

South Australia

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CHILDREN'S PROTECTION ACT 1993

An Act to provide for the care and protection of children; and for other purposes.

*This Act is reprinted pursuant to the Acts Republication Act 1967 and incorporates all amendments in force as at **1 July 2000**.*

It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.

CHILDREN'S PROTECTION ACT 1993

being

Children's Protection Act 1993 No. 93 of 1993
[Assented to 4 November 1993]¹

as amended by

Statutes Amendment (Female Genital Mutilation and Child Protection) Act 1995 No. 24 of 1995 [Assented to 27 April 1995]²

Statutes Amendment (Sentencing of Young Offenders) Act 1996 No. 68 of 1996 [Assented to 15 August 1996]³

Statutes Amendment and Repeal (Justice Portfolio) Act 1999 No. 42 of 1999 [Assented to 5 August 1999]⁴

Children's Protection (Mandatory Reporting and Reciprocal Arrangements) Amendment Act 2000 No. 16 of 2000
[Assented to 1 June 2000]⁵

¹ Came into operation (except ss. 27-36, 49 and 59) 1 January 1994: *Gaz.* 4 November 1993, p. 2166; ss. 27-36, 49 and 59 came into operation 5 January 1995: *Gaz.* 5 January 1995, p. 6.

² Came into operation (except s. 5) 1 May 1995: *Gaz.* 27 April 1995, p. 1563; s. 5 came into operation 27 April 1997 (by virtue of the Acts Interpretation Act 1915, s. 7(5)).

³ Came into operation 8 October 1996: *Gaz.* 29 August 1996, p. 810.

⁴ Part 4 (ss. 11-24) came into operation 3 October 1999: *Gaz.* 23 September 1999, p. 1208.

⁵ **Came into operation 1 July 2000: *Gaz.* 29 June 2000, p. 3413.**

NOTE:

- Asterisks indicate repeal or deletion of text.
- Entries appearing in bold type indicate the amendments incorporated since the last reprint.
- For the legislative history of the Act see Appendix.

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The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

1. This Act may be cited as the *Children's Protection Act 1993*.

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Objects

3. (1) The object of this Act is to provide for the care and protection of children and to do so in a manner that maximises a child's opportunity to grow up in a safe and stable environment and to reach his or her full potential.

(2) The administration of this Act is to be founded on the principles that the primary responsibility for a child's care and protection lies with the child's family and that a high priority should therefore be accorded to supporting and assisting the family to carry out that responsibility.

Principles to be observed in dealing with children

4. (1) In any exercise of powers under this Act in relation to a child—

- (a) the safety of the child is to be the paramount consideration; and
- (b) the powers must always be exercised in the best interests of the child.

- (2) Serious consideration must, however, be given to the desirability of—

- (a) keeping the child within his or her family; and
- (b) preserving and strengthening family relationships between the child, the child's parents and other members of the child's family, whether or not the child is to reside within his or her family; and
- (c) not withdrawing the child unnecessarily from the child's familiar environment or neighbourhood; and
- (d) not interrupting unnecessarily the child's education or employment; and
- (e) preserving and enhancing the child's sense of racial, ethnic, religious or cultural identity, and making decisions and orders that are consistent with racial or ethnic traditions or religious or cultural values.

(3) If the child is able to form and express his or her own views as to his or her ongoing care and protection, those views must be sought and given serious consideration, taking into account the child's age and maturity.

(4) All proceedings under this Act must be dealt with expeditiously, with due regard to the degree of urgency of each particular case.

Provisions relating to dealing with Aboriginal or Torres Strait Islander children

5. (1) No decision or order may be made under this Act as to where or with whom an Aboriginal or Torres Strait Islander child will reside unless consultation has first been had with a recognised Aboriginal organisation, or a recognised Torres Strait Islander organisation, as the case may require.

(2) A person or court, in making any decision or order under this Act in relation to an Aboriginal or Torres Strait Islander child, must, in addition to complying with the requirements of section 4, have regard—

- (a) to the submissions made by or on behalf of a recognised Aboriginal or Torres Strait Islander organisation consulted in relation to the child; and
- (b) where there has been no such consultation—to Aboriginal traditions and cultural values (including kinship rules) as generally expressed by the Aboriginal community, or to Torres Strait Islander traditions and cultural values (including kinship rules) as generally expressed by the Torres Strait Islander community, as the case may require; and
- (c) to the general principle that an Aboriginal child should be kept within the Aboriginal community and a Torres Strait Islander child should be kept within the Torres Strait Islander community.

(3) For the purposes of this Act, a recognised Aboriginal or Torres Strait Islander organisation is an organisation that the Minister, after consulting with the Aboriginal community or a section of the Aboriginal community, or the Torres Strait Islander community or a section of the Torres Strait Islander community, as the case may require, declares by notice in the *Gazette* to be a recognised Aboriginal organisation, or a recognised Torres Strait Islander organisation, for the purposes of this Act.

(4) 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 under subsection (3).

(5) All reasonable endeavours should be made when conducting consultations, negotiations, meetings or proceedings of any kind under this Act involving an Aboriginal person (whether a child or not) to do so in a manner and in a venue that is as sympathetic to Aboriginal traditions as is reasonably practicable.

(6) All reasonable endeavours should be made when conducting consultations, negotiations, meetings or proceedings of any kind under this Act involving a Torres Strait Islander person (whether a child or not) to do so in a manner and in a venue that is as sympathetic to Torres Strait Islander traditions as is reasonably practicable.

(7) The Minister will cause discussions to be held from time to time between the Department and the relevant community for the purposes of implementing subsections (5) and (6).

Interpretation

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

"**Aboriginal child**" means a child—

- (a) who is a descendant of the indigenous inhabitants of Australia; and
- (b) who regards himself or herself as an Aboriginal or, if he or she is a young child, is regarded as an Aboriginal by at least one of his or her parents;

"**abuse or neglect**", in relation to a child, means—

- (a) sexual abuse of the child; or
- (b) physical or emotional abuse of the child, or neglect of the child, to the extent that—
 - (i) the child has suffered, or is likely to suffer, physical or psychological injury detrimental to the child's wellbeing; or
 - (ii) the child's physical or psychological development is in jeopardy,

and "**abused**" or "**neglected**" has a corresponding meaning;

"**authorised police officer**" means a member of the police force who is of or above the rank of sergeant or who is in charge of a police station or any other member of the police force designated as an authorised police officer by the Commissioner of Police for the purposes of this Act;

"**Care and Protection Co-ordinator**" means a member of the staff of the State Courts Administration Council assigned to the position of Care and Protection Co-ordinator;

"**Chief Executive Officer**" means the person for the time being holding, or acting in, the position of chief executive officer of the Department;

"**child**" means a person under 18 years of age;

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

"**dentist**" means a person who is registered as a dentist under the *Dentists Act 1984*;

"**Department**" means the *Department for Family and Community Services*;

"**family**", in relation to a child, means the child's immediate family (including all guardians) and the child's extended family (that is to say, all other persons to whom the child is related by blood or marriage) and, in relation to an Aboriginal or Torres Strait Islander child, includes any person held to be related to the child according to Aboriginal kinship rules, or Torres Strait Islander kinship rules, as the case may require;

"**family care meeting**"—*See Part 5 Division 1*;

