or such longer period as the Contact Arrangements Review Panel may allow); and
  - (b) must be made in a manner and form determined by the Contact Arrangements Review Panel.
- (3) However, the Contact Arrangements Review Panel may only allow an extension of time under subsection (2)(a) if satisfied that special circumstances exist.



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- (4) The Contact Arrangements Review Panel need not conduct a review under this section if the Contact Arrangements Review Panel believes that the application—
- (a) is frivolous, vexatious, misconceived or lacking in substance; or
  - (b) is being used for an improper purpose; or
  - (c) is otherwise an abuse of process,
- and, in such a case, a further application relating to the same matter may only be made with the permission of the Contact Arrangements Review Panel.
- (5) The Contact Arrangements Review Panel may, on a review under this section—
- (a) affirm the determination that is being reviewed; or
  - (b) vary the determination that is being reviewed; or
  - (c) set aside the determination being reviewed and—
    - (i) substitute its own determination; or
    - (ii) send the matter back to the Chief Executive for determination in accordance with any directions or recommendations that the Contact Arrangements Review Panel considers appropriate.
- (6) The Chief Executive's determination as affirmed, varied or substituted by the Contact Arrangements Review Panel—
- (a) will be taken to be a determination of contact arrangements in respect of the relevant child or young person; and
  - (b) has effect from the time specified by the Contact Arrangements Review Panel.
- (7) A determination that has been affirmed, varied or substituted under this section cannot be the subject of a further review by the Contact Arrangements Review Panel.
- (8) Subject to this Act, the Contact Arrangements Review Panel may determine its own procedures.
- (9) The regulations may make further provision in relation to reviews under this section.

## Part 5—Voluntary custody agreements

### 96—Voluntary custody agreements

- (1) Subject to this section, the parents or guardians of a child or young person and the Chief Executive may enter into an agreement (a **voluntary custody agreement**) under which the Chief Executive will have the custody of the child or young person while the agreement has effect.
- (2) If—
- (a) the whereabouts of a particular parent or guardian of a child or young person cannot, after reasonable enquiries, be ascertained; or
  - (b) a particular parent or guardian of a child or young person has failed to respond within a reasonable period of time to a request that they enter into a voluntary custody agreement; or

- (c) it is not, in all the circumstances of the case, reasonably practicable to request a particular parent or guardian of a child or young person to enter into a voluntary custody agreement,  
the remaining parent or guardian (as the case requires) may enter into a voluntary custody agreement in respect of the child or young person.
- (3) Negotiations for a voluntary custody agreement may be initiated by a parent or guardian of a child or young person, or by a child or young person of or above the age of 16 years.
- (4) A voluntary custody agreement in relation to a child or young person of or above the age of 16 years can only be entered into, or extended, with the consent of the child or young person.
- (5) If the Chief Executive is satisfied that a child or young person under the age of 16 years has a sufficient understanding of the consequences of a voluntary custody agreement, the child or young person must be consulted before a voluntary custody agreement relating to them can be entered into or extended.
- (6) A voluntary custody agreement—
  - (a) must be in writing; and
  - (b) may be terminated at any time—
    - (i) by a parent or guardian who is a party to the agreement; or
    - (ii) by agreement between the parties to the agreement; and
  - (c) will be taken to have been terminated on any order being made under this Act or any other Act or law placing the child or young person under the guardianship or in the custody of a person.
- (7) A termination of a voluntary custody agreement under subsection (6)(b)(i) must be by notice in writing to the Chief Executive.
- (8) If a voluntary custody agreement relates to a child or young person of or above the age of 16 years, the Chief Executive must, if the Chief Executive is satisfied that proper arrangements exist for the care of the child or young person, terminate the agreement on the request of the child or young person.
- (9) Unless the agreement is terminated earlier under this section, a voluntary custody agreement—
  - (a) has effect for the period (not exceeding 3 months) specified in the agreement; and
  - (b) may, on its expiration, be extended by the parties to the agreement (but not so that the agreement will operate for a total period of more than 6 months).

## **Part 6—Foster care agencies**

### **97—Interpretation**

For the purposes of this Part, a reference to the *business of a foster care agency* will be taken to be a reference to the placement of children and young people in the care of approved carers (whether on a commercial basis or otherwise).

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## 98—Foster care agencies to be licensed

A person must not carry on the business of a foster care agency unless the person is the holder of a licence under this Part.

Maximum penalty:

- (a) in the case of a natural person—Imprisonment for 2 years; or
- (b) in the case of a body corporate—\$120 000.

## 99—Licence to carry on business as foster care agency

- (1) The Chief Executive may, on an application under this section and by notice in writing, grant a licence to a person to carry on the business of a foster care agency.
  - (2) An application for a licence—
    - (a) must be made in a manner and form determined by the Chief Executive; and
    - (b) must be accompanied by any information or documents as may be required by the Chief Executive.
  - (3) The Chief Executive must not grant a licence to a person unless satisfied that—
    - (a) the person is a fit and proper person to hold a licence (including by having regard to the qualifications and experience in the field of foster care, or any other related field, of the persons who will be carrying on or managing the business, and of any employees of the business); and
    - (b) the person (or, in the case of a body corporate, each director of the body corporate) is not a prohibited person under the *Child Safety (Prohibited Persons) Act 2016*; and
    - (c) a working with children check has been conducted in relation to the person (or, in the case of a body corporate, in relation to each director of the body corporate) within the preceding 5 years; and
    - (d) the system of management within the agency is appropriate; and
    - (e) the procedures proposed by the agency for the selection, approval, training and support of approved carers are appropriate; and
    - (f) the procedures proposed by the agency for the placement and supervision of children and young people are appropriate,and may refuse to grant a licence for any reason the Chief Executive thinks fit.
  - (4) A licence may be conditional or unconditional.
  - (5) The Chief Executive may, by notice in writing, vary, substitute or revoke a condition of a licence.
  - (6) The holder of a licence under this Part must not refuse or fail to comply with a condition of the licence.
- Maximum penalty:
- (a) in the case of a natural person—Imprisonment for 1 year; or
  - (b) in the case of a body corporate—\$50 000.

- (7) Subject to this Act, a licence remains in force for a period of 12 months from the day on which it was issued, and may be renewed in accordance with the regulations for successive periods of 12 months.

### **100—Cancellation of licence**

- (1) The Chief Executive may, by notice in writing, cancel a licence under this Part if the Chief Executive reasonably suspects that—
- (a) a child or young person placed in the care of an approved carer pursuant to the licence is not being adequately cared for; or
  - (b) the provisions of this Act are not being complied with by the licensed foster care agency to which the licence relates; or
  - (c) the holder of the licence no longer meets a requirement for granting the licence under section 99(3); or
  - (d) the holder of the licence has refused or failed to comply with a condition of the licence; or
  - (e) the holder of the licence (or, if the holder of the licence is a body corporate, a director of the body corporate) is a prohibited person under the *Child Safety (Prohibited Persons) Act 2016*; or
  - (f) a working with children check has been not conducted in relation to the holder of the licence (or, if the holder of the licence is a body corporate, in relation to a director of the body corporate) within the preceding 5 years; or
  - (g) it is otherwise appropriate that the licence be cancelled.
- (2) The Chief Executive must (except in relation to a cancellation for a reason referred to in subsection (1)(d) or (e)) give the holder of a licence under this Part at least 28 days notice in writing of the Chief Executive's intention to cancel the licence.

### **101—Record keeping**

- (1) The holder of a licence under this Part must make such records as may be required by the regulations.

Maximum penalty: \$50 000.

- (2) The holder of a licence under this Part must keep the records referred to in subsection (1) in accordance with the requirements set out in the regulations.

Maximum penalty: \$50 000.

### **102—Ongoing reviews of approved carers by agency**

The holder of a licence under this Part must, in relation to each approved carer in whose care the foster care agency places children and young people pursuant to the licence—

- (a) undertake regular assessments of the provision of care by the approved carer under this Act; and
- (b) assess any requirement of the approved carer for financial or other assistance.

Maximum penalty: \$50 000.

## Part 7—Licensed children's residential facilities

### 103—Interpretation

In this Part—

*children's residential facility* means—

- (a) a place where 3 or more children or young people are, for monetary or other consideration, cared for on a residential basis apart from their parents or guardians; or
- (b) any other place in which children or young people are cared for on a residential basis declared by the regulations to be included in the ambit of this definition,

but does not include—

- (c) the residence of an approved carer in whose care a child or young person is placed under this Act; or
- (d) a residential facility or other centre established by the Minister under the *Family and Community Services Act 1972*; or
- (da) a training centre established under the *Youth Justice Administration Act 2016*; or
- (e) residential premises that are attached to a school or a tertiary education institution, or that are used solely for the purposes of caring for tertiary students; or
- (f) any other facility or place, or class of facility or place, declared by the regulations not to be included in the ambit of this definition.

### 104—Children's residential facilities to be licensed

A person must not operate a children's residential facility unless the person is the holder of a licence under this Part in respect of the facility.

Maximum penalty:

- (a) in the case of a natural person—Imprisonment for 2 years; or
- (b) in the case of a body corporate—\$120 000.

### 105—Licence to operate children's residential facility

- (1) The Chief Executive may, on an application under this section and by notice in writing, grant a licence to a person to operate a children's residential facility.
- (2) An application for a licence—
  - (a) must be made in a manner and form determined by the Chief Executive; and
  - (b) must be accompanied by such information or documents as may be reasonably required by the Chief Executive.

- (3) The Chief Executive must not grant a licence to a person unless satisfied that—
- (a) the person is a fit and proper person to hold a licence (including by having regard to the suitability, qualifications and experience of the persons who will be operating the children's residential facility and of any persons who will be employed in the facility); and
  - (b) the person (or, in the case of a body corporate, each director of the body corporate) is not a prohibited person under the *Child Safety (Prohibited Persons) Act 2016*; and
  - (c) a working with children check has been conducted in relation to the person (or, in the case of a body corporate, in relation to each director of the body corporate) within the preceding 5 years; and
  - (d) the premises proposed to be used as a children's residential facility are suitable for that purpose; and
  - (e) the system of management within the children's residential facility is appropriate.
- (4) The Chief Executive must impose on each licence a condition setting out the maximum number (not exceeding the prescribed number) of children and young people that may reside in the licensed children's residential facility at any time (and may impose such other conditions as the Chief Executive thinks appropriate).
- (5) The Chief Executive may, by notice in writing, vary, substitute or revoke a condition of a licence.
- (6) The holder of a licence under this Part must not refuse or fail to comply with a condition of the licence.

Maximum penalty:

- (a) in the case of a natural person—Imprisonment for 1 year; or
  - (b) in the case of a body corporate—\$50 000.
- (7) Subject to this Act, a licence remains in force for the period specified in the licence (not exceeding 3 years) and may be renewed in accordance with the regulations.
- (8) In this section—

***prescribed number*** means—

- (a) if the regulations prescribe a number for the purposes of this definition—that number; or
- (b) if the regulations do not prescribe a number for the purposes of this definition—4.

## **106—Cancellation of licence**

- (1) The Chief Executive may, by notice in writing, cancel a licence under this Part if the Chief Executive reasonably suspects that—
- (a) a child or young person in the licensed children's residential facility is not being adequately cared for; or
  - (b) the provisions of this Act are not being complied with in respect of the licensed children's residential facility to which the licence relates; or

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- (c) the holder of the licence has refused or failed to comply with a condition of the licence; or
  - (d) the holder of the licence (or, if the holder of the licence is a body corporate, a director of the body corporate) is a prohibited person under the *Child Safety (Prohibited Persons) Act 2016*; or
  - (e) a working with children check has not been conducted in relation to the holder of the licence (or, if the holder of the licence is a body corporate, in relation to a director of the body corporate) within the preceding 5 years; or
  - (f) it is otherwise appropriate that the licence be cancelled.
- (2) The Chief Executive must (except in relation to a cancellation for a reason referred to in subsection (1)(c) or (d)) give the holder of a licence at least 28 days notice in writing of the Chief Executive's intention to cancel the licence.

### **107—Persons not to be employed in licensed children's residential facility unless they have been assessed**

- (1) A person must not be employed in a licensed children's residential facility unless the person has undergone a psychological or psychometric assessment of a kind determined by the Chief Executive for the purposes of this section.
- (2) However, subsection (1) does not apply to the employment of a person or person of a class, or the employment of a person in circumstances, prescribed by the regulations for the purposes of this subsection.
- (3) A person who is employed in a children's residential facility in contravention of subsection (1) is guilty of an offence.