"**guardian**", of a child, means a parent of the child, a person (other than the Minister) who is the legal guardian of the child or has the legal custody of the child or any other person who stands *in loco parentis* to the child and has done so for a significant length of time;

"**licensed children's residential facility**" means a children's residential facility that is the subject of a licence under the *Family and Community Services Act 1972*;

"**medical practitioner**" means a person who is registered on the general register under the *Medical Practitioners Act 1983*;

"**parent**", of a child, includes a stepmother or stepfather of the child;

"**pharmacist**" means a person who is registered as a pharmacist under the *Pharmacists Act 1991*;

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"psychologist" means a person who is registered as a psychologist under the *Psychological Practices Act 1973*;

"Senior Judge" includes, if the Senior Judge is not reasonably available to exercise a power vested in the Senior Judge under this Act, the most senior of the Judges of the Court who is available to exercise that power;

"Torres Strait Islander child" means a child—

- (a) who is a descendant of the indigenous inhabitants of the Torres Strait Islands; and
- (b) who regards himself or herself as a Torres Strait Islander or, if he or she is a young child, is regarded as a Torres Strait Islander by at least one of his or her parents;

"working day" means any day other than a Saturday or a Sunday or other public holiday.

(2) For the purposes of this Act, a child is at risk if—

- (a) the child has been, or is being, abused or neglected; or
- (b) a person with whom the child resides (whether a guardian of the child or not)—
 - (i) has threatened to kill or injure the child and there is a reasonable likelihood of the threat being carried out; or
 - (ii) has killed, abused or neglected some other child or children and there is a reasonable likelihood of the child in question being killed, abused or neglected by that person; or
- (c) the guardians of the child—
 - (i) are unable to maintain the child, or are unable to exercise adequate supervision and control over the child; or
 - (ii) are unwilling to maintain the child, or are unwilling to exercise adequate supervision and control over the child; or
 - (iii) are dead, have abandoned the child, or cannot, after reasonable inquiry, be found; or
- (d) the child is of compulsory school age but has been persistently absent from school without satisfactory explanation of the absence; or
- (e) the child is under 15 years of age and is of no fixed address.

(3) It is immaterial for the purposes of this Act that any conduct referred to in subsection (2) took place wholly or partly outside this State.

Care and Protection Co-ordinators

7. The person responsible for appointing Care and Protection Co-ordinators should ensure that, as far as is reasonably practicable, the Co-ordinators represent between them an appropriate cultural diversity.

PART 2
THE MINISTER'S FUNCTIONS

General functions of the Minister

8. The Minister must seek to further the objects of this Act and, to that end, should endeavour—

- (a) to promote a partnership approach between the Government, local government, non-government agencies and families in taking responsibility for and dealing with the problem of child abuse and neglect;
- (b) to promote and assist in the development of co-ordinated strategies for dealing with the problem of child abuse and neglect;
- (c) to provide, or assist in the provision of, services for dealing with the problem of child abuse and neglect and for the care and protection of children;
- (d) to provide, or assist in the provision of, preventative and support services directed towards strengthening and supporting families, reducing the incidence of child abuse and neglect and maximising the well-being of children generally;
- (e) to assist the Aboriginal community to establish its own programmes for preventing or reducing the incidence of abuse or neglect of children within the Aboriginal community;
- (f) to provide, or assist in the provision of, information or education services for parents, prospective parents and other members of the community in relation to the developmental, social and safety requirements of children;
- (g) to provide, or assist in the provision of, education to persons who are required to notify the Department on forming a reasonable suspicion that a child is being abused or neglected;
- (h) to provide, or assist in the provision of, services to assist persons who, as children, have been under the guardianship or in the custody of the Minister, in making a successful transition to adulthood;
- (i) to collect and publish relevant data or statistics or to assist in their collection or publication;
- (j) to promote, encourage or undertake research into child abuse and neglect;
- (k) to encourage the provision, by tertiary institutions in relevant courses, of instruction about child abuse and neglect and its prevention and treatment;
- (l) generally to do such other things as the Minister believes will further the objects of this Act.

**PART 3
CUSTODY AGREEMENTS**

Voluntary custody agreements

9. (1) The guardians of a child and the Minister may enter into an agreement (a "custody agreement") under which the Minister will have the custody of the child while the agreement has effect.

(2) Notwithstanding subsection (1)—

- (a) if the whereabouts of a guardian of a child cannot, after reasonable enquiries, be ascertained; or
- (b) if a guardian of a child has failed to respond within a reasonable period of time to a request that he or she enter into a custody agreement; or
- (c) if it is not, in all the circumstances of the case, reasonably practicable to request a particular guardian of a child to enter into a custody agreement,

the remaining guardian or guardians may enter into a custody agreement in respect of the child.

(3) Negotiations for a custody agreement may be initiated by a guardian of a child or by a child of or above the age of 16 years, but no such agreement can be entered into (or extended) in relation to a child of or above the age of 16 years unless the child consents to the agreement or extension.

(4) If a child under the age of 16 years appears to have a sufficient understanding of the consequences of a custody agreement, the child must be consulted before such an agreement can be entered into (or extended) by his or her guardians.

(5) A custody agreement—

- (a) must be in writing; and
- (b) may be terminated at any time—
 - (i) by a guardian who is a party to the agreement, by notice in writing to the Minister; 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 for the guardianship or custody of the child.

(6) If a custody agreement relates to a child of or above the age of 16 years, the Minister must terminate the agreement on the request of the child, but not until he or she is satisfied that proper arrangements exist for the care of the child.

(7) Unless the agreement is terminated under subsection (5) or (6), a custody agreement—

- (a) has effect for a period, not exceeding three months, specified in the agreement; and
- (b) may, on its expiration, be extended by the parties to the agreement in accordance with this section, but not so that the agreement will operate for a total period of more than six months.

**PART 4
NOTIFICATION AND INVESTIGATIONS**

DIVISION 1—NOTIFICATION OF ABUSE OR NEGLECT

Interpretation

10. In this Division, "**abuse or neglect**", in relation to a child, has the same meaning as in section 6(1), but includes a reasonable likelihood, in terms of section 6(2)(b), of the child being killed, injured, abused or neglected by a person with whom the child resides.

Notification of abuse or neglect

11. (1) Where—

- (a) a person to whom this section applies suspects on reasonable grounds that a child has been or is being abused or neglected; and
- (b) the suspicion is formed in the course of the person's work (whether paid or voluntary) or of carrying out official duties,

the person must notify the Department of that suspicion as soon as practicable after he or she forms the suspicion.

Maximum penalty: \$2 500.

(2) This section applies to the following persons:

- (a) a medical practitioner;
- (ab) a pharmacist;
- (b) a registered or enrolled nurse;
- (c) a dentist;
- (d) a psychologist;
- (e) a member of the police force;
- (f) a community corrections officer (an officer or employee of an administrative unit of the Public Service whose duties include the supervision of young or adult offenders in the community);
- (g) a social worker;
- (h) a teacher in any educational institution (including a kindergarten);
- (i) an approved family day care provider;
- (j) any other person who is an employee of, or volunteer in, a Government department, agency or instrumentality, or a local government or non-government agency, that provides health, welfare, education, child care or residential services wholly or partly for children, being a person who—
 - (i) is engaged in the actual delivery of those services to children; or

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- (ii) holds a management position in the relevant organisation the duties of which include direct responsibility for, or direct supervision of, the provision of those services to children.

(3) A notification under this section must be accompanied by a statement of the observations, information and opinions upon which the suspicion is based.

* * * * *

Protection from liability for voluntary or mandatory notification

12. A person who (whether voluntarily or pursuant to a requirement of this Act) notifies the Department of a suspicion that a child has been or is being abused or neglected or provides any information to the Department in respect of such a notification—

- (a) cannot, by virtue of doing so, be held to have breached any code of professional etiquette or ethics, or to have departed from any accepted form of professional conduct; and
- (b) insofar as he or she has acted in good faith, incurs no civil or criminal liability in respect of the notification or the provision of the information.

Confidentiality of notification of abuse or neglect

13. (1) For the purposes of this section, a notifier is a person who notifies the Department that he or she suspects that a child has been or is being abused or neglected.

(2) Subject to this section, a person who receives a notification of child abuse or neglect from a notifier, or who otherwise becomes aware of the identity of a notifier, must not disclose the identity of the notifier to any other person unless the disclosure—

- (a) is made in the course of official duties to another person acting in the course of official duties; or
- (b) is made with the consent of the notifier; or
- (c) is made by way of evidence adduced in accordance with subsections (3) and (4).

Maximum penalty: \$5 000.

(3) Subject to subsection (4)—

- (a) no evidence as to the identity of a notifier, or from which the identity of the notifier could be deduced, may be adduced in proceedings before a court without leave of the court; and
- (b) unless such leave is granted, a party or witness in those proceedings must not be asked, and, if asked, cannot be required to answer, any question that cannot be answered without disclosing the identity of, or leading to the identification of, the notifier.

(4) A court cannot grant leave under subsection (3) unless—

- (a) the court 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
- (b) the notifier consents to the admission of the evidence in the proceedings.

- (5) An application for leave to adduce evidence under subsection (3)—
- (a) must not, except as authorised by the court, 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 notifier pending the determination of the application.

Chief Executive Officer not obliged to take action in certain circumstances

14. Nothing in this Act requires the Minister or the Chief Executive Officer to take or initiate any action under this Act in relation to a notification of suspected abuse or neglect of a child if the Minister or the Chief Executive Officer is satisfied—

- (a) that the information or observations on which the notifier formed his or her suspicion were not sufficient to constitute reasonable grounds for the suspicion; or
- (b) that, while there are reasonable grounds for such a suspicion, proper arrangements exist for the care and protection of the child and the matter of the apparent abuse or neglect has been or is being adequately dealt with.

DIVISION 2—REMOVAL OF CHILDREN IN DANGER

Interpretation

15. In this Division, "officer" means—

- (a) a member of the police force; or
- (b) an employee of the Department authorised by the Minister to exercise powers under this Division.

Power to remove children from dangerous situations

16. (1) If an officer believes on reasonable grounds—

- (a) that a child is in a situation such that, if not removed pursuant to this section, the child's safety would be in serious danger; and
- (b) that the child is not in the company of any of his or her guardians,

the officer may remove the child from any premises or place, using such force (including breaking into premises) as is reasonably necessary for the purpose.

(2) A member of the police force below the rank of inspector cannot remove a child pursuant to this section without the prior approval of a member of the police force of or above the rank of inspector, unless he or she believes on reasonable grounds that the delay consequent upon seeking approval would prejudice the safety of the child.

(3) An officer who removes a child pursuant to this section must use all reasonable endeavours to return the child to the child's residence unless of the opinion that it would not be in the best interests of the child to do so.

Power to remove children from guardians

17. (1) If an officer believes on reasonable grounds—

- (a) that the safety of a child who is in the company of his or her guardian or guardians is in imminent danger; and

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(b) that the child is a child who is at risk,

the officer may remove the child from the guardian or guardians, using such force (including breaking into premises) as is reasonably necessary for the purpose.

(2) An employee of the Department cannot remove a child pursuant to this section except with the prior approval of the Chief Executive Officer.

Dealing with a child after removal

18. (1) A member of the police force who removes a child pursuant to this Division must (if the child is not returned to the child's residence) consult with an appropriate employee of the Department and deliver the child into the care of such person as the employee nominates.

(2) The Minister will be taken to have the custody of a child who is removed pursuant to this Division and who is not returned to his or her residence, but only until the end of the next working day after the day on which the child is so removed, unless, by the end of that period, custody of the child has been granted to the Minister under an investigation and assessment order.

DIVISION 3—INVESTIGATIONS

Investigations

19. (1) If the Chief Executive Officer suspects on reasonable grounds that a child is at risk, the Chief Executive Officer may cause an investigation into the circumstances of the child to be carried out.

(2) For the purposes of an investigation, the Chief Executive Officer may, by notice in writing, require a person who has examined, assessed, carried out tests on or treated the child, or the agency for whom the person works, to furnish the Chief Executive Officer with a written report on the examination, assessment, tests or treatment.

(3) Subject to this section, an authorised police officer may, for the purposes of assisting an investigation under subsection (1), do all or any of the following:

- (a) enter or break into, remain in and search any premises or place;
- (b) seize any item that the officer believes on reasonable grounds may afford evidence relevant to the investigation;
- (c) take photographs, films or videos;
- (d) require a person who may be in a position to furnish information relevant to the investigation to answer any question put by the officer to the best of that person's knowledge, information or belief.

(4) The powers under subsection (3) can only be exercised on the authority of a warrant issued by a magistrate except where—

- (a) entry to the premises or place has been refused or cannot be gained; and
- (b) the police officer believes on reasonable grounds that the delay that would ensue as a result of applying for a warrant would prejudice the investigation and the safety of the child to whom the investigation relates.

(5) An authorised police officer may be accompanied by such other members of the police force or employees of the Department while exercising powers under this section as may be necessary or desirable in the circumstances.

(6) Subject to subsection (7), a person must not refuse or fail to comply with a requirement under this section.

Maximum penalty: \$2 500 or imprisonment for 6 months.

(7) A person is not required—

- (a) to provide information that is privileged on the ground of legal professional privilege; or
- (b) to answer a question if the answer to the question would incriminate the person of an offence.

(8) An application for the issue of a warrant under this section may be made personally or by telephone.

(9) 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.

(10) An application must not be made by telephone unless the applicant is of the opinion that the warrant is urgently required and there is insufficient time to make the application personally.

(11) The following provisions apply in relation to an application made by telephone:

- (a) the applicant must inform the magistrate of his or her name and rank and the magistrate, on receiving that information, is entitled to assume, without further inquiry, that the applicant has the authority to make the application;
- (b) the applicant must inform the magistrate of the grounds on which the issue of the warrant is sought;
- (c) if it appears to the magistrate from the information furnished by the applicant that there are proper grounds for the issue of the warrant, the magistrate must inform the applicant of the facts that, in the magistrate's opinion, justify the issue of the warrant and must not proceed to issue the warrant unless the applicant undertakes to make an affidavit verifying those facts;
- (d) if the applicant gives such an undertaking, the magistrate may then make out and sign a warrant, noting on the warrant the facts that justify, in his or her opinion, the issue of the warrant;
- (e) the warrant will be taken to have been issued when signed by the magistrate;
- (f) the magistrate must inform the applicant of the terms of the warrant;
- (g) the applicant must, as soon as practicable after the issue of the warrant forward to the magistrate an affidavit in accordance with his or her undertaking.