Maximum penalty:

- (a) for a first or second offence—\$20 000;
  - (b) for a third or subsequent offence—\$50 000 or imprisonment for 1 year.
- (4) A person who employs, or continues to employ, a person in a licensed children's residential facility in contravention of subsection (1) is guilty of an offence.

Maximum penalty:

- (a) in the case of a natural person—\$50 000 or imprisonment for 1 year; or
  - (b) in the case of a body corporate—\$120 000.
- (5) For the purposes of this section, a reference to a person being *employed* will be taken to include a reference to a person who—
- (a) is a self-employed person; or
  - (b) carries out work under a contract for services; or
  - (c) carries out work as a minister of religion or as part of the duties of a religious or spiritual vocation; or
  - (d) undertakes practical training as part of an educational or vocational course; or
  - (e) carries out work as a volunteer; or
  - (f) performs unpaid community work in accordance with an order of a court,
- and a reference to *employ* is to be construed accordingly.

## **108—Record keeping**

- (1) The holder of a licence under this Part must make such records as may be required by the regulations.

Maximum penalty: \$50 000.

- (2) The holder of a licence under this Part must keep the records referred to in subsection (1) in accordance with the requirements set out in the regulations.

Maximum penalty: \$50 000.

## **109—Child protection officer may inspect licensed children's residential facility**

- (1) Without limiting any other provision of this Act, a child protection officer may, at any reasonable time, enter and inspect a licensed children's residential facility.

- (2) A child protection officer may give to the holder of a licence in respect of a licensed children's residential facility, or any person present at the facility, such directions as the child protection officer thinks necessary or appropriate to enable the child protection officer to properly inspect the facility.

- (3) A person must not refuse or fail to comply with a direction under subsection (2).

Maximum penalty:

- (a) in the case of a natural person—Imprisonment for 1 year; or
- (b) in the case of a body corporate—\$50 000.

- (4) To avoid doubt, a child protection officer need not suspect that a child or young person residing in the licensed children's residential facility is at risk, or that the holder of a licence in respect of the facility has contravened this Act, in order to exercise a power under this section.

## **110—Chief Executive to hear complaints**

- (1) A child or young person being cared for in a prescribed facility, or a parent or guardian of such a child or young person, may make a complaint to the Chief Executive with respect to the care that the child or young person is receiving in the facility.

- (2) A complaint under subsection (1) must be made in a manner and form determined by the Chief Executive.

- (3) The Chief Executive must cause a complaint made under this section to be investigated in accordance with the regulations.

- (4) In this section—

***prescribed facility*** means—

- (a) a licensed children's residential facility; and
- (b) any other facility prescribed by the regulations for the purposes of this paragraph.



## Part 7A—Assessment of employees in other residential facilities

### 110A—Persons not to be employed in certain residential facilities unless assessed

- (1) A person must not be employed in a residential facility established by the Minister under section 36 of the *Family and Community Services Act 1972* unless the person has undergone a psychological or psychometric assessment of a kind determined by the Chief Executive for the purposes of this section.
- (2) However, subsection (1) does not apply to the employment of a person or a person of a class, or the employment of a person in circumstances, prescribed by the regulations for the purposes of this subsection.
- (3) A person who is employed in a residential facility in contravention of subsection (1) is guilty of an offence.

Maximum penalty:

- (a) for a first or second offence—\$20 000;
  - (b) for a third or subsequent offence—\$50 000 or imprisonment for 1 year.
- (4) A person who employs, or continues to employ, a person in a residential facility in contravention of subsection (1) is guilty of an offence.

Maximum penalty:

- (a) in the case of a natural person—\$50 000 or imprisonment for 1 year; or
  - (b) in the case of a body corporate—\$120 000.
- (5) For the purposes of this section, a reference to a person being *employed* will be taken to include a reference to a person who—
  - (a) is a self-employed person; or
  - (b) carries out work under a contract for services; or
  - (c) carries out work as a minister of religion or as part of the duties of a religious or spiritual vocation; or
  - (d) undertakes practical training as part of an educational or vocational course; or
  - (e) carries out work as a volunteer; or
  - (f) performs unpaid community work in accordance with an order of a court,and a reference to *employ* is to be construed accordingly.

## Part 8—Provision of assistance to care leavers

### 111—Chief Executive to assist persons leaving care

- (1) The Chief Executive must, in relation to each child or young person who is lawfully leaving the care of a person in whose guardianship or custody they have been placed under this Act, and in consultation with the child or young person, prepare a plan setting out steps to assist the child or young person in making their transition from care.

- (2) The Department, and any other State authority specified by the Chief Executive in a plan under this section, is to take reasonable steps to implement the plan.
- (3) However, a plan under this section does not create legally enforceable rights or entitlements.

### **112—Minister to arrange assistance for eligible care leavers**

- (1) The Minister must cause such assistance as the Minister thinks appropriate to be offered to each eligible care leaver for the purposes of making their transition from care as easy as is reasonably practicable.
- (2) Without limiting the kinds of assistance that may be offered to an eligible care leaver, such assistance may include 1 or more of the following:
  - (a) the provision of information about Government and other resources and services available to the eligible care leaver;
  - (b) the provision of education and training services;
  - (c) assistance in finding accommodation;
  - (d) assistance in finding employment;
  - (e) assistance in accessing legal advice and health services;
  - (f) counselling and support services.
- (3) If an eligible care leaver accepts an offer of assistance, the Minister must take reasonable steps to provide such assistance, or cause such assistance to be provided, to the eligible care leaver.
- (4) To avoid doubt, assistance may, at the discretion of the Minister, be provided for a specified period or until a person ceases to be an eligible care leaver.
- (5) However, an offer of assistance under this section does not create legally enforceable rights or entitlements.
- (6) In this section—

***eligible care leaver***—a person is an eligible care leaver if the person—

  - (a) is more than 16, but less than 26, years of age; and
  - (b) was, at any stage, under the guardianship or custody of the Chief Executive or another person pursuant to this Act or the *Children's Protection Act 1993* for a period of 6 months or more (or such lesser period as may be allowed by the Minister).

## **Part 9—Miscellaneous**

### **112A—Chief Executive may provide assistance to persons caring for children and young people**

The Chief Executive may grant to an approved carer or other person in whose care a child or young person has been placed under this Act or the *Family Relationships Act 1975* such financial or other assistance in relation to the care and maintenance of the child or young person as may be determined by the Chief Executive.

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### **113—Agreement for funeral arrangements of children and young people in care**

- (1) This section applies to a child or young person who—
  - (a) is under the guardianship or custody of the Chief Executive or another person pursuant to this Act; or
  - (b) is otherwise placed in the care of an approved carer pursuant to this Act.
- (2) If—
  - (a) a child or young person to whom this section applies dies; and
  - (b) the person in whose care the child or young person was at the time of their death and the person who is responsible for arranging the funeral and the disposal of the deceased's remains disagree about those arrangements,the Chief Executive may, at the request of 1 or both of the parties, endeavour to assist the parties to reach an agreement about those arrangements.

## **Chapter 8—Providing safe environments for children and young people**

### **114—Certain organisations must have policies and procedures to ensure safe environments provided**

- (1) A prescribed organisation must, in accordance with any requirement set out in the regulations, prepare or adopt policies and procedures of the following kinds:
  - (a) policies and procedures that ensure that the requirements under Chapter 5 Part 1 are satisfied;
  - (b) policies and procedures designed to ensure that safe environments for children and young people are established and maintained in respect of the services or activities provided or undertaken by the prescribed organisation;
  - (c) such other policies and procedures as may be required by the regulations for the purposes of this section.
- (2) A prescribed organisation may, in accordance with any requirement set out in the regulations, from time to time vary or substitute a policy or guideline required under subsection (1).
- (3) A prescribed organisation must, as soon as is reasonably practicable after preparing or adopting, or varying or substituting, the policies and procedures required under subsection (1), provide to the Chief Executive a statement—
  - (a) certifying that the prescribed organisation has in place policies and procedures as required under that subsection; and
  - (b) setting out any information required by the regulations for the purposes of this paragraph.
- (4) A statement required under subsection (3)—
  - (a) must be provided in a manner and form determined by the Chief Executive; and

- (b) must, if the Chief Executive so requires, be accompanied by a copy of each policy and procedure prepared or adopted under subsection (1) as varied or substituted from time to time; and
  - (c) must comply with any other requirements set out in the regulations for the purposes of this paragraph.
- (5) A prescribed organisation must, at the request of a person in relation to whom the prescribed organisation provides, or is to provide, a service, produce for inspection a copy of the policies and procedures prepared or adopted under subsection (1), as in force at the relevant time.
- (6) A prescribed organisation must not refuse or fail to comply with a requirement under this section.  
Maximum penalty: \$10 000.
- (7) In this section—  
*prescribed organisation* means—
  - (a) State authorities; or
  - (b) persons or bodies who provide a service or undertake an activity that constitutes child-related work under the *Child Safety (Prohibited Persons) Act 2016*; or
  - (c) any other person or body, or person or body of a class, declared by the regulations to be included in the ambit of this paragraph.

## **115—Policies and procedures to be reviewed**

- (1) A prescribed organisation must, in accordance with any requirement set out in the regulations, review the policies and procedures prepared or adopted under section 114(1) at least once in every 5 year period.  
Maximum penalty: \$10 000.
- (2) In this section—  
*prescribed organisation* has the same meaning as in section 114.

## **Chapter 9—Child and Young Person's Visitor scheme**

### **116—Interpretation**

In this Chapter—

*prescribed facility* means—

- (a) a licensed children's residential facility; and
- (b) any other facility prescribed by the regulations.

### **117—Child and Young Person's Visitor**

- (1) The Minister may establish a Child and Young Person's Visitor.
- (2) The Child and Young Person's Visitor is to be independent of direction or control by the Crown or any Minister or officer of the Crown.

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- (3) The regulations may make further provision in relation to the establishment and appointment of the Child and Young Person's Visitor.

## **118—Functions and powers**

- (1) The functions of the Child and Young Person's Visitor are—
- (a) to conduct visits to, and inspections of, prescribed facilities as required or authorised under this Chapter; and
  - (b) to communicate with children and young people resident in prescribed facilities; and
  - (c) to promote the best interests of the children and young people resident in prescribed facilities; and
  - (d) to act as an advocate for children and young people resident in prescribed facilities and to promote the proper resolution of issues relating to their care; and
  - (e) to inquire into, and provide advice to the Minister relating to, any systemic reform necessary to improve—
    - (i) the quality of care, treatment or control of children and young people resident in prescribed facilities; or
    - (ii) the management of prescribed facilities; and
  - (f) any other functions assigned to the Child and Young Person's Visitor under this or any other Act.
- (2) In performing functions under this Act, the Child and Young Person's Visitor—
- (a) must encourage children and young people resident in prescribed facilities to express their own views and give proper weight to those views; and
  - (b) must pay particular attention to the needs and circumstances of—
    - (i) Aboriginal or Torres Strait Islander children or young people; or
    - (ii) children and young people who have a physical, psychological or intellectual disability; and
  - (c) may receive and consider any information, reports and materials that may be relevant to performing the Child and Young Person's Visitor's functions.
- (3) On a visit to a prescribed facility under this Chapter, the Child and Young Person's Visitor may—
- (a) inspect any part of the prescribed facility; and
  - (b) make inquiries about the care, treatment and control of each child or young person resident in the prescribed facility; and
  - (c) take such other action as may be reasonably required to perform the Child and Young Person's Visitor's functions under this Act.
- (4) Subject to subsection (5), a visit to a prescribed facility—
- (a) may be made by the Child and Young Person's Visitor on the Child and Young Person's Visitor's own initiative or at the request of a child or young person who is or was resident in the prescribed facility; and

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- (b) may be made at any reasonable time; and
    - (c) may be of such duration as the Child and Young Person's Visitor thinks appropriate.
  - (5) The Child and Young Person's Visitor must—
    - (a) except in exceptional circumstances, give the person in charge of a prescribed facility reasonable notice of a visit; and
    - (b) take steps to ensure that the safe administration of the prescribed facility is not compromised by a visit; and
    - (c) obey the reasonable directions of the person in charge of the prescribed facility in relation to any genuine concerns the person may have in connection with the safe management of the prescribed facility.
  - (6) If the person in charge of a prescribed facility refuses to allow the Child and Young Person's Visitor to visit the prescribed facility because of genuine concerns the person may have in connection with the safety of the Child and Young Person's Visitor (whether related to a security risk, a health related risk or some other reason), the person must, as soon as reasonably practicable, provide the Child and Young Person's Visitor with written advice as to why entry to the prescribed facility was refused.
  - (7) The Child and Young Person's Visitor has such other powers as may be necessary or expedient for, or incidental to, the performance of the Child and Young Person's Visitor's functions.