(12) 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 Youth Court.

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(13) A person who is required to answer a question or furnish a report under this section does not, insofar as he or she has acted in good faith, incur any civil liability in complying with the requirement.

DIVISION 4—INVESTIGATION AND ASSESSMENT ORDERS

Application for order

20. If the Chief Executive Officer is of the opinion—

- (a) that there is some information or evidence leading to a reasonable suspicion that a child is at risk; and
- (b) that further investigation of the matter is warranted or a family care meeting should be held; and
- (c) that—
 - (i) the investigation cannot properly proceed unless an order under this Division is made; or
 - (ii) it is desirable that the child be protected while the matter is being investigated or a family care meeting is being held,

the Chief Executive Officer may apply to the Youth Court for an order under this Division.

Orders Court may make

21. (1) If, on an application under this Division, the Court is satisfied that there are sufficient grounds for making an order under this section and that it would be in the best interests of the child the subject of the application that such an order be made, the Court may make all or any of the following orders:

- (a) an order authorising examination and assessment of the child;
- (b) an order authorising the Chief Executive Officer to require—
 - (i) any person to answer, to the best of the person's knowledge, information or belief, questions put by an employee of the Department authorised by the Minister to exercise the power to question; or
 - (ii) any person who has examined, assessed or treated a party to the proceedings (other than the child), or the agency for whom the person works, to furnish the Chief Executive Officer with a written report of that examination, assessment or treatment;
- (c) an order granting custody of the child to the Minister;
- (d) an order directing a party to the application who resides with the child to cease or refrain from residing in the same premises as the child;
- (e) an order directing a party to the application to refrain from having contact with the child;
- (f) such ancillary orders as the Court thinks fit.

(2) An order under subsection (1)—

- (a) has effect for the period (not exceeding four weeks) specified in the order; and
- (b) may, on application by the Chief Executive Officer, be extended (once only) for a period (not exceeding four weeks) specified in the order.

(3) An application for extension under subsection (2)(b) must be heard by the Senior Judge of the Court.

(4) A party to the proceedings who, having been served personally with an order made under subsection (1), contravenes or fails to comply with the order is guilty of an offence.

Maximum penalty: Imprisonment for 3 months.

Variation or discharge of orders

22. (1) The Chief Executive Officer may apply to the Court for an order to vary or discharge an order under section 21.

(2) The Court may, on an application under this section, by order—

- (a) vary the terms of the order; or
- (b) discharge the order; or
- (c) dismiss the application.

Power of adjournment

23. (1) The Court may adjourn the hearing of an application under this Division for a period not exceeding seven days.

(2) The Court cannot adjourn the hearing of an application more than once.

(3) The Court may, on an adjournment under this section, make one or more of the following orders:

- (a) an order granting custody of the child to the Minister;
- (b) an order directing a guardian of the child take specified steps to secure the proper care and protection of the child;
- (c) an order directing that a specified person be allowed, or not be allowed, access to the child;
- (d) an order authorising the examination and assessment of the child;
- (e) an order authorising the Chief Executive Officer to require—
 - (i) any person to answer, to the best of the person's knowledge, information or belief, questions put by an employee of the Department authorised by the Minister to exercise the power to question; or
 - (ii) any person who has examined, assessed or treated a party to the proceedings (other than the child), or the agency for whom the person works, to furnish the Chief Executive Officer with a written report of that examination, assessment or treatment;

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(f) such ancillary orders as the Court thinks fit.

(4) An order under subsection (3) has effect only during the period of the adjournment.

(5) A party to the application 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 3 months.

Obligation to answer questions or furnish reports

24. (1) Subject to subsection (2), a person must not refuse or fail to comply with a requirement to answer a question or furnish a report if the requirement is authorised by an order under this Division.

Maximum penalty: \$2 500 or imprisonment for 6 months.

(2) A person is not required—

(a) to provide information that is privileged on the ground of legal professional privilege; or

(b) to answer a question if the answer to the question would incriminate the person of an offence.

(3) A person who is required to answer a question or furnish a report under this Division does not, insofar as he or she has acted in good faith, incur any civil liability in complying with the requirement.

Orders not appealable

25. No appeal lies against an order under this Division.

DIVISION 5—EXAMINATION AND ASSESSMENT OF CHILDREN

Examination and assessment of children

26. (1) While—

(a) a child is in the custody of the Minister pursuant to having been removed from any person, premises or place under Division 2; or

(b) an investigation and assessment order under Division 4 authorising examination and assessment of a child is in force,

an employee of the Department may take the child to such persons or places (including admitting the child to hospital) as the Chief Executive Officer may authorise for the purpose of having the child professionally examined, tested or assessed.

(2) A medical practitioner or dentist to whom a child is referred under this section may give such treatment to the child as he or she thinks necessary for alleviating any immediate injury or suffering of the child.

(3) A person who is to examine, test, assess or treat a child pursuant to this section may do so notwithstanding the absence or refusal of the consent of the child's guardians, but nothing in this section requires the person to carry out any examination, test, assessment or treatment if the child refuses consent.

(4) A person to whom a child is referred under this section, or the agency for whom the person works, must, as soon as practicable after any examination, assessment, test or treatment of the child is completed, furnish the Chief Executive Officer with a written report on the examination, assessment, test or treatment.

(5) A person who is required to furnish a report under subsection (4) does not, insofar as he or she has acted in good faith, incur any civil liability in respect of complying with the requirement.

DIVISION 6—OTHER ORDERS

Definitions

26A. (1) 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.

(2) A medical procedure has a genuine therapeutic purpose only if directed at curing or alleviating a physiological disability or physical abnormality.

Protection of children at risk of genital mutilation

26B. (1) If the Court is satisfied that there are reasonable grounds to suspect that a child may be at risk of female genital mutilation, the Court may make orders for the protection of the child.

Examples—

The Court might for example make an order—

- (a) preventing a person from taking the child from the State; or
- (b) requiring that the child's passport be held by the Court for a period specified in the order or until further order; or
- (c) providing for the periodic examination of the child to ensure that the child is not subjected to female genital mutilation.

(2) An application for an order under this section may be made by a member of the police force or by the Chief Executive Officer.

(3) The Court may make an order on an application under this section without giving a person who is to be bound by the Court's order notice of the proceedings or an opportunity to be heard in the proceedings.

(4) However, in that case the Court must allow the person against whom the order is made a

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reasonable opportunity to appear before the Court to show why the order should be varied or revoked.

(5) In proceedings under this section the Court must assume that it is in the child's best interests to resist pressure of racial, ethnic, religious, cultural or family origin that might lead to genital mutilation of the child.

**PART 5
CHILDREN IN NEED OF CARE AND PROTECTION**

DIVISION 1—FAMILY CARE MEETING

Family care meetings to be convened by Minister

27. (1) If the Minister is of the opinion that a child is at risk and that arrangements should be made to secure the child's care and protection, the Minister should cause a family care meeting to be convened in respect of the child.

(2) The Minister cannot make an application under Division 2 for an order granting custody of a child, or placing a child under guardianship, before a family care meeting has been held in respect of the child unless satisfied—

- (a) that it has not been possible to hold a meeting despite reasonable endeavours to do so; or
- (b) that an order should be made without delay; or
- (c) that the guardians of the child consent to the making of the application; or
- (d) that there is other good reason to do so.

(3) An application under Division 2 is not invalid by reason only of a failure to hold a family care meeting.

Purpose of family care meetings

28. The purpose of a family care meeting is to provide a proper opportunity for a child's family, in conjunction with a Care and Protection Co-ordinator—

- (a) to make informed decisions as to the arrangements for best securing the care and protection of the child; and
- (b) to review those arrangements from time to time.

Convening a family care meeting

29. (1) A Care and Protection Co-ordinator nominated by the Senior Judge of the Court will be responsible for convening and conducting a family care meeting.

(2) The Co-ordinator must arrange for a suitable person to act as advocate for the child at the meeting, unless satisfied that the child has made an independent decision to waive his or her right to be so represented.

(3) The Co-ordinator must, as far as is reasonably practicable, consult with the child and the child's guardians as to who should be invited to attend the meeting and the time and place to be fixed for the meeting.

Invited participants

30. (1) Subject to subsection (2), the Care and Protection Co-ordinator convening a family care meeting will issue written invitations to attend to the following persons:

- (a) the child; and
- (b) the guardians of the child; and
- (c) other members of the child's family who should, in the opinion of the Co-ordinator,

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attend the meeting; and

- (d) any other person who has had a close association with the child and who should, in the opinion of the Co-ordinator, attend the meeting; and
- (e) any other adult person (not being a legal practitioner) who the child or the child's guardians wish to support them at the meeting and who, in the opinion of the Co-ordinator, would be of assistance in that role.

(2) The Co-ordinator is not required—

- (a) to invite the child to the meeting if the Co-ordinator is of the opinion that it would not be in the best interests of the child for the child to attend; or
- (b) to invite any other particular person to the meeting if the Co-ordinator is of the opinion that the attendance of that person would not be in the best interests of the child.

Constitution of family care meeting

31. A family care meeting consists of—

- (a) the Care and Protection Co-ordinator; and
- (b) such of the persons invited to attend the meeting as attend in response to the invitation; and
- (c) the employee in the Department authorised by the Chief Executive Officer to present the report of the investigation into the child's circumstances to the meeting; and
- (d) if persistent absenteeism from school is involved—
 - (i) in the case of a Government school—an Education Department employee nominated by the Director-General of Education;
 - (ii) in the case of a non-Government school—a person nominated by the head teacher of the school; and
- (e) if one has been appointed, the child's advocate; and
- (f) any person, nominated by the Co-ordinator, who has examined, assessed, counselled or treated the child in the course of the investigation into the child's circumstances; and
- (g) any other person nominated by the Co-ordinator for the purpose of providing expert advice or information on matters relevant to the meeting; and
- (h) —
 - (i) if the child is an Aboriginal child, a person nominated by a recognised Aboriginal organisation; or
 - (ii) if the child is a Torres Strait Islander child, a person nominated by a recognised Torres Strait Islander organisation.

Procedures

32. (1) The Care and Protection Co-ordinator must take reasonable steps to ascertain the views as to the care and protection of the child—

- (a) from those persons invited to a family care meeting who are unable to attend; and
- (b) from the child (so far as his or her views are ascertainable) if he or she has not been invited, or refuses, to attend; and
- (c) from any guardian or other family member who has not been invited to attend the meeting, if the Co-ordinator thinks it appropriate to do so,

and must relay all those views to the meeting.

(2) The Co-ordinator must ensure that sufficient information as to the child's circumstances and the grounds for believing the child to be at risk is presented to the meeting.

(3) The Co-ordinator must allow the child's guardians and other family members present at the meeting, and the child if the Co-ordinator thinks it appropriate to do so, an opportunity to hold discussions in private for the purpose of formulating the family's recommendations as to the arrangements for securing the care and protection of the child.

(4) The Co-ordinator may adjourn the meeting to another date if he or she thinks it is necessary or desirable to do so.

(5) A family care meeting should if possible make decisions by the consensus of the child and the child's guardians and other family members.

(6) A decision made by a family care meeting will not however be regarded as validly made unless it is concurred in by the Care and Protection Co-ordinator as properly securing the care and protection of the child.

(7) The decisions made by a family care meeting as to the arrangements for securing the care and protection of the child must be recorded in writing by the Co-ordinator and acknowledged in writing by the Co-ordinator and such of the following persons who attend the meeting and concur in the decisions:

- (a) the child (unless excused by the Co-ordinator from the obligation); and
- (b) the child's guardians and other family members.

(8) A copy of that written record must be made available by the Co-ordinator to—

- (a) the child; and
- (b) each guardian of the child; and
- (c) any other person involved in implementing the arrangements; and
- (d) such other persons as the Co-ordinator thinks fit.

Review of arrangements

33. (1) A family care meeting that makes decisions as to the arrangements for securing the care and protection of a child must also make provision for the review of those arrangements.

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(2) A Care and Protection Co-ordinator will convene a family care meeting for the purpose of reviewing the arrangements made for the care and protection of a child at a previous meeting, in the following circumstances:

- (a) if the Co-ordinator is required to do so pursuant to a decision made at the previous meeting; or
- (b) if the Co-ordinator is requested to do so at any other time by any two or more members of the child's family who attended the previous meeting; or
- (c) if at any time the Co-ordinator thinks it is necessary or desirable to do so.

Certain matters not admissible

34. Evidence of anything said at a family care meeting is not admissible in any proceedings, but the written record of the decisions made by a family care meeting is admissible in proceedings under Division 2 for the purpose of establishing that those decisions were made.

Procedure where decisions not made or implemented

35. If no decisions are made by a family care meeting as to the arrangements for securing the care and protection of the child, or if such decisions are made but are not implemented or complied with, the Minister will, if of the opinion that the child is at risk and that an order under Division 2 is required to secure the child's care and protection, take out an application under Division 2.

Guardians whose whereabouts are unknown

36. This Division does not apply in relation to a guardian whose whereabouts cannot, after reasonable enquiry, be ascertained.

DIVISION 2—CARE AND PROTECTION ORDERS**Application for care and protection order**

37. (1) If the Minister is of the opinion—

- (a) that a child is at risk; and
- (b) that an order under this Division should be made in respect of the child to secure his or her care and protection,

the Minister may apply to the Youth Court for an order under this Division.

(2) If the Minister is of the opinion—

- (a) that proper arrangements exist for the care and protection of a child (whether pursuant to a decision of a family care meeting or pursuant to an exercise of administrative powers under the *Family and Community Services Act 1972* as in force immediately prior to the commencement of this Act); and
- (b) that the child would be likely to suffer significant psychological injury if the arrangements were to be disturbed; and
- (c) that it would be in the best interests of the child for the arrangements to be the subject of an order under this Division,

the Minister may apply to the Youth Court for an order under this Division.