### **119—Reporting obligations**

- (1) The Child and Young Person's Visitor must, on or before 30 September in every year, prepare and provide to the Minister a report on the work of the Child and Young Person's Visitor during the financial year ending on the preceding 30 June.
- (2) The Minister must, within 6 sitting days after receiving a report under subsection (1), have copies of the report laid before both Houses of Parliament.
- (3) The Child and Young Person's Visitor may, at any time, prepare a special report to the Minister on any matter arising out of the performance of the Child and Young Person's Visitor's functions.
- (4) The Minister must, within 6 sitting days after receiving a special report, have copies of the report laid before both Houses of Parliament.

## Chapter 10—Transfer of certain orders and proceedings between South Australia and other jurisdictions

### Part 1—Preliminary

#### 120—Purpose of Chapter

The purpose of this Chapter is to provide for the transfer of certain child protection orders and proceedings between South Australia and another State or a Territory of Australia or between South Australia and New Zealand—

- (a) so that children who are in need of protection may be protected despite moving from one jurisdiction to another; and
- (b) so as to facilitate the timely and expeditious determination of court proceedings relating to the protection of a child.

#### 121—Interpretation

- (1) In this Chapter—

***appropriate court***, in relation to a participating State, means the court in that State that has jurisdiction to hear and determine child protection proceedings at first instance;

***child protection order*** means an order (not being an interim order (see definition) or any other order made on an interim basis) made under a child welfare law that gives—

- (a) a minister of the Crown; or
- (b) a person who is the chief executive of a government department or statutory authority or otherwise holds an office or position in, or is employed in, a government department or statutory authority; or
- (c) the chief executive of a licensed children's residential facility or any other organisation or its chief executive,

responsibility in relation to the guardianship, custody or supervision of the child, however that responsibility is described;

***child protection proceeding*** means any proceeding brought in a court under a child welfare law for—

- (a) the making of a finding that a child is in need of protection or any other finding (however described) the making of which is a prerequisite under the child welfare law to the exercise by the court of a power to make a child protection order; or
- (b) the making of a child protection order or an interim order or for the variation or revocation or the extension of the period of such an order;

***child welfare law*** means—

- (a) this Act; or
- (ab) the *Children's Protection Act 1993*; or
- (b) a law of another State that is declared by proclamation under subsection (2) to be a child welfare law for the purposes of this Chapter;

***interim order*** means—

- (a) an order made under section 133; or
- (b) an equivalent order made under an interstate law;

***interstate law*** means a law of another State that is declared by proclamation under subsection (3) to be an interstate law for the purposes of this Chapter;

***interstate officer***, in relation to a State other than South Australia, means—

- (a) the holder of an office or position that is declared by proclamation under subsection (4) to be an office or position the holder of which is the interstate officer in relation to that State for the purposes of this Chapter; or
- (b) the person holding the office or position to which there is given by or under the child welfare law of that State principal responsibility for the protection of children in that State;

***participating State*** means a State in which an interstate law is in force;

***Registrar*** means the Registrar of the Youth Court;

***sending State*** means the State from which a child protection order or proceeding is transferred under this Chapter or an interstate law;

***State*** means—

- (a) a State or a Territory of Australia; or
  - (b) New Zealand.
- (2) The Governor may, by proclamation, declare a law of a State (other than South Australia) to be a child welfare law for the purposes of this Chapter if satisfied that the law substantially corresponds to this Act.
  - (3) The Governor may, by proclamation, declare a law of a State (other than South Australia) to be an interstate law for the purposes of this Chapter if satisfied that the law substantially corresponds to this Chapter.
  - (4) The Governor may, by proclamation, declare an office or position in a State (other than South Australia) to be an office or position the holder of which is the interstate officer in relation to that State for the purposes of this Act.
  - (5) The Governor may, by proclamation, vary or revoke a proclamation made under this section.
  - (6) For the purposes of this Chapter, a decision or order is not subject to review or appeal if—
    - (a) the time for instituting a review of or appeal against the decision or order has expired; or
    - (b) where a review or appeal was instituted, the decision or order was confirmed on the review or appeal or the review or appeal was discontinued.
  - (7) The following persons are parties to proceedings before the Court on an application for the transfer of a child protection order or a child protection proceeding under this Chapter:
    - (a) the applicant;



- (b) the child the subject of the application;
- (c) each parent and guardian of the child.

## **Part 2—Administrative transfer of child protection order**

### **122—When Chief Executive may transfer order**

- (1) The Chief Executive may transfer a child protection order (the *home order*) to a participating State if—
  - (a) in the Chief Executive's opinion a child protection order to the same or a similar effect as the home order could be made under the child welfare law of that State; and
  - (b) the home order is not subject to an appeal; and
  - (c) the relevant interstate officer has consented in writing to the transfer and to any proposed variation of the terms of the order pursuant to subsection (3); and
  - (d) the persons whose consent to the transfer is required under section 123 have so consented.
- (2) In determining whether a child protection order to the same or a similar effect as the home order could be made under the child welfare law of the participating State, the Chief Executive must not take into account the period for which it is possible under that law for such an order to be in force.
- (3) For the purposes of transferring a child protection order to a participating State, the Chief Executive may vary the terms of the order so that it makes provision for any matter in terms that could be included in a child protection order of that type made in the participating State.
- (4) The Chief Executive must specify in the transferred order the period for which it is to remain in force.
- (5) That period must be—
  - (a) if the same period as that of the home order is possible for the transferred order under the child welfare law of the participating State commencing on and including the date of the registration of the order in that State—that period; or
  - (b) in any other case—as similar a period as is possible under that law but in no case longer than the period of the home order.

### **123—Persons whose consent is required**

- (1) For the purposes of section 122(1)(d)—
  - (a) if the home order grants custody (but not guardianship) of the child to the Minister or the Chief Executive, consent to the transfer is required from the child's parents;

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- (b) if the home order grants custody of the child to the chief executive of a licensed children's residential facility or to any other organisation or its chief executive, consent to the transfer is required from the child's parents and the chief executive of the facility or organisation;
    - (c) if the home order requires the child to be under the supervision of the Chief Executive or some other specified person or authority, consent to the transfer is required from the child's parents and guardians;
    - (d) if the home order or any ancillary order grants a person access to the child, consent to the transfer is required from that person.
  - (2) However, if a person whose consent would normally be required is residing in, or is intending to reside in, the relevant participating State, the consent of that person to the transfer is not required.
  - (3) Despite subsection (1), if a person whose consent is required—
    - (a) cannot, after reasonable enquiries, be found; or
    - (b) fails to respond within a reasonable period of time to a request for consent,the consent of that person to the transfer is not required.

#### **124—Chief Executive to have regard to certain matters**

In determining whether to transfer a child protection order to a participating State under this Part, the Chief Executive must have regard to—

- (a) any sentencing order (other than a fine) in force in respect of the child, or criminal proceeding pending against the child in a court, of which the Chief Executive is aware; and
- (b) whether the Chief Executive or an interstate officer is in the better position to exercise the powers and responsibilities under the order; and
- (c) the desirability of the order being an order under the child welfare law of the State where the child resides.

#### **125—Notification to child, parents and guardians**

- (1) If the Chief Executive has decided to transfer a child protection order to a participating State under this Part, the Chief Executive must cause—
  - (a) the parents and guardians of the child who is the subject of the order and any other person who is granted access to the child under the order (or an ancillary order); and
  - (b) if the child is of or above the age of 10 years, the child,to be served with a notice of the decision as soon as practicable but in any event no later than 3 business days after making it.
- (2) A notice under subsection (1) must, in addition to providing notice of the decision, give particulars of the rights of review of the decision and of how and when an application for such a review may be made.
- (3) The notice of the decision must be served personally, but—
  - (a) if it is not practicable to serve the notice personally on a person (not being the child); or

- (b) if the whereabouts of such a person cannot, after reasonable enquiries, be ascertained,

the notice of the decision may be served on that person by post addressed to the person at their last known place of residence or employment or in any other manner authorised by the Court.

### **126—Review of decision may be sought**

- (1) Any person who is required to be notified of a decision of the Chief Executive to transfer a child protection order to a participating State under this Part may apply to the Court for a review of the decision.
- (2) An application for review must be lodged with the Court and served on the Chief Executive within 13 business days after the day on which the decision is made.
- (3) Subject to subsection (2), an application for review must be brought in accordance with the rules of the Court.
- (4) The lodgment and service of an application in accordance with subsections (2) and (3) operate as a stay of the decision pending the determination of the review.
- (5) A review is to be conducted by way of a hearing and for that purpose the Court may receive evidence, including, if the Court so determines, evidence given by affidavit.
- (6) The Court must, on a review, give due weight to the decision being reviewed and the reasons for it and not depart from the decision except for cogent reasons.
- (7) On a review, the Court may—
  - (a) affirm the decision the subject of the review; or
  - (b) rescind the decision; or
  - (c) rescind the decision and substitute a decision that the Court considers appropriate; or
  - (d) remit the subject matter of the review to the Chief Executive for reconsideration in accordance with any directions or recommendations of the Court,and may make any ancillary or consequential order that the Court considers appropriate.
- (8) Each party to the proceedings is to bear their own costs unless the Court considers that some other order should be made to do justice between the parties.

## **Part 3—Judicial transfer of child protection order**

### **127—When Court may make order under this Part**

The Court may make an order under this Part transferring a child protection order to a participating State if—

- (a) an application for the making of the order is made by the Chief Executive; and
- (b) the child protection order is not subject to an appeal; and

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- (c) the relevant interstate officer has consented in writing to the transfer and to the proposed terms of the order.

### **128—Type of order**

- (1) If the Court determines to transfer a child protection order (the *home order*) under this Part, the Court may, for the purpose of the transfer, vary the terms of the order so that it makes provision for any matter in terms that could be included in a child protection order made under the child welfare law of the participating State and that the Court believes to be—
- (a) to the same or a similar effect as the terms of the home order; or
  - (b) otherwise in the best interests of the child.
- (2) In determining whether an order to the same or a similar effect as the home order could be made under the child welfare law of the participating State, the Court must not take into account the period for which it is possible under that law for such an order to be in force.
- (3) The Court must specify in the transferred order the period for which it is to remain in force.
- (4) The period must be any period that is possible for a child protection order of the type of the transferred order under the child welfare law of the participating State commencing from the date of its registration in that State and that the Court considers appropriate.

### **129—Court to have regard to certain matters**

In determining an application under this Part, the Court must have regard to—

- (a) whether the Chief Executive or an interstate officer is in the better position to exercise the powers and responsibilities under a child protection order relating to the child; and
- (b) the desirability of a child protection order being an order under the child welfare law of the State where the child resides; and
- (c) any information given to the Court by the Chief Executive under section 130.

### **130—Duty of Chief Executive to inform the Court of certain matters**

If the Chief Executive is aware that—

- (a) a sentencing order, other than a fine, is in force in respect of the child who is the subject of an application under this Part; or
- (b) a criminal proceeding is pending against that child in any court,

the Chief Executive must, as soon as possible, inform the Court of that fact and of the details of the sentencing order or pending criminal proceeding.

## **Part 4—Transfer of child protection proceedings**

### **131—When Court may make order under this Part**

- (1) The Court may make an order under this Part transferring a child protection proceeding pending in the Court to the appropriate court in a participating State if—
  - (a) an application for the order is made by the Chief Executive; and
  - (b) the relevant interstate officer has consented in writing to the transfer.
- (2) The proceeding is discontinued in the Court on the registration of the order in the appropriate court in the participating State in accordance with the interstate law.