Court's power to make orders

38. (1) If the Court finds, on an application under this Division, that the grounds of the application have been made out and that an order under this section should be made in respect of the child, the Court may exercise any one or more of the following powers:

- (a) the Court may require any guardian of the child, or the child, to enter into a written undertaking (for a specified period not exceeding 12 months) to do any specified thing, or to refrain from doing any specified thing and, if the Court thinks fit, require the child to be under the supervision of the Chief Executive Officer or some other specified person or authority for the duration of the undertaking;
- (b) the Court may grant custody of the child, for a specified period not exceeding 12 months, to one of the following persons:
 - (i) a guardian of the child;
 - (ii) some other member of the child's family;
 - (iii) the chief executive officer of a licensed children's residential facility, for placement of the child in such of those facilities as that officer from time to time thinks appropriate;
 - (iv) the Minister;
 - (v) any other person that the Court thinks appropriate in the circumstances of the case;
- (c) the Court may place the child, for a specified period not exceeding 12 months, under the guardianship of the Minister or such other person or persons (not exceeding two) as the Court thinks appropriate in the circumstances of the case;
- (d) the Court may place the child, until the child attains 18 years of age, under the guardianship of the Minister or such other person or persons (not exceeding two) as the Court thinks appropriate in the circumstances of the case;
- (e) the Court may direct a party to the application to do one or more of the following:
 - (i) to cease or refrain from residing in the same premises as the child;
 - (ii) to refrain from coming within a specified distance of the child's residence;
 - (iii) to refrain from having any contact with the child except in the presence of some other person;
 - (iv) to refrain from having any contact at all with the child;
- (f) the Court may make consequential or ancillary orders—
 - (i) providing for access to the child; or
 - (ii) providing for the way in which a person who has custody or guardianship of the child under an order of the Court is to deal with matters relating to the care, protection, health, welfare or education of the child; or
 - (iii) dealing with any other matter.

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(2) In relation to orders under subsection (1)(d) (placing a child under guardianship until 18), the Court—

- (a) should not, as a general rule, consider making such an order in relation to a child unless satisfied that no other order would in all the circumstances of the case be appropriate; but
- (b) should, in the interests of securing a settled and permanent living arrangement for the child, consider making such an order if some other order under this section has been, or will have been, in force in relation to the child for a period of two years (or a number of such orders have, or will have, between them been in force for that period).

(3) If the Court finds that a child is at risk because a person other than a guardian with whom the child resides has abused, neglected or threatened the child, the Court cannot make an order removing the child from the guardianship or custody of the guardians with whom the child resides unless satisfied that they knew, or ought to have known, of the abuse, neglect or threats.

(4) Where the Chief Executive Officer or some other specified person or authority is, by order of the Court, to supervise a child who has entered into an undertaking, the supervisor may exercise such powers as the Minister authorises either generally or in relation to a particular supervisor.

Adjournments

39. The Court—

- (a) cannot exercise its general power of adjournment in relation to an application under this Division so that the period between the lodging of the application and the commencement of the hearing exceeds 10 weeks; and
- (b) on any adjournment, may make such of the orders it is empowered to make under this Division as it thinks appropriate, to have effect for the period of the adjournment and any subsequent adjournment (but nothing in this subsection prevents the Court from varying or revoking such an order or making a further order on any subsequent adjournment).

Variation or revocation of orders

40. An order made by the Court under this Division—

- (a) may be varied or revoked at any time on application by a party to the proceedings; and
- (b) lapses when the child attains 18 years of age.

* * * * *

Conference of parties

42. (1) If the Court considers it desirable to do so, the Court may, before or during the hearing of proceedings under this Division, 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.

Effect of guardianship order

43. If the Court places a child under the guardianship of the Minister or any other person or persons under this Division, the Minister or the other person or persons is, or are, the lawful guardian, or guardians, of the child to the exclusion of the rights of any other person.

Non-compliance with orders

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

Maximum penalty: Imprisonment for 3 months.

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**PART 6
PROCEDURAL MATTERS**

Evidence, etc.

45. (1) In any proceedings under this Act—

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

(2) A fact to be proved in proceedings under this Act is sufficiently proved if proved on the balance of probabilities.

Service of applications on parties

46. (1) The following persons are parties to an application under this Act for an investigation and assessment order or a care and protection order, or for the variation, extension or revocation of such an order, or to an application by the Chief Executive Officer under Part 8 for the transfer of a child protection order or a child protection proceeding:

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

(2) A copy of an application must be served—

- (a) on the child the subject of the application, if the child is of or above the age of 10 years; and
- (b) subject to this section, on each other party to the application; and
- (c) where the application is to transfer a child protection order or a child protection proceeding under Part 8, on any person to whom access to the child has been granted.

(3) The application must be served personally, but—

- (a) if it is not practicable to serve the application personally on a party (not being the child); or
- (b) if the whereabouts of such a party cannot, after reasonable enquiries, be ascertained,

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

(4) A copy of an application for service must be endorsed with a notification of the place, date and time for the hearing of the application.

(5) Subject to this section, the Court must not proceed to hear an application unless each party served with the application has had at least the following period of notice of the hearing:

- (a) in the case of an application for an investigation and assessment order—three working days;

(b) in any other case—five working days.

(6) 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.

Joinder of parties

47. If the Court is of the opinion in any proceedings on an application for an investigation and assessment order, a care and protection order or an order under Part 8 to transfer a child protection order or a child protection proceeding that it should make an order binding upon 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 him or her a reasonable opportunity to make representations to the Court as to why such an order should not be made.

Right of other interested persons to be heard

47A. In any proceedings under this Act, the Court may, on the application of—

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

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

Legal representation of child

48. (1) The Court must not proceed to hear an application under this Act unless—

- (a) the child is represented in the proceedings by a legal practitioner; or
- (b) the Court is satisfied that the child has made an informed and independent decision not to be so represented,

(but whether or not the child is represented by a legal practitioner, the child must be given a reasonable opportunity to give his or her own views personally to the Court as to his or her ongoing care and protection unless the Court is satisfied that the child is not capable of doing so).

(2) If the child is to be represented by a legal practitioner, but is not capable of properly instructing the legal practitioner, the legal practitioner must act, and make representations to the Court, according to his or her own view of the best interests of the child.

Court may refer a matter to a family care meeting

49. 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 care meeting for consideration and report to the Court by the meeting.

Orders for costs

50. If the Court dismisses an application under this Act by the Chief Executive Officer or the Minister, 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.

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**PART 7
CHILDREN UNDER MINISTER'S CARE AND PROTECTION****Powers of Minister in relation to children under the Minister's care and protection**

51. (1) Subject to this Act, the Minister may from time to time make provision for the care of a child who is under the guardianship of the Minister or of whom the Minister has custody pursuant to this Act, in any of the following ways:

- (a) by placing the child, or permitting the child to remain, in the care of a guardian of the child or some other member of the child's family;
- (b) by placing the child in the care of an approved foster parent or any other suitable person;
- (c) by placing the child in a home (not being a training centre) established or licensed under the *Family and Community Services Act 1972* or in any other suitable place, and by giving such directions as to the care of the child in that home or place as the Minister thinks fit;
- (d) by making arrangements for the education of the child;
- (e) by making arrangements (including admission to hospital) for the medical or dental examination or treatment of the child or for such other professional examination or treatment as may be necessary or desirable;
- (f) by making such other provision for the care of the child as the circumstances of the case may require.

(2) In making provision for the care of a child pursuant to subsection (1), the Minister must, where appropriate, have regard to the desirability of securing settled and permanent living arrangements for the child.