### **132—Court to have regard to certain matters**

- (1) In determining an application to transfer a proceeding under this Part, the Court must have regard to—
  - (a) whether any other proceedings relating to the child are pending, or have previously been heard and determined, under the child welfare law in the participating State; and
  - (b) the place where any of the matters giving rise to the proceeding in the Court arose; and
  - (c) the place of residence, or likely place of residence, of the child, their parents or guardians and any other people who are significant to the child; and
  - (d) whether the Chief Executive or an interstate officer is in the better position to exercise the powers and responsibilities under a child protection order relating to the child; and
  - (e) the desirability of a child protection order being an order under the child welfare law of the State where the child resides; and
  - (f) any information given to the Court by the Chief Executive under subsection (2).
- (2) If the Chief Executive is aware that—
  - (a) a sentencing order, other than a fine, is in force in respect of the child who is the subject of an application under this Part; or
  - (b) a criminal proceeding is pending against that child in any court,the Chief Executive must, as soon as possible, inform the Court of that fact and of the details of the sentencing order or pending criminal proceeding.

### **133—Interim order**

- (1) If the Court makes an order transferring a proceeding under this Part, the Court may also make an interim order.
- (2) An interim order—
  - (a) may make provision for the guardianship, custody or care of the child in such terms as the Court considers to be appropriate; and

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- (b) may give responsibility for the supervision of the child to the interstate officer in the participating State or any other person in that State to whom responsibility for the supervision of a child could be given under the child welfare law of that State; and
    - (c) remains in force for the period (not exceeding 30 days) specified in the order.
  - (3) The appropriate court in the participating State may vary or revoke, or extend the period of, an interim order in accordance with the relevant interstate law.

## **Part 5—Registration of interstate orders and proceedings**

### **134—Filing and registration of interstate documents**

- (1) Subject to subsection (3), the Chief Executive must, as soon as possible, file in the Court for registration a copy of a child protection order transferred to South Australia under an interstate law.
- (2) Subject to subsection (3), the Chief Executive must, as soon as possible, file in the Court for registration a copy of an order under an interstate law to transfer a child protection proceeding to South Australia, together with a copy of any interim order made at the same time.
- (3) The Chief Executive must not file in the Court a copy of a child protection order or of an order to transfer a child protection proceeding if—
  - (a) the decision or order to transfer the child protection order or the order to transfer the child protection proceeding (as the case requires) is subject to review or appeal or a stay; or
  - (b) the time for instituting a review or appeal has not expired,under the interstate law.

### **135—Notification by Registrar**

The Registrar must immediately notify the appropriate officer of the appropriate court in the sending State and the interstate officer in that State of—

- (a) the registration of any document filed under section 134; or
- (b) the revocation under section 137 of the registration of any document so filed.

### **136—Effect of registration**

- (1) A child protection order registered in the Court under this Part will be taken for all purposes (except for the purposes of appeal) to be a care and protection order of the relevant type made by the Court on the day on which it is registered and it may be varied or revoked, or the period of the order extended, or a breach of it dealt with, under this Act accordingly.
- (2) An interim order registered in the Court under this Part will be taken for all purposes (except for the purposes of appeal) to be an order made by the Court under this Act on the day on which it is registered and it may be varied, or the period of the order extended, or a breach of it dealt with, accordingly.

- (3) If an order under an interstate law to transfer a child protection proceeding to South Australia is registered under this Part, the proceeding will be taken to have been commenced in the Court on the day on which the order is so registered.

### **137—Revocation of registration**

- (1) An application for the revocation of the registration of any document filed under section 134 may be made to the Court by—
- (a) the Chief Executive; or
  - (b) the child concerned; or
  - (c) a parent or guardian of the child concerned; or
  - (d) a party to the proceeding in the appropriate court in the sending State in which the decision to transfer the order or proceeding (as the case requires) was made.
- (2) The Registrar must cause a copy of an application under subsection (1) to be given personally or by post as soon as possible to—
- (a) the relevant interstate officer; and
  - (b) each person (other than the applicant) by whom such an application could have been made.
- (3) The Court may only revoke the registration of a document filed under section 134 if satisfied that it was inappropriately registered because—
- (a) the decision or order to transfer the child protection order or the order to transfer the child protection proceeding (as the case requires) was at the time of registration subject to review or appeal or a stay; or
  - (b) the time for instituting a review or appeal had not expired,
- under the relevant interstate law.
- (4) The Registrar must cause any document filed in the Court under section 134 to be sent to the appropriate court in the sending State if the registration of the document is revoked under this section.
- (5) The revocation of the registration of a document does not prevent the later re-registration of that document.

## **Part 6—Miscellaneous**

### **138—Appeals**

- (1) An appeal against a final order of the Court—
- (a) if made in a proceeding to transfer a child protection order to a participating State, must be lodged within 10 business days after the day on which the order was made; or
  - (b) if made in a proceeding to transfer a child protection proceeding to the appropriate court in a participating State, must be lodged within 3 business days after the day on which the order was made.
- (2) An appeal operates as a stay of the order.

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### **139—Effect of registration of transferred order**

- (1) On a child protection order being registered in a participating State under an interstate law, the child protection order made by the Court under this Act ceases to have effect.
- (2) Despite subsection (1), an order that has ceased to have effect by force of that subsection is revived if the registration of the transferred order is revoked in the participating State under the interstate law.
- (3) The period for which a child protection order is revived is the balance of the period for which it would have remained in force but for the registration of the transferred order.

### **140—Transfer of Court file**

The Registrar must cause all documents filed in the Court in connection with a child protection proceeding to be sent to the appropriate court in a participating State if—

- (a) the child protection order or proceeding is transferred to the participating State; and
- (b) the decision or order to transfer the child protection order or the order to transfer the child protection proceeding (as the case requires) is not subject to review or appeal or a stay.

### **141—Hearing and determination of transferred proceeding**

In hearing and determining a child protection proceeding transferred to the Court under an interstate law, the Court—

- (a) is not bound by any finding of fact made in the proceeding in the appropriate court in the sending State before its transfer; but
- (b) may have regard to the transcript of, or any evidence adduced in, the proceeding referred to in paragraph (a).

### **142—Disclosure of information**

- (1) Despite anything to the contrary in a prescribed child protection law, the Chief Executive may disclose to an interstate officer any information that has come to the Chief Executive's notice in the performance of duties or exercise of powers under a prescribed child protection law if the Chief Executive considers that it is necessary to do so to enable the interstate officer to perform duties or exercise powers under a child welfare law or an interstate law.
- (2) In this section—

*prescribed child protection law* means—

- (a) this Act;
- (b) the *Children's Protection Act 1993*;
- (c) any other Act prescribed by the regulations for the purposes of this paragraph.

### **143—Discretion of Chief Executive to consent to transfer**

- (1) If, under an interstate law, there is a proposal to transfer a child protection order to South Australia, the Chief Executive may consent or refuse to consent to the transfer and the proposed terms of the child protection order to be transferred.



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- (2) If, under an interstate law, there is a proposal to transfer a child protection proceeding to the Court, the Chief Executive may consent or refuse to consent to the transfer.

#### **144—Evidence of consent of relevant interstate officer**

A document or a copy of a document—

- (a) purporting to be the written consent of the relevant interstate officer to—
    - (i) the transfer of a child protection order to a participating State and to the proposed terms of the child protection order to be transferred; or
    - (ii) the transfer of a child protection proceeding pending in the Court to the appropriate court in a participating State; and
  - (b) purporting to be signed by the relevant interstate officer or their delegate,
- is admissible in evidence in any proceeding under this Chapter and, in the absence of evidence to the contrary, is proof that consent in the terms appearing in the document was duly given by the relevant interstate officer.

## **Chapter 11—Administrative matters**

### **Part 1—Functions of Chief Executive etc**

#### **145—Functions of the Chief Executive**

The functions of the Chief Executive under this Act include—

- (a) developing codes of conduct and principles of good practice for caring for, or working with, children and young people; and
- (b) providing guidance on matters relating to the protection of children and young people, including—
  - (i) appropriate standards of conduct for adults in dealing with children and young people; and
  - (ii) how to deal with cases involving the bullying or harassment of a child or young person; and
  - (iii) how to deal with cases involving the suspected harming of a child or young person; and
  - (iv) recruitment and supervision of staff of government and non-government organisations who may have contact with children and young people in the course of their employment; and
- (c) defining appropriate standards of care for ensuring the safety of children and young people; and
- (d) disseminating information about ways in which children and young people may be at risk of harm so that such cases are more readily recognised and more promptly dealt with; and
- (e) ensuring, as far as practicable, that procedures for making complaints relating to children and young people who may be at risk are accessible and responsive to the needs of children and young people in care; and

- (f) developing channels of communication and information sharing between the Department or State authorities and children and young people; and
- (g) contributing to public discourse on issues relating to the protection of children and young people as part of a wider engagement to promote the message that the protection of children and young people is everyone's responsibility; and
- (h) providing and overseeing the training and ongoing education of child protection officers; and
- (i) developing standard operating procedures governing the exercise of powers under this Act; and
- (j) to monitor the operation of this Act as it relates to the provision of safe environments for children and young people (including by monitoring progress in the government and non-government sectors towards achieving that goal) and to report regularly to the Minister on that subject; and
- (k) any other function conferred on the Chief Executive under this or any other Act or by the Minister.

## **146—Powers of delegation**

- (1) The Minister or the Chief Executive may delegate a function or power (other than a prescribed function or power) under this Act to a specified person or body (including a person for the time being holding or acting in a specified office or position, or a person or body located in another State or Territory).
- (2) A delegation under this section—
  - (a) must be by instrument in writing; and
  - (b) may be absolute or conditional; and
  - (c) does not derogate from the ability of the Minister or Chief Executive (as the case requires) to act in any matter; and
  - (d) is revocable at will.
- (3) A function or power delegated under this section may, if the instrument of delegation so provides, be further delegated.

## **Part 2—Child protection officers**

### **147—Child protection officers**

- (1) The following persons are *child protection officers* for the purposes of this Act:
  - (a) the Chief Executive;
  - (b) police officers;
  - (c) an employee of the Department authorised by the Chief Executive by instrument in writing as a child protection officer.
- (2) An authorisation under subsection (1)(c) may be made subject to conditions or limitations specified in the instrument of authorisation.

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- (3) A child protection officer authorised under subsection (1)(c) must be issued with an identity card—
- (a) containing the person's name and a photograph of the person; and
  - (b) stating that the person is a child protection officer under this Act; and
  - (c) if the powers of a child protection officer have been limited by conditions—stating those limitations.
- (4) A child protection officer (other than a police officer in uniform) must, at the request of a person in relation to whom the officer intends to exercise powers under this Act, produce for inspection their identity card or other evidence of their authority.
- (5) The Chief Executive may, by notice in writing to a child protection officer authorised under subsection (1)(c), vary or revoke the authorisation, or a condition or limitation of the authorisation, on any grounds the Chief Executive thinks fit.

### **148—Primary function of child protection officers**

Without limiting any other functions or powers of child protection officers under this or any other Act, the primary function of child protection officers under this Act is to exercise their powers for the purpose of removing children and young people from situations in which they are at risk of harm.

### **149—Powers of child protection officers**

- (1) Subject to this Act, a child protection officer may, as may reasonably be required in the administration, operation or enforcement of this Act, do 1 or more of the following:
- (a) enter and remain on any premises, place, vehicle or vessel (and for that purpose require a vehicle or vessel to stop);
  - (b) inspect any premises or place, vehicle or vessel;
  - (c) use reasonable force to break into or open any part of, or anything in or on, any premises, place, vehicle or vessel;
  - (d) if the officer believes on reasonable grounds that a child or young person is at risk of removal from the State for female genital mutilation or marriage—seize and retain any passport issued in the name of the child or young person;
  - (e) take photographs, films, audio, video or other recordings;
  - (f) seize and retain anything that the officer reasonably suspects has been used in, or may constitute evidence of, a contravention of this Act;
  - (g) require a person who the officer reasonably suspects has committed, is committing or is about to commit, a contravention of this Act to state their full name and usual place of residence and to produce evidence of their identity;
  - (h) give such directions as may be reasonably required in connection with the exercise of a power conferred by a preceding paragraph or otherwise for a purpose related to the administration, operation or enforcement of this Act.