(3) The Minister must keep the guardians of the child informed about where the child is placed and how the child is being cared for, unless the Minister is of the opinion that it would not be in the best interests of the child to do so.

(4) An authorised police officer may for the purposes of enforcing any order of the Youth Court, without warrant, remove from any place a child who is under the guardianship of the Minister or of whom the Minister has custody, using such force (including breaking into premises) as is reasonably necessary for that purpose.

Review of circumstances of child under long term guardianship of Minister

52. (1) Where a child is subject to an order placing the child under the guardianship of the Minister until the child attains 18 years of age, a review of the circumstances of the child must be carried out at least once in each year that the child remains subject to the order.

(2) The review will be carried out by a panel appointed by the Minister for the purpose.

(3) The panel carrying out a review must keep under constant consideration whether the existing arrangements for the care and protection of the child continue to be in the best interests of the child.

(4) Subject to subsection (5), the Minister must cause a copy of the conclusions reached by a review panel to be given to the child, the child's guardians and the persons who have the care of the child.

(5) The Minister is not obliged to give a copy of the panel's conclusions to a particular person if—

- (a) the Minister is of the opinion that it would not be in the best interests of the child to do so; or
- (b) the whereabouts of the person cannot, after reasonable enquiries, be ascertained.

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PART 8
TRANSFER OF CHILD PROTECTION ORDERS AND PROCEEDINGS

DIVISION 1—INTRODUCTORY

Purpose of Part

53. The purpose of this Part 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.

Interpretation

54. (1) For the purposes of this Part—

"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 officer 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 officer of a licensed children's residential facility or any other organisation or its chief executive officer,

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
- (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 Part;

"interim order" means—

- (a) an order made under section 54L; 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 Part;

"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 Part; 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 Part 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 Part 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 Part if satisfied that the law substantially corresponds to this Part.

(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 Part, 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.

DIVISION 2—ADMINISTRATIVE TRANSFER OF CHILD PROTECTION ORDER

When Chief Executive Officer may transfer order

Children's Protection Act 1993

54A. (1) The Chief Executive Officer may transfer a child protection order (the "home order") to a participating State if—

- (a) in his or her 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 54B 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 Officer 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 Officer 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 Officer 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.

Persons whose consent is required

54B. (1) For the purposes of section 54A(1)(d)—

- (a) if the home order grants custody (but not guardianship) of the child to the Minister, consent to the transfer is required from the child's guardians;
- (b) if the home order grants custody of the child to the chief executive officer of a licensed children's residential facility or to any other organisation or its chief executive officer, consent to the transfer is required from the child's guardians and the chief executive officer of the facility or organisation;
- (c) if the home order requires the child to be under the supervision of the Chief Executive Officer or some other specified person or authority, consent to the transfer is required from the child's 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.

Chief Executive Officer to have regard to certain matters

54C. In determining whether to transfer a child protection order to a participating State under this Division, the Chief Executive Officer 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 Officer is aware; and
(b) whether the Chief Executive Officer 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.

Notification to child and his or her guardians

54D. (1) If the Chief Executive Officer has decided to transfer a child protection order to a participating State under this Division, the Chief Executive Officer must cause—

- (a) the 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 working 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 his or her last known place of residence or employment or in any other manner authorised by the Court.

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Limited period for review of decision

54E. (1) Any person who is required to be notified of a decision of the Chief Executive Officer to transfer a child protection order to a participating State under this Division 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 Officer within 13 working 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 Officer 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 his or her own costs unless the Court considers that some other order should be made to do justice between the parties.

DIVISION 3—JUDICIAL TRANSFER OF CHILD PROTECTION ORDER

When Court may make order under this Division

54F. The Court may make an order under this Division 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 Officer; and

(b) the child protection order is not subject to an appeal; and

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

Type of order

54G. (1) If the Court determines to transfer a child protection order (the "home order") under this Division, 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.

Court to have regard to certain matters

54H. In determining an application under this Division the Court must have regard to—

- (a) whether the Chief Executive Officer 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 Officer under section 54I.

Duty of Chief Executive Officer to inform the Court of certain matters

54I. If the Chief Executive Officer 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 Division; or
- (b) a criminal proceeding is pending against that child in any court,

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

DIVISION 4—TRANSFER OF CHILD PROTECTION PROCEEDINGS

When Court may make order under this Division

54J. (1) The Court may make an order under this Division 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 Officer; 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.

Court to have regard to certain matters

54K. (1) In determining an application to transfer a proceeding under this Division the Court must have regard to—

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- (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, his or her guardians and any other people who are significant to the child; and
 - (d) whether the Chief Executive Officer 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 Officer under subsection (2).
- (2) If the Chief Executive Officer 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 Division; or
 - (b) a criminal proceeding is pending against that child in any court,

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

Interim order

54L. (1) If the Court makes an order transferring a proceeding under this Division, 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
 - (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.

DIVISION 5—REGISTRATION OF INTERSTATE ORDERS AND PROCEEDINGS

Filing and registration of interstate documents

54M. (1) Subject to subsection (3), the Chief Executive Officer 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 Officer 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 Officer 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.

Notification by Registrar

54N. 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 54M; or
- (b) the revocation under section 54P of the registration of any document so filed.

Effect of registration

54O. (1) A child protection order registered in the Court under this Division 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 Division 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 Division, the proceeding will be taken to have been commenced in the Court on the day on which the order is so registered.

Revocation of registration

54P. (1) An application for the revocation of the registration of any document filed under section 54M may be made to the Court by—

- (a) the Chief Executive Officer; or
- (b) the child concerned; or
- (c) a 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.

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(3) The Court may only revoke the registration of a document filed under section 54M 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 54M 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.

DIVISION 6—MISCELLANEOUS

Appeals

54Q. (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 working 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 working days after the day on which the order was made.

(2) An appeal operates as a stay of the order.

Effect of registration of transferred order

54R. (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.

Transfer of Court file

54S. 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.

Hearing and determination of transferred proceeding

54T. 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).

Disclosure of information

54U. Despite anything to the contrary in this Act, the Chief Executive Officer may disclose to an interstate officer any information that has come to his or her notice in the performance of duties or exercise of powers under this Act if the Chief Executive Officer 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.

Discretion of Chief Executive Officer to consent to transfer

54V. (1) Where, under an interstate law, there is a proposal to transfer a child protection order to South Australia, the Chief Executive Officer may consent or refuse to consent to the transfer and the proposed terms of the child protection order to be transferred.

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

Evidence of consent of relevant interstate officer

54W. 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 his or her delegate,

is admissible in evidence in any proceeding under this Part 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.

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**PART 9
MISCELLANEOUS**

Children's Protection Advisory Panel

55. (1) The Minister must establish a panel to be called the "*Children's Protection Advisory Panel*".

(2) The panel is to consist of not less than three or more than eight persons who have expertise in the field of child welfare.

(3) At least one member of the panel must be from the non-government sector and one other member must be a legal practitioner.

(4) The functions of the panel are—

(a) to monitor and keep under constant review the operation and administration of this Act; and

(b) to report to the Minister, on the panel's own initiative or at the request of the Minister, on any matter relating to the operation or administration of this Act; and

(c) to make such recommendations to the Minister as the panel thinks fit for the amendment of this Act or for the making of administrative changes or otherwise to further the objects of this Act.