- (2) Subject to any order of the Court, a passport seized under subsection (1)—
  - (a) may be held by the Chief Executive for the period prescribed by the regulations; and
  - (b) must, at the end of the period, be dealt with in accordance with the regulations.
- (3) Without limiting subsection (1), a child protection officer may, for the purposes of enforcing any order of the Court, without warrant, remove from any premises, place, vehicle or vessel a child or young person using such force (including breaking into the premises, place, vehicle or vessel) as is reasonably necessary for that purpose.
- (4) Except as is provided for in subsection (3), a child protection officer may only use force to enter any premises, place, vehicle or vessel—
  - (a) on the authority of a warrant issued by a magistrate; or
  - (b) if—
    - (i) entry to the premises, place, vehicle or vessel has been refused or cannot be gained; and
    - (ii) the child protection officer believes on reasonable grounds that the delay that would ensue as a result of applying for a warrant would significantly increase the risk of harm, or further harm, being caused to a child or young person.
- (5) A magistrate must not issue a warrant under this section unless satisfied on information given on oath, personally or by affidavit, that there are reasonable grounds for the issue of a warrant.
- (6) An application for the issue of a warrant under this section—
  - (a) may be made either personally or by telephone; and
  - (b) must be made in accordance with any procedures prescribed by the regulations.
- (7) A magistrate by whom a warrant is issued under this section must file the warrant, or a copy of it, and any supporting affidavit in the Court.
- (8) Without limiting subsection (1), a child protection officer may exercise a power under this section for the purpose of determining whether an order of the Court, or a direction or requirement of the Chief Executive, is being, or has been, complied with in respect of a child or young person who is under the guardianship, or in the custody, of the Chief Executive.
- (9) A child protection officer may, in exercising powers under this Act, be accompanied by such assistants as are reasonably required in the circumstances.
- (10) A person must not, without reasonable excuse, refuse or fail to comply with a requirement or direction under this section.  
Maximum penalty: Imprisonment for 1 year.
- (11) To avoid doubt, this section does not limit any other powers conferred by any other provision of this Act.

**150—Child protection officer may require information etc**

- (1) A child protection officer, may, by notice in writing, require a specified person or body (whether or not the person or body is a State authority, or an officer or employee of a State authority) to provide to them such information, or such documents, as may be specified in the notice (being information or a document in the possession of the person or body that is reasonably required in the administration, operation or enforcement of this Act).
- (2) To avoid doubt, a requirement under subsection (1) may include a requirement to provide copies of medical, financial or other records in respect of a person.
- (3) A child protection officer may, by notice in writing, require a specified person to—
  - (a) answer, to the best of the person's knowledge or belief, questions put by the child protection officer or an employee of the Department authorised by the Chief Executive for the purposes of this subsection; and
  - (b) in the case of a person who has examined, assessed or treated a person under this Act—provide to the child protection officer or the Chief Executive a written report of that examination, assessment or treatment.
- (4) A person or body of whom a requirement is made under this section must provide the specified information, documents, answers or reports in the manner and form, and within the period, specified in the notice.
- (5) A person or body who refuses or fails to comply with a notice under this section is guilty of an offence.

Maximum penalty:

- (a) in the case of a natural person—Imprisonment for 1 year; or
  - (b) in the case of a body corporate—\$50 000.
- (6) If a State authority refuses or fails to comply with a notice under subsection (1), the Chief Executive may, after consultation with the State authority—
    - (a) report the refusal or failure to the Minister and to the Minister responsible for the State authority; and
    - (b) include details of the refusal or failure in the annual report of the Department.

**Part 3—Information gathering and sharing****151—Chief Executive may require State authority to provide report**

- (1) The Chief Executive may, if the Chief Executive is of the opinion that it is necessary or would otherwise assist in the performance of functions under this Act, require a State authority to prepare and provide a report to the Chief Executive in relation to the matters, and in accordance with any requirements, specified in the notice.
- (2) If a State authority refuses or fails to comply with a requirement under subsection (1), the Chief Executive may require the State authority to provide to the Chief Executive within a specified period a report setting out the reasons for non-compliance.
- (3) The Chief Executive may, on receiving a report under subsection (2), submit a copy of the report to the Minister setting out the views of the Chief Executive in respect of the State authority's non-compliance.

- (4) The Minister must, on receiving a report under subsection (3), prepare a report to Parliament setting out—
  - (a) the Minister's response to the Chief Executive's report; and
  - (b) any other information required by the regulations.
- (5) The Minister must, within 6 sitting days after completing a report under subsection (4), cause a copy of both the report and the Chief Executive's report under subsection (3) to be laid before both Houses of Parliament.

## **152—Sharing of information between certain persons and bodies**

- (1) This section applies to the following persons and bodies:
  - (a) the Department;
  - (b) the Commissioner for Children and Young People;
  - (ba) the Commissioner for Aboriginal Children and Young People;
  - (c) the Guardian for Children and Young People;
  - (d) the Child Death and Serious Injury Committee;
  - (e) the Child and Young Person's Visitor;
  - (f) a State authority;
  - (g) a Child and Family Assessment and Referral Network and its constituent members;
  - (h) any other person or body prescribed by the regulations.
- (2) Despite any other Act or law, a person or body to whom this section applies (the **provider**) may, in accordance with any requirement set out in the regulations, provide prescribed information and documents to another person or body to whom this section applies (the **recipient**) if the provider reasonably believes that the provision of the information or documents would assist the recipient—
  - (a) to perform functions relating to children and young people; or
  - (b) to manage any risk to a child or young person, or class of children or young people, that might arise in the recipient's capacity as an employer or provider of services.
- (3) Subject to this section, but despite any other Act or law, information or documents that do not directly or indirectly disclose the identity of any person may be provided by one person or body to whom this section applies to another without restriction.
- (4) Subsection (3) applies—
  - (a) whether or not the information or documents consist of or include prescribed information and documents; and
  - (b) whether or not the information or document ever disclosed the identity of a person, or has been redacted so as to de-identify it.
- (5) Information may be provided under this section whether or not the provider has been requested to provide the information.

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- (6) Despite section 164, the recipient of information or documents under this section must not disclose information or documents received under this section except—
- (a) to another person or body to whom this section applies; or
  - (b) as may be authorised by the regulations.
- (7) In this section—
- prescribed information and documents*** means—
- (a) information or documents relating to the health, safety, welfare or wellbeing of a particular child or young person, or class of children or young people; or
  - (b) any other information or document of a kind prescribed by the regulations for the purposes of this definition.

### **153—Certain persons to be provided with documents and information held by the Department**

- (1) An eligible applicant in respect of a prescribed person may apply to the Chief Executive for the provision of documents and information relating to the prescribed person being held by the Department.
- (2) An application made under this section must be made in the manner and form determined by the Chief Executive.
- (3) Subject to this section, the Department must, on an application under subsection (1), provide to the eligible applicant—
  - (a) such of the following documents relating to the prescribed person as may be held by the Department:
    - (i) birth certificate;
    - (ii) religious certificates;
    - (iii) certificates of achievement;
    - (iv) education and training reports;
    - (v) correspondence addressed to the prescribed person;
    - (vi) passport;
    - (vii) photographs;
    - (viii) any other documents of a kind prescribed by the regulations; and
  - (b) such information relating to the prescribed person of a kind specified in the application as may be held by the Department.
- (4) If the Department holds an original of a document referred to in subsection (3)(a), the Department must give the original to the eligible applicant and must ensure that a copy of the document is retained for the purposes of the laws of the State.
- (5) For the purposes of the *State Records Act 1997*, the disclosure or provision of an official record (within the meaning of that Act) is authorised under this Part.
- (6) The Department may, in accordance with any guidelines published by the Department for the purposes of this section—
  - (a) refuse to provide a document or information; or

- (b) provide a document in redacted form.
- (7) If the Department refuses to provide a document or information, or provides a document in redacted form, the Department must give the eligible applicant a written notice that sets out—
- (a) the reasons for the decision; and
  - (b) the eligible applicant's right to seek a review of the decision under section 154; and
  - (c) any other matter prescribed by the regulations.
- (8) If—
- (a) a document that must be provided to an eligible applicant under this section contains information of a medical nature concerning the prescribed person; and
  - (b) the Department is of the opinion that disclosure of the information may have an adverse effect on the physical or mental health, or the emotional state, of the prescribed person,
- the Department—
- (c) is not required to give access to the document directly to the eligible applicant; and
  - (d) may instead give access to the document to—
    - (i) a medical practitioner nominated by the prescribed person or the eligible applicant; or
    - (ii) a person or body nominated by the prescribed person or the eligible applicant and approved by the Department.

- (9) In this section—

***eligible applicant***, in respect of a prescribed person, means—

- (a) the prescribed person; or
- (b) a person authorised by the prescribed person to make an application under this section; or
- (c) in the case of a prescribed person who has died—a grandparent, parent, child or grandchild of the prescribed person;

***prescribed person*** means a person of or above the age of 18 years who was, while the person was a child or young person, provided with out of home care or care of a corresponding kind provided under an earlier Act of the State.

## **154—Internal Review by Chief Executive**

- (1) An eligible applicant under section 153 may apply to the Chief Executive for a review of a decision to refuse to provide a document or information, or to provide a document in redacted form, within 30 days of the making of the decision.
- (2) On a review under this section, the Chief Executive may confirm, vary or reverse the decision.



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- (3) If the Chief Executive fails to determine an application made under this section within 14 days after it is received, the Chief Executive will be taken to have confirmed the decision in respect of which review is sought.

### **155—Interaction with *Public Sector (Data Sharing) Act 2016***

Nothing in this Part affects the operation of the *Public Sector (Data Sharing) Act 2016*.

## **Part 4—Additional reporting obligations of Chief Executive**

### **156—Additional annual reporting obligations**

- (1) The Chief Executive must, not later than 30 September in each year, submit to the Minister a report setting out—
- (a) the following information in respect of Aboriginal and Torres Strait Islander children and young people:
    - (i) the extent to which case planning in relation to such children and young people includes the development of cultural maintenance plans with input from local Aboriginal and Torres Strait Islander communities and organisations;
    - (ii) the extent to which agreements made in case planning relating to supporting the cultural needs of such children and young people are being met (being support such as transport to cultural events, respect for religious laws, attendance at funerals, providing appropriate food and access to religious celebrations);
    - (iii) the extent to which such children and young people have access to a case worker, community, relative or other person from the same Aboriginal or Torres Strait Islander community as the child or young person; and
  - (b) the following information relating to case workers and children and young people in care:
    - (i) whether a case worker has been allocated to each child and young person in care;
    - (ii) whether each child and young person in care has had face to face contact with their allocated case worker at least once in each month, and, if not, the extent to which those targets have been achieved; and
  - (c) whether each child or young person under the guardianship of the Chief Executive until they are 18 years of age has a case plan that is developed, monitored and reviewed as part of a regular 6 monthly planning cycle and, if not, the extent to which that target has been achieved; and
  - (d) the emergence of any recurring themes in the matters referred to in a preceding paragraph; and
  - (e) the following information relating to recommendations of the Child Protection Systems Royal Commission (being information relating to the preceding financial year):

- (i) the extent to which any outstanding recommendations have been implemented;
  - (ii) if a decision was made to implement a particular recommendation that the government, or the Minister or Chief Executive, had previously indicated would not be implemented—the reasons for that decision and the manner in which the recommendation is to be implemented;
  - (iii) if a decision was made not to implement a particular recommendation that the government, or the Minister or Chief Executive, had previously indicated would be implemented—the reasons for that decision; and
- (f) the number, and general nature, of placements of children and young people under section 77; and
- (g) any other matter prescribed by the regulations for the purposes of this paragraph.
- (2) The Minister must, as soon as is reasonably practicable after receipt of a report under this section, cause a copy of the report to be published on a website determined by the Minister.
- (3) The Minister must, within 6 sitting days after receipt of a report under this section, cause a copy of the report to be laid before each House of Parliament.
- (4) The requirements of this section are in addition to any other reporting obligation of the Chief Executive (however, a report under this section may be included in the annual report of the Chief Executive under the *Public Sector Act 2009*).

## **Chapter 12—Reviews of decisions under Act**

### **Part 1—Internal review**

#### **157—Internal review**

- (1) A person who is aggrieved by a decision of the Chief Executive or a child protection officer under this Act is entitled to a review of the decision under this section.
- (2) An application for review—
  - (a) must be made in a manner and form determined by the Chief Executive; and
  - (b) must be made within 30 days after the day on which notice of the decision was given to the applicant (or such longer time as the Chief Executive may allow).
- (3) On an application for review under this section the Chief Executive may confirm, vary or reverse the decision under review.
- (4) The regulations may make further provision in respect of a review under this section (including, to avoid doubt, by limiting the kinds of decisions that may be the subject of an application or review).

## **Part 2—Review of decisions by South Australian Civil and Administrative Tribunal**

### **158—Review of decisions by South Australian Civil and Administrative Tribunal**

- (1) Subject to this section, the South Australian Civil and Administrative Tribunal is, by force of this section, conferred with jurisdiction to deal with matters consisting of the review of the following decisions (*reviewable decisions*):
  - (a) a decision of the Chief Executive under Chapter 7 (other than a decision under Part 4 of that Chapter);
  - (b) any other decision under this Act declared by the regulations to be a reviewable decision.
- (2) However—
  - (a) a decision referred to in subsection (1) that comprises a prescribed child protection complaint (within the meaning of section 28A of the *Health and Community Services Complaints Act 2004*) will be taken not to be a reviewable decision; and
  - (b) a decision referred to in subsection (1) will only be taken to be a reviewable decision if a review under section 157 has been conducted in respect of the decision.
- (3) An application for review of a reviewable decision may be made to the South Australian Civil and Administrative Tribunal by—
  - (a) in the case of a decision under section 72, 99 or 105—the applicant in relation to the relevant decision; or
  - (b) in the case of a decision under section 74, 100 or 106—the person, foster care agency or children's residential facility to which the relevant decision relates (as the case requires); or
  - (c) in the case of any other decision—a person or persons prescribed by the regulations for the purposes of this paragraph.
- (4) An application must be made within 28 days after the applicant receives notice of the results of the relevant review under section 157 (or such longer period as the Tribunal may allow).
- (5) However, the South Australian Civil and Administrative Tribunal may only allow an extension of time under subsection (4) if satisfied that—
  - (a) special circumstances exist; and
  - (b) another party will not be unreasonably disadvantaged because of the delay in commencing the proceedings.

### **159—Views of child or young person may be heard**

- (1) In any proceedings under this Part, a child or young person to whom the proceedings relate must be given a reasonable opportunity to personally present to the South Australian Civil and Administrative Tribunal their views related to their ongoing care and protection.
- (2) However, subsection (1) does not apply if the South Australian Civil and Administrative Tribunal is satisfied that—
  - (a) the child or young person is not capable of doing so; or
  - (b) to do so would not be in the best interests of the child or young person.
- (3) Subsection (1) applies whether or not the child or young person is represented by a legal practitioner in the proceedings.

## **Chapter 13—Miscellaneous**

### **160—Hindering or obstructing a person in execution of duty**

A person who hinders or obstructs the Chief Executive, a child protection officer or any other person in the performance of a function, or exercise of a power, under this Act is guilty of an offence.

Maximum penalty: \$10 000.

### **161—Payment of money to Chief Executive on behalf of child or young person**

- (1) The Chief Executive may receive money on behalf of a child or young person.
- (2) The Chief Executive must cause any money received on behalf of a child or young person—
  - (a) to be held by the Public Trustee on behalf of the child or young person in accordance with the scheme set out in the regulations; or
  - (b) to be deposited in an ADI account in the name of the child or young person.
- (3) Without limiting the regulations that may be made under subsection (2)(a), the regulations may make provisions relating to the transfer of money to the Public Trustee, interest payable on money held by the Public Trustee, and the application of money held by the Public Trustee, under this section.
- (5) Any money held on behalf of a child or young person pursuant to this section is payable to the child or young person on the Chief Executive ceasing to have any direct responsibility for the affairs of the child or young person.

### **162—Restrictions on publication of certain information**

- (1) A person must not publish a report of a family group conference, or of any statement made or thing done at a family group conference.

Maximum penalty:

- (a) in the case of a natural person—\$50 000; or
- (b) in the case of a body corporate—\$120 000.

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- (2) Except as may be permitted under subsection (3), a person must not publish a report of proceedings before any court or tribunal in which a child or young person is alleged to be at risk or in need of care or protection if—
- (a) the court or tribunal prohibits publication of any report of the proceedings; or
  - (b) the report—
    - (i) identifies, or contains information tending to identify, the child or young person; or
    - (ii) reveals the name, address or school, or includes any particulars, picture or film that may lead to the identification, of any child or young person who is concerned in the proceedings, either as a party or a witness.

Maximum penalty:

- (a) in the case of a natural person—\$50 000; or
  - (b) in the case of a body corporate—\$120 000.
- (3) The court or tribunal before which proceedings referred to in subsection (2) are heard may, on such conditions as it thinks fit, permit the publication of information or images that would otherwise be suppressed from publication under subsection (2)(b).

### **163—Protection of identity of persons who report to or notify Department**

- (1) A person who receives a report or notification that a child or young person may be at risk, or who otherwise becomes aware of the identity of a person who has made such a report or notification, must not disclose the identity of the person who made the report or notification to any other person unless the disclosure—
- (a) is made with the consent of the person who gave the notification; or
  - (ab) is required or authorised by the Chief Executive or under this Act; or
  - (b) is made by way of evidence adduced in accordance with subsections (2) and (3); or
  - (c) is otherwise authorised by the regulations.

Maximum penalty: \$10 000.

- (2) In proceedings before a court or tribunal—
- (a) evidence that directly or indirectly discloses the identity of a person who made a report or notification referred to in subsection (1) cannot be adduced without the permission of the court or tribunal; and
  - (b) a party or witness must not, without the permission of the court or tribunal, be asked, nor required to answer, any question that cannot be answered without directly or indirectly disclosing the identity of a person who made a report or notification referred to in subsection (1).
- (3) A court or tribunal cannot grant permission under subsection (2) unless—
- (a) the court or tribunal is satisfied that the evidence is of critical importance in the proceedings and that failure to admit it would prejudice the proper administration of justice; or

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- (b) the person who made the relevant report or notification consents to the admission of the evidence in the proceedings.
  - (4) An application for permission under subsection (2)—
    - (a) must not, except as authorised by the court or tribunal, be heard and determined in public; and
    - (b) must be conducted in such a manner as to protect, so far as may be practicable, the identity of the person who made the relevant report or notification pending the determination of the application.

### **164—Confidentiality**

- (1) Subject to this Act, a person engaged or formerly engaged in the administration, operation or enforcement of this Act must not disclose personal information obtained (whether by that person or otherwise) in the course of performing functions or exercising powers under this Act except—
  - (a) as required or authorised by or under this Act or any other Act or law; or
  - (b) with the consent of the person to whom the information relates; or
  - (c) in connection with the administration or enforcement of this or any other Act; or
  - (d) for the purposes of referring the matter to a law enforcement agency, or a person or agency exercising official duties under an Act relating to the care or protection of children and young people; or
  - (e) to an agency or instrumentality of this State, the Commonwealth or another State or a Territory of the Commonwealth for the purposes of the proper performance of its functions; or
  - (f) if the disclosure is reasonably necessary for the protection of the lawful interests of that person.

Maximum penalty: \$10 000.

- (2) Subsection (1) does not prevent disclosure of statistical or other data that could not reasonably be expected to lead to the identification of any person to whom it relates.
- (3) Information that has been disclosed under subsection (1) for a particular purpose must not be used for any other purpose by—
  - (a) the person to whom the information was disclosed; or
  - (b) any other person who gains access to the information (whether properly or improperly and whether directly or indirectly) as a result of that disclosure.

Maximum penalty: \$10 000.

- (4) The regulations may make further provision in respect of the disclosure of information obtained in the course of the administration of this Act.

### **165—Victimisation**

- (1) A person who causes detriment to another on the ground, or substantially on the ground, that the other person or a third person has provided, or intends to provide, information under this Act commits an act of victimisation.

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- (2) However, causing detriment on the ground that a person—
- (a) has made a false allegation; or
  - (b) has not acted in good faith,
- does not constitute an act of victimisation.
- (3) An act of victimisation under this Act may be dealt with—
- (a) as a tort; or
  - (b) as if it were an act of victimisation under the *Equal Opportunity Act 1984*,  
but, if the victim commences proceedings in a court seeking a remedy in tort, the victim cannot subsequently lodge a complaint under the *Equal Opportunity Act 1984* and, conversely, if the victim lodges a complaint under that Act, the victim cannot subsequently commence proceedings in a court seeking a remedy in tort.
- (4) If a complaint alleging an act of victimisation under this Act has been lodged with the Commissioner for Equal Opportunity and the Commissioner is of the opinion that the subject matter of the complaint has already been adequately dealt with by a competent authority, the Commissioner may decline to act on the complaint or to proceed further with action on the complaint.
- (5) In proceedings against a person seeking a remedy in tort for an act of victimisation committed by an employee or agent of the person, it is a defence to prove that the person exercised all reasonable diligence to ensure that the employee or agent would not commit an act of victimisation.
- (6) A person who personally commits an act of victimisation under this Act is guilty of an offence.  
Maximum penalty: \$10 000.
- (7) Proceedings for an offence against subsection (6) may only be commenced by a police officer or a person approved by either the Commissioner of Police or the Director of Public Prosecutions.
- (8) In this section—  
*detriment* includes—
- (a) injury, damage or loss; or
  - (b) intimidation or harassment; or
  - (c) discrimination, disadvantage or adverse treatment in relation to a person's employment; or
  - (d) threats of reprisal.

## 166—Protections, privileges and immunities

- (1) Nothing in this Act affects any rule or principle of law relating to—
- (a) legal professional privilege; or
  - (b) "without prejudice" privilege; or
  - (c) public interest immunity.

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- (2) A person is excused from answering a question or producing a document or other material in connection with an inquiry if the person could not be compelled to answer the question or produce the document or material in proceedings in the Supreme Court.
  - (3) A person who provides information or a document to an inquiry under this Act has the same protection, privileges and immunities as a witness in proceedings before the Supreme Court.
  - (4) A person who does anything in accordance with this Act, or as required or authorised by or under this Act, cannot by so doing be held to have breached any code of professional etiquette or ethics, or to have departed from any acceptable form of professional conduct.

### 166A—Limitation on tortious liability for acts of certain children and young people

No liability in tort attaches to the Crown, the Minister, the Chief Executive or any employee of the Department in respect of an act or omission of a child or young person under the guardianship of the Chief Executive, or of whom the Chief Executive has custody under any Act, unless the act or omission occurs while the child or young person—

- (a) is acting as the servant or agent of the Chief Executive or employee of the Department; and
- (b) is acting within the scope of such employment or authority.

### 167—Evidentiary provision

- (1) In proceedings for an offence against this Act, an allegation in an information—
  - (a) that a working with children check relating to a specified person had, or had not, been conducted on a specified day or within a specified period; or
  - (b) that a prohibition notice had, or had not, been issued to a specified person; or
  - (c) that a specified person had, or had not, been issued with a specified unique identifier; or
  - (d) that a specified person was, or was not, a child protection officer at a specified time; or
  - (e) that a specified person was, or was not, an approved carer at a specified time; or
  - (f) that specified premises were, or were not, a licensed children's residential facility,

must be accepted as proved in the absence of evidence to the contrary.

- (2) In this section—

*prohibition notice* and *unique identifier* have the same meanings as in the *Child Safety (Prohibited Persons) Act 2016*.



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## 168—Service

Except where this Act requires otherwise, a notice or other document required or authorised to be given to or served on a person under this Act may—

- (a) be given to the person personally; or
- (b) be left for the person at the person's place of residence or business with someone apparently over the age of 16 years; or
- (c) be posted to the person at the person's last known place of residence or business; or
- (d) be transmitted by fax or email to a fax number or email address provided by the person (in which case the notice or other document will be taken to have been given or served at the time of transmission); or
- (e) if the person is a company or registered body within the meaning of the *Corporations Act 2001* of the Commonwealth, be served in accordance with that Act.

## 169—Review of Act

- (1) The Minister must cause a review of the operation of this Act to be conducted and a report on the review to be prepared and submitted to the Minister.
- (2) The review and the report must be completed after the fourth, but before the fifth, anniversary of the commencement of this Act.
- (3) The Minister must cause a copy of the report submitted under subsection (1) to be laid before both Houses of Parliament within 6 sitting days after receiving the report.