Referrals to the Chief Executive Officer

56. If the Youth Court, a Youth Justice Co-ordinator or a member of the police force, in the course of exercising any powers in relation to a child otherwise than under this Act, forms the opinion that the child may be at risk, the Court, Co-ordinator or police officer may refer the matter to the Chief Executive Officer.

Delegation

57. (1) The Minister or the Chief Executive Officer may delegate any of his or her powers under this Act or an interstate law within the meaning of Part 8.

(2) A delegation is revocable at will and does not derogate from the powers of the delegator.

Duty to maintain confidentiality

58. (1) A person engaged in the administration of this Act who, in the course of that administration, obtains personal information relating to a child, a child's guardians or other family members or any person alleged to have abused, neglected or threatened a child, must not divulge that information.

Maximum penalty: \$10 000.

(2) A person who attends a family conference (not being the child, a guardian of the child or any other member of the child's family) must not divulge any personal information obtained at the conference relating to any of those persons.

Maximum penalty: \$10 000.

(3) This section does not prevent—

(a) a person from divulging information if authorised or required to do so by law; or

- (b) a person from divulging statistical or other data that could not reasonably be expected to lead to the identification of any person to whom it relates; or
- (c) a person engaged in the administration of this Act from divulging information if authorised or required to do so by his or her employer.

Reports of family care meetings not to be published

59. A person must not publish, by radio, television, newspaper or in any other way, a report of any family care meeting held pursuant to this Act or of anything said or done at such a meeting.

Maximum penalty: \$10 000.

Restrictions on reports of proceedings

59A. (1) A person must not publish by radio, television, newspaper or in any other way, a report of proceedings in which a child is alleged to be at risk or in need of care or protection, if—

- (a) the court before which the proceedings are heard prohibits publication of any report of the proceedings; or
- (b) the report—
 - (i) identifies the child or contains information tending to identify the child; or
 - (ii) reveals the name, address or school, or includes any particulars, picture or film that may lead to the identification, of any child who is concerned in the proceedings, either as a party or a witness.

(2) The court before which the proceedings are heard may, on such conditions as it thinks fit, permit the publication of particulars, pictures or films that would otherwise be suppressed from publication under subsection (1)(b).

(3) A person who contravenes this section, or a condition imposed under subsection (2), is guilty of an offence.

Maximum penalty: \$10 000.

Officers must produce evidence of authority

60. An employee of the Department authorised by the Minister to exercise powers under this Act must, before exercising those powers in relation to a person, produce evidence of that authority to the person.

Maximum penalty: \$250.

Hindering a person in execution of duty

61. A person who hinders or obstructs the Chief Executive Officer, an authorised police officer or any other person in the execution, performance or discharge of a power, function or duty under this Act is guilty of an offence.

Maximum penalty: \$2 500 or imprisonment for 6 months.

Protection from liability

62. (1) A person engaged in the administration of this Act incurs no liability for an honest act or omission in the exercise or discharge, or purported exercise or discharge by the person or by a body of which he or she is a member, of a power, function or duty under this Act.

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(2) A liability that would, but for subsection (1), lie against a person lies instead against the Crown.

Regulations

63. (1) The Governor may make such regulations as are contemplated by this Act or as are necessary or expedient for the purposes of this Act.

(2) A regulation may prescribe a penalty not exceeding \$1 250 for contravention of a regulation.

APPENDIX

LEGISLATIVE HISTORY

Transitional Provisions

(Transitional provisions from Statutes Repeal and Amendment (*Children's Protection and Young Offenders*) Act 1993, ss. 3 and 20)

Interpretation

3. In this Act—

"**commencement day**" means the day on which this Act comes into operation;

"**new legislation**" means—

(a) the *Young Offenders Act 1993*; and

(b) the *Youth Court Act 1993*;

"**former legislation**" means the *Children's Protection and Young Offenders Act 1979*.

Transitional provisions—in need of care proceedings

20. (1) Where a conference was held in respect of a child under section 12(1a) of the former legislation but no application had been made under that section in respect of the child before the commencement day, the Minister is not required to (but may if he or she thinks fit) hold a family care meeting in relation to the child before any proceedings are commenced under the *Children's Protection Act 1993* in respect of the child, provided that those proceedings are commenced within one month of the commencement day.

(2) Where the Children's Court is continuing to hear and determine proceedings under Part 3 of the former legislation, the orders that the Court is empowered to make in relation to the child the subject of the proceedings are those that the Youth Court is empowered to make in similar proceedings under the *Children's Protection Act 1993*.

(3) An order in force under Part 3 of the former legislation immediately before the commencement day—

(a) remains in force, according to its terms; and

(b) will be taken to have been made by the Youth Court; and

(c) in the case of an order placing a child under the control of the Director-General empowering the Director-General to make decisions as to where the child will reside, will be taken to be an order granting custody of the child to the Minister.

(4) A child who was, immediately before the commencement day, being held in the custody of the Director-General under section 19 of the former legislation, may continue to be so held in accordance with that section, as if it were still in force.

Legislative History

(entries in bold type indicate amendments incorporated since the last reprint)

Section 6(1):	definition of "licensed children's residential facility" inserted by 16, 2000, s. 3(a)
	definition of "pharmacist" inserted by 16, 2000, s. 3(b)
Section 6(3):	definition of "Senior Judge" inserted by 68, 1996, s. 4
Section 11(1):	inserted by 16, 2000, s. 3(c)
Section 11(2):	amended by 42, 1999, s. 11(a)
Section 11(4):	amended by 42, 1999, s. 11(b); 16, 2000, s. 4(a)
Section 13(2):	repealed by 16, 2000, s. 4(b)
Section 16(2):	amended by 42, 1999, s. 12
Section 19(6):	amended by 42, 1999, s. 13
Section 21(4):	amended by 42, 1999, s. 14
Section 23(5):	amended by 42, 1999, s. 15
Section 24(1):	amended by 42, 1999, s. 16
	amended by 42, 1999, s. 17

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Division 6 of Part 4 comprising ss. 26A, 26B and heading inserted by 24, 1995, s. 5

Section 27: substituted by 24, 1995, s. 6
Section 38(1): amended by 16, 2000, s. 5
Section 41: repealed by 16, 2000, s. 6
Section 44: amended by 42, 1999, s. 18
Section 45(1): substituted by 16, 2000, s. 7
Section 46(1): amended by 16, 2000, s. 8(a)
Section 46(2): amended by 16, 2000, s. 8(b)
Section 47: amended by 16, 2000, s. 9
Section 47A: inserted by 16, 2000, s. 10

Part 8 comprising ss. 53, 54 and heading **repealed and ss. 53 - 54W and headings inserted in its place by 16, 2000, s. 11**

Section 55(2): amended by 24, 1995, s. 7(a)
Section 55(4): amended by 24, 1995, s. 7(b)
Section 57(1): amended by 16, 2000, s. 12
Section 58(1) and (2): amended by 42, 1999, s. 19
Section 59: amended by 42, 1999, s. 20
Section 59A: inserted by 42, 1999, s. 21
Section 60: amended by 42, 1999, s. 22
Section 61: amended by 42, 1999, s. 23
Section 63(2): amended by 42, 1999, s. 24