## 169A—Independent inquiry into foster care and kinship care

- (1) The Minister must cause an independent inquiry into foster care and kinship care in the State to be conducted, and a report of the inquiry to be prepared, in accordance with this section.
- (2) Without limiting the matters that may be considered in the course of the inquiry, the inquiry—
  - (a) must review existing complaints mechanisms in the Department as they relate to foster care and kinship care, including consideration of—
    - (i) how such complaints are processed by the Department; and
    - (ii) the independence of the complaints process; and
    - (iii) outcomes and actions arising from such complaints; and
    - (iv) the extent to which outcomes and feedback relating to such complaints are communicated to foster carers and kinship carers; and
  - (b) must review the adequacy of existing consultation processes between the Department, other persons and bodies involved in foster care or kinship care, and foster carers and kinship carers; and

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- (c) must review the transparency and availability of documentation and information held by the Department and other persons and bodies involved in foster care or kinship care to foster carers and kinship carers (including care concerns and manuals of practice); and
  - (d) must consider the adequacy of internal procedures and arrangements within the Department and other persons and bodies involved in foster care or kinship care in ensuring that—
    - (i) there is a sound partnership between the Department, those persons and bodies and foster carers and kinship carers; and
    - (ii) the rights of children in foster care and kinship care (including their rights relating to safety, cultural identity, access to services and opportunities, autonomy and decision-making) are respected, addressed and realised; and
  - (e) may make such recommendations for changes to matters affecting foster care or kinship care that the inquiry considers necessary or appropriate to improve outcomes for children and young people in foster care or kinship care, as well as foster carers and kinship carers (including, for example, the need for an independent, legislatively protected complaints system, changes to compliance procedures within the Department and any legislative changes needed to enable the recommendations to be implemented).
- (3) The following provisions apply in relation to the inquiry:
- (a) the inquiry must be conducted by a person who is independent of the Department and not involved in the administration, operation or enforcement of this Act;
  - (b) the inquiry must commence not later than 1 month after this section comes into operation;
  - (c) the inquiry must seek submissions from foster carers and kinship carers, and must have regard to any submissions made to the inquiry by such persons;
  - (d) the inquiry must be completed within 6 months after this section comes into operation.
- (4) On completing the inquiry, the person conducting the inquiry must cause a report of the inquiry to be prepared, and a copy of the report provided to the Minister.
- (5) The Minister must cause a copy of the report provided under subsection (4) to be laid before both Houses of Parliament within 6 sitting days after receiving the report.

## **170—Regulations**

- (1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.
- (2) Without limiting the generality of subsection (1), the regulations may provide for—
  - (a) the exemption of a person, or a class of persons, from the operation of a specified provision or provisions of this Act; and
  - (b) fees or charges in respect of any matter under this Act and their payment, recovery or waiver; and

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- (c) fines, not exceeding \$10 000, for offences against the regulations; and
  - (d) facilitation of proof of the commission of offences against the regulations.
- (3) The regulations may—
- (a) be of general or limited application; and
  - (b) make different provision according to the matters or circumstances to which they are expressed to apply; and
  - (c) make provisions of a saving or transitional nature consequent on the enactment of this Act or on the commencement of specified provisions of this Act or on the making of regulations under this Act; and
  - (ca) make provisions of a saving or transitional nature consequent on the commencement of the *Child Safety (Prohibited Persons) Act 2016*; and
  - (d) provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Minister, the Chief Executive or any other specified person or body; and
  - (e) apply or incorporate, wholly or partially and with or without modification, a code, standard, policy or other document prepared or published by the Minister or another specified person or body.
- (4) If a code, standard or other document is referred to or incorporated in the regulations—
- (a) a copy of the code, standard or other document must be kept available for public inspection, without charge and during ordinary office hours, at an office or offices specified in the regulations; and
  - (b) evidence of the contents of the code, standard or other document may be given in any legal proceedings by production of a document apparently certified by the Minister to be a true copy of the code, standard or other document.

## Legislative history

### Notes

- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Legislation repealed by principal Act

The *Children and Young People (Safety) Act 2017* repealed the following:

*Children's Protection Act 1993*

### Legislation amended by principal Act

The *Children and Young People (Safety) Act 2017* amended the following:

*Children's Protection Act 1993*

*Criminal Law Consolidation Act 1935*

### Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
2017	25	<i>Children and Young People (Safety) Act 2017</i>	18.7.2017	26.2.2018 immediately after s 60 of 64/2017 except ss 17, 18, 21 to 58, 60, 61, 67 to 77, 84 to 95, 97 to 110, 111, 112A, 113 to 115, 120 to 144, 147 to 152, 161, 163 & Sch 1 Pt 2 (cll 2(b) to (e), 2A (as enacted by s 60 of 64/2017)), Pt 3 (cll 3, 4)—22.10.2018 ( <i>Gazette 19.12.2017 p5118</i> as varied by <i>Gazette 13.2.2018 p731</i> )
2017	64	<i>Children's Protection Law Reform (Transitional Arrangements and Related Amendments) Act 2017</i>	12.12.2017	Pt 4 (s 34) & Pt 10 (ss 49 to 57, 59)—19.12.2017; Pt 4 (ss 22, 23, 26) & Pt 10 (s 60)—26.2.2018; Pt 4 (ss 24, 25, 27 to 33, 35 to 38) & Pt 10 (s 58)—22.10.2018 ( <i>Gazette 19.12.2017 p5119</i> )
2018	17	<i>Children and Young People (Safety) (Miscellaneous) Amendment Act 2018</i>	18.10.2018	Pt 2 (ss 4 to 14) & Sch 1 (cl 7)—22.10.2018 ( <i>Gazette 18.10.2018 p3821</i> )

2021	14	<i>Statutes Amendment (Recommendations of Independent Inquiry into Child Protection) Act 2021</i>	13.5.2021	Pt 3 (s 5)—2.8.2021 ( <i>Gazette</i> 22.7.2021 p2857)
2021	35	<i>Children and Young People (Oversight and Advocacy Bodies) (Commissioner for Aboriginal Children and Young People) Amendment Act 2021</i>	30.9.2021	Sch 1 (cl 1)—21.10.2021 ( <i>Gazette</i> 21.10.2021 p3788)
2021	55	<i>Children and Young People (Safety) (Inquiry into Foster and Kinship Care) Amendment Act 2021</i>	9.12.2021	9.12.2021
2023	4	<b><i>Statutes Amendment (Attorney-General's Portfolio and Other Justice Measures) Act 2023</i></b>	<b>23.2.2023</b>	<b>Pt 3 (s 6)—22.6.2023 (<i>Gazette</i> 15.6.2023 p1774)</b>

## Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Ch 1		
s 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	<i>21.10.2021</i>
Ch 3		
s 18		
s 18(1)	amended by 17/2018 s 4	22.10.2018
Ch 4		
Ch 4 Pt 3		
s 28		
s 28(5)		
prescribed child or young person	amended by 64/2017 s 49	19.12.2017
Ch 5		
Ch 5 Pt 2		
s 32		
s 32(5)	inserted by 64/2017 s 50	19.12.2017
s 33		
s 33(5)	<i>deleted by 64/2017 s 51</i>	<i>19.12.2017</i>
Ch 5 Pt 3		
s 43		
s 43(1)	s 43 redesignated as s 43(1) by 17/2018 s 5	22.10.2018
s 43(2)	inserted by 17/2018 s 5	22.10.2018
Ch 6		
Ch 6 Pt 2		
s 53		

# Children and Young People (Safety) Act 2017—22.6.2023

## Legislative history

s 53(1a)—(1f)	inserted by 64/2017 s 52	19.12.2017
s 59		
s 59(1a)	inserted by 17/2018 s 6	22.10.2018
Ch 7		
Ch 7 Pt 2		
s 86		
<b>heading</b>	<b>amended by 4/2023 s 6(1)</b>	<b>22.6.2023</b>
<b>s 86(1a)</b>	<b>inserted by 4/2023 s 6(2)</b>	<b>22.6.2023</b>
s 86(4)	amended by 14/2021 s 5	2.8.2021
<b>s 86(4a)</b>	<b>inserted by 4/2023 s 6(3)</b>	<b>22.6.2023</b>
<b>s 86(6)</b>	<b>inserted by 4/2023 s 6(4)</b>	<b>22.6.2023</b>
Ch 7 Pt 3		
s 90		
s 90(3)	<i>substituted by 64/2017 s 53</i>	<i>19.12.2017</i>
	<i>deleted by 17/2018 s 7</i>	<i>22.10.2018</i>
s 91		
s 91(2a)	inserted by 17/2018 s 8	22.10.2018
Ch 7 Pt 4		
s 92		
s 92(1)	s 92 redesignated as s 92(1) by 17/2018 s 9	22.10.2018
s 92(2)	inserted by 17/2018 s 9	22.10.2018
s 95		
s 95(1)	substituted by 17/2018 s 10	22.10.2018
Ch 7 Pt 7		
s 103		
children's residential facility	amended by 64/2017 s 54(1), (2)	19.12.2017
Ch 7 Pt 7A	inserted by 64/2017 s 55	19.12.2017
Ch 7 Pt 9		
s 112A	inserted by 64/2017 s 56	19.12.2017
Ch 10		
Ch 10 Pt 1		
s 121		
s 121(1)		
child welfare law	amended by 17/2018 s 11	22.10.2018
Ch 10 Pt 6		
s 142	amended by 17/2018 s 12(1)	22.10.2018
s 142(1)	s 142 redesignated as s 142(1) by 17/2018 s 12(2)	22.10.2018
s 142(2)	inserted by 17/2018 s 12(2)	22.10.2018
Ch 11		
Ch 11 Pt 3		
s 152		

s 152(1)	amended by 35/2021 Sch 1 cl 1	21.10.2021
Ch 13		
s 161		
s 161(2) and (3)	substituted by 17/2018 s 13	22.10.2018
s 161(4)	deleted by 17/2018 s 13	22.10.2018
s 163		
s 163(1)	amended by 64/2017 s 57(1), (2)	19.12.2017
s 166A	inserted by 64/2017 s 58	22.10.2018
s 169A	inserted by 55/2021 s 3	9.12.2021
s 170		
s 170(3)	amended by 64/2017 s 59	19.12.2017
Sch 1 before omission		
Pt 2	substituted by 64/2017 s 60	26.2.2018
cl 2	amended by 17/2018 s 14	22.10.2018
Sch 1	omitted under Legislation Revision and Publication Act 2002	21.10.2021

## Transitional etc provisions associated with Act or amendments

### ***Children's Protection Law Reform (Transitional Arrangements and Related Amendments) Act 2017, Pt 4—Transitional provisions relating to Children and Young People (Safety) Act 2017***

#### **22—Interpretation**

- (1) Subject to this Part, and unless the contrary intention appears, a term or phrase used in this Part that is defined in the *Children and Young People (Safety) Act 2017* has the same meaning as in that Act.
- (2) In this Part—  
*repealed Act* means the *Children's Protection Act 1993*.

#### **23—References to working with children checks and the *Child Safety (Prohibited Persons) Act 2016* etc**

- (1) For the purposes of the *Children and Young People (Safety) Act 2017*, a reference in that Act to a ***working with children check*** will be taken to include a reference to an assessment of relevant history.
- (2) For the purposes of section 72(3)(b)(i) of the *Children and Young People (Safety) Act 2017*, a reference in that subparagraph to having regard to the operation of the *Child Safety (Prohibited Persons) Act 2016* will, to the extent that it includes having regard to the working with children check scheme, will be taken to include a reference to having regard to the operation of sections 8B and 8BA of the *Children's Protection Act 1993* (as in force immediately before the commencement of this section).

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- (3) For the purposes of paragraph (b) of the definition of *prescribed organisation* in section 114(7) of the *Children and Young People (Safety) Act 2017*, a reference in that paragraph to persons or bodies who provide a service or undertake an activity that constitutes child-related work under the *Child Safety (Prohibited Persons) Act 2016* will be taken to include a reference to organisations to which section 8C of the *Children's Protection Act 1993* applied immediately before the commencement of this section.

## **24—Chief Executive to be guardian of certain children and young people**

- (1) This section applies to a child or young person who was, immediately before the commencement of this section, under the guardianship of the Minister pursuant to an order of the Court under the repealed Act.
- (2) On the commencement of this section a child or young person to whom this section applies will, by force of this subsection, be taken to be under the guardianship of the Chief Executive.
- (3) A placement of a child or young person to whom this section applies pursuant to the repealed Act will be taken to continue in effect as if the child or young person were so placed by the Chief Executive under section 84 of the *Children and Young People (Safety) Act 2017* (and the placement will, for the purposes of that Act, be taken to be a placement under that section).
- (4) On the commencement of this section, a reference in any order or other document or instrument to the Minister in the Minister's capacity as guardian of a child or young person to whom this section applies will be taken to be a reference to the Chief Executive in that capacity.

## **25—Chief Executive to have custody of certain children and young people**

- (1) This section applies to a child or young person who was, immediately before the commencement of this section, in the custody of the Minister pursuant to an order of the Court under the repealed Act.
- (2) Subject to this section, on the commencement of this section a child or young person to whom this section applies will, by force of this subsection, be taken to be in the custody of the Chief Executive.
- (3) A placement of a child or young person to whom this section applies pursuant to the repealed Act will be taken to continue in effect as if the child or young person were so placed by the Chief Executive under section 84 the *Children and Young People (Safety) Act 2017* (and the placement will, for the purposes of that Act, be taken to be a placement under that section).
- (4) On the commencement of this section, a reference in any order or other document or instrument to the Minister in the Minister's capacity as custodian of a child or young person to whom this section applies will be taken to be a reference to the Chief Executive in that capacity.



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**26—Continuation of voluntary custody agreements**

- (1) Subject to this section and the *Children and Young People (Safety) Act 2017*, a voluntary custody agreement under section 9 of the repealed Act in force immediately before the commencement of this section will continue in accordance with its terms (and the agreement will, for the purposes of the *Children and Young People (Safety) Act 2017*, be taken to be a voluntary custody agreement under section 96 of that Act).
- (2) A reference in a voluntary custody agreement continued under this section to the Minister will be taken to be a reference to the Chief Executive.

**27—Continuation of approved foster parents as approved carers**

- (1) Subject to this section, a person who was, immediately before the commencement of this section, an approved foster parent under section 43 of the *Family and Community Services Act 1972* will be taken to be an approved carer under the *Children and Young People (Safety) Act 2017* (and the approval of the person will be taken to have been granted under section 72 of that Act).
- (2) A permission of the Chief Executive Officer under section 43(3) of the *Family and Community Services Act 1972* relating to the number of foster children that a foster parent referred to in subsection (1) is permitted to have in their care will be taken to continue to apply to the approved carer according to its terms.
- (3) The approval of a person as an approved carer under subsection (1) will, subject to the *Children and Young People (Safety) Act 2017*, be taken to be subject to the same conditions applying to the person's approval immediately before the commencement of this section.

**28—Continuation of licensed foster care agencies**

- (1) A licence of a person as a foster care agency granted under section 48 of the *Family and Community Services Act 1972* and in force immediately before the commencement of this section—
  - (a) will, subject to the *Children and Young People (Safety) Act 2017*, continue in force as a licence to carry on a foster care agency under that Act; and
  - (b) will be taken to have been granted under section 99 of that Act.
- (2) A licence continued under subsection (1) will, subject to the *Children and Young People (Safety) Act 2017*, be taken to be subject to the same conditions applying to the licence immediately before the commencement of this section.
- (3) A record that was, pursuant to section 50 of the *Family and Community Services Act 1972*, required to be kept by the holder of a licence continued under subsection (1) will, for the purposes of section 101(2) of the *Children and Young People (Safety) Act 2017*, be taken to be records required to be kept under that subsection.

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## 29—Continuation of licence to maintain children's residential facilities

- (1) A licence to maintain a children's residential facility granted under section 51 of the *Family and Community Services Act 1972* (being a licence in force immediately before the commencement of this section)—
  - (a) will, subject to the *Children and Young People (Safety) Act 2017*, continue in force as a licence to operate a children's residential facility under that Act; and
  - (b) will be taken to have been granted under section 105 of that Act.
- (2) A licence continued under subsection (1) will, subject to the *Children and Young People (Safety) Act 2017*, be taken to be subject to the same conditions applying to the licence immediately before the commencement of this section.
- (3) A register that was, pursuant to section 53 of the *Family and Community Services Act 1972*, required to be kept by the holder of a licence continued under subsection (1) will, for the purposes of section 108(2) of the *Children and Young People (Safety) Act 2017*, be taken to be a record required to be kept under that subsection.

## 30—Notifications of abuse or neglect and investigations etc under repealed Act to continue

- (1) A notification made under section 11 of the repealed Act that a person suspects that a child has been or is being abused or neglected will, for the purposes of the *Children and Young People (Safety) Act 2017*, be taken to be a report made by the person under section 31 of that Act.
- (2) An investigation under section 19 of the repealed Act that was commenced but not completed before the commencement of this section will be taken to continue as an investigation of the relevant kind under Chapter 5 Part 2 of the *Children and Young People (Safety) Act 2017* (and, to avoid doubt, the Chief Executive may exercise the powers of investigation or direction under that Part accordingly).

## 31—Continuation of family care meetings under repealed Act

- (1) Subject to this section, a family care meeting convened under Part 5 of the repealed Act before the commencement of this section will continue as a family group conference convened under Chapter 4 Part 2 of the *Children and Young People (Safety) Act 2017*.
- (2) A family group conference as continued under this section will, subject to the *Children and Young People (Safety) Act 2017*, consist of the same persons as the original family care meeting.
- (3) The procedures applicable to a family care meeting continued under this section will, subject to the *Children and Young People (Safety) Act 2017*, be taken to apply to the family group conference.

## 32—Orders relating to access to child or young person to continue as determination of Chief Executive

- (1) An order of the Court under section 38 of the repealed Act in force immediately before the commencement of this section (being an order relating to access to a specified child (however described)) is, by force of this section, revoked.

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- (2) The Chief Executive will, in respect of each child or young person to whom an order revoked under subsection (1) relates, be taken to have made a determination under section 93 of the *Children and Young People (Safety) Act 2017* in such terms as to give continuing effect to the terms of the revoked order (and the determination will, for the purposes of that Act, be taken to be a determination under section 93 of that Act).

### **33—Continuation of certain delegations under *Family and Community Services Act 1972***

- (1) A delegation by the Minister or the Chief Executive under section 8 of the *Family and Community Services Act 1972* relating to a matter that is the subject of the *Children and Young People (Safety) Act 2017* and that is in force immediately before the commencement of this section will, subject to the *Children and Young People (Safety) Act 2017*, continue in accordance with its terms (and will, for the purposes of the *Children and Young People (Safety) Act 2017*, be taken to be a delegation by the Minister or Chief Executive (as the case requires) of the relevant powers under section 146 of that Act).
- (2) A delegation by the Minister under section 80 of the *Family and Community Services Act 1972* in force immediately before the commencement of this section will, subject to the *Children and Young People (Safety) Act 2017*, continue in accordance with its terms (and will, for the purposes of the *Children and Young People (Safety) Act 2017*, be taken to be a delegation by the Chief Executive of the relevant powers under section 76 of that Act).

### **34—References to Families SA**

On the commencement of this section, a reference in any Act, or any order or other instrument or document, to Families SA will, for all purposes, be taken to be a reference to the Department.

### **35—Application of Chapter 7 Part 8 of *Children and Young People (Safety) Act 2017* to certain children and young people**

For the purposes of Chapter 7 Part 8 of the *Children and Young People (Safety) Act 2017*, a child or young person whose guardianship or custody arrangements are continued under this Part will be taken to be a child or young person placed in the guardianship or custody of a person under that Act.

### **36—Certain policies and procedures taken to satisfy Chapter 8 of *Children and Young People (Safety) Act 2017***

- (1) This section applies to in relation to prescribed policies and procedures of an organisation to which section 8C of the repealed Act applied immediately before the commencement of this section.
- (2) The prescribed policies and procedures of an organisation to which section 8C of the repealed Act applied immediately before the commencement of this section will, for the purposes of Chapter 8 of the *Children and Young People (Safety) Act 2017*, be taken to be a policy or policies prepared or adopted by the organisation in accordance with section 114(1) of that Act.

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- (3) An organisation to which section 8C of the repealed Act applied immediately before the commencement of this section (being an organisation that has complied with the requirements under section 8C(3) of the repealed Act) will, for the purposes of Chapter 8 of the *Children and Young People (Safety) Act 2017*, be taken to have complied with the requirements of section 114(3) of that Act.
  - (4) In this section—  
*prescribed policies and procedures* means policies and procedures put in place by an organisation in accordance with section 8C of the repealed Act and in force immediately before the commencement of this section.

### **37—Certain persons the subject of interim registration taken to be approved carers under *Children and Young People (Safety) Act 2017***

- (1) This section applies to a person who was, immediately before the commencement of this section—
  - (a) caring for a child or young person who is under the guardianship or in the custody of the Minister (whether under an order of the Court, a voluntary custody agreement under section 9 of the *Children's Protection Act 1993* or any other provision of that Act or any other Act); and
  - (b) the subject of a provisional or initial registration by the Department, or an approval for temporary placement granted by the Department, in relation to the care of children.
- (2) A person to whom this section applies will, for the purposes of the *Children and Young People (Safety) Act 2017*, be taken to be approved as an approved carer under section 72 of that Act.
- (3) It is a condition of each approval under this section that the person comply with any directions of the Chief Executive relating to the care of a specified child or young person (including, to avoid doubt, a direction requiring the person to submit to a working with children check).
- (4) The Chief Executive may, by notice in writing, impose such conditions on an approval under this section as the Chief Executive thinks fit.
- (5) The Chief Executive may, by notice in writing, vary or revoke a condition of an approval under this section.
- (6) An approval under this section will remain in force until—
  - (a) the end of the transitional period; or
  - (b) the approval is cancelled under subsection (7),
 whichever occurs first.
- (7) However, the approval of a person under this section is, by force of this section, cancelled if—
  - (a) the person becomes a prohibited person; or
  - (b) the approval of the person as an approved carer is cancelled under section 74 of the *Children and Young People (Safety) Act 2017*; or
  - (c) the person refuses or fails to comply with a direction under subsection (3); or

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- (d) the person contravenes a condition under subsection (4).
  - (8) For the purposes of this section, a reference to the Department will be taken to include a reference to an administrative unit of the Public Service that was, at the relevant time, assisting a Minister in the administration of the repealed Act.

### **38—Certain persons taken to be approved carers under *Children and Young People (Safety) Act 2017***

- (1) This section applies to a person or body, or a person or body of a class, prescribed by the Chief Executive by notice in the Gazette.
- (2) A person to whom this section applies will, for the purposes of the *Children and Young People (Safety) Act 2017*, be taken to be approved as an approved carer under section 72 of that Act.
- (3) It is a condition of each approval under this section that the person comply with any directions of the Chief Executive relating to the care of children or young people (including, to avoid doubt, a direction requiring the person to submit to a working with children check).
- (4) The Chief Executive may, by notice in writing, impose such conditions on an approval under this section as the Chief Executive thinks fit.
- (5) The Chief Executive may, by notice in writing, vary or revoke a condition of an approval under this section.
- (6) An approval under this section will remain in force until—
  - (a) the end of the transitional period; or
  - (b) the approval is cancelled under subsection (7),
 whichever occurs first.
- (7) However, the approval of a person under this section is, by force of this section, cancelled if—
  - (a) the person becomes a prohibited person; or
  - (b) the approval of the person as an approved carer is cancelled under section 74 of the *Children and Young People (Safety) Act 2017*; or
  - (c) the person refuses or fails to comply with a direction under subsection (3); or
  - (d) the person contravenes a condition under subsection (4).

### ***Children and Young People (Safety) (Miscellaneous) Amendment Act 2018, Sch 1 Pt 2—Transitional provisions etc***

#### **7—Moneys held on behalf of child or young person**

- (1) This clause applies to money received pursuant to section 84 of the *Family and Community Services Act 1972*, or section 161 of the *Children and Young People (Safety) Act 2017* (as in force before the commencement of section 13 of this Act), that is being held on behalf of a child or young person, regardless of where the money is being held.

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- (2) Any money to which this clause applies will, on the commencement of this clause, be taken to be money received by the Chief Executive pursuant to section 161 of the *Children and Young People (Safety) Act 2017* (as amended by section 13 of this Act) and is to be dealt with in accordance with that section.
- (3) In this clause—  
***Chief Executive*** has the same meaning as in the *Children and Young People (Safety) Act 2017*.

## Historical versions

19.12.2017  
26.2.2018  
22.10.2018  
2.8.2021  
21.10.2021  
9.12.2021