

South Australia

# Children's Protection Act 1993

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

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## Legislative history

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## The Parliament of South Australia enacts as follows:

### Part 1—Preliminary

#### 1—Short title

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

#### 3—Objects of Act

The objects of this Act are—

- (a) to ensure that all children are safe from harm; and
- (b) to ensure as far as practicable that all children are cared for in a way that allows them to reach their full potential; and
- (c) to promote caring attitudes and responses towards children among all sections of the community so that the need for appropriate nurture, care and protection (including protection of the child's cultural identity) is understood, risks to a child's wellbeing are quickly identified, and any necessary support, protection or care is promptly provided; and
- (d) to recognise the family as the primary means of providing for the nurture, care and protection of children and to accord a high priority to supporting and assisting the family to carry out its responsibilities to children.

#### 4—Fundamental principles

- (1) Every child has a right to be safe from harm.
- (2) Every child has a right to care in a safe and stable family environment or, if such a family environment cannot for some reason be provided, in some alternative form of care in which the child has every opportunity that can be reasonably provided to develop to his or her full potential.

- (3) In the exercise of powers under this Act, the above principles and the child's wellbeing and best interests are to be the paramount considerations.
- (4) In determining a child's best interests, consideration must be given to the following:
  - (a) the desirability of keeping the child within the child's own family and the undesirability of withdrawing the child unnecessarily from a neighbourhood or environment with which the child has an established sense of connection;
  - (b) the need to preserve and strengthen relationships between the child, the child's parents and grandparents and other members of the child's family (whether or not the child is to reside with those parents, grandparents or other family members);
  - (c) the need to encourage, preserve and enhance the child's sense of racial, ethnic, religious, spiritual and cultural identity and to respect traditions and values of the community into which the child was born;
  - (d) if the child is able to form and express his or her own views as to his or her best interests—those views;
  - (e) the undesirability of interrupting the child's education or employment unnecessarily.
- (5) In relation to an Aboriginal child, the Aboriginal Child Placement Principle is to be observed.
- (6) A child who is placed or about to be placed in alternative care—
  - (a) must be provided with—
    - (i) a nurturing, safe and stable living environment; and
    - (ii) care that is, as far as practicable, appropriate to the child's needs and culturally appropriate; and
  - (b) must be allowed to maintain relationships with the child's family (including the child's grandparents) and community, to the extent that such relationships can be maintained without serious risk of harm; and
  - (c) must be consulted about, and (if the child is reasonably able to do so) take part in making, decisions affecting the child's life, particularly decisions about the child's ongoing care, where the child is to live, contact with the child's family and the child's health and schooling; and
  - (d) must be given information that is appropriate, having regard to the child's age and ability to understand, about plans and decisions concerning the child's future; and
  - (e) is entitled to have his or her privacy respected; and
  - (f) if the child is in alternative care and under the guardianship, or in the custody, of the Minister—is entitled to regular review of the child's circumstances and the arrangements for the child's care.
- (7) All proceedings under this Act must be dealt with expeditiously, with due regard to the degree of urgency of each particular case.

## 5—Provisions relating to dealing with Aboriginal or Torres Strait Islander children

- (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) if 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).

## 6—Interpretation

- (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;

**Aboriginal Child Placement Principle** means the Aboriginal Child Placement Principle as stated in the regulations;

**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;

**alternative care** means care provided for a child on a residential basis—

- (a) by or through a government or non-government agency; or
- (b) in a foster home (including a foster home provided by a member of the child's family),

and includes care provided in a detention facility for a child who is held there in lawful detention and care provided under independent living arrangements made for a child under the Minister's guardianship;

**authorised police officer** means a police officer who is of or above the rank of sergeant or who is in charge of a police station or any other police officer 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** means the person for the time being holding, or acting in, the position of chief executive 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 dental practitioner under the law of this State;

**Department** means the administrative unit of the Public Service prescribed by regulation for the purposes of this definition;

**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;

**government organisation** means a government department, agency or instrumentality;



**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 as a medical practitioner under the law of this State;

**non-government organisation** means—

- (a) a business; or
- (b) a service provider; or
- (c) a group organised for some purpose, work or undertaking (such as a society, club, institution or body),

whether incorporated or unincorporated, and includes a local government organisation; but does not include a government organisation;

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

**pharmacist** means a person who is registered as a pharmacist under the law of this State;

**psychologist** means a person who is registered as a psychologist under the law of this State;

**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.

- (1a) For the purposes of this Act, an organisation may consist of a single person.
- (2) For the purposes of this Act, a child is at risk if—
  - (aa) there is a significant risk that the child will suffer serious harm to his or her physical, psychological or emotional wellbeing against which he or she should have, but does not have, proper protection; or
  - (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 care for and protect the child, or are unable to exercise adequate supervision and control over the child; or
    - (ii) are unwilling to care for and protect 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.

## **7—Care and Protection Co-ordinators**

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, the Chief Executive and child safe environments**

## **Division 1—The Minister**

### **8—General functions of Minister**

- (1) 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—
    - (i) to assist children who are under the guardianship or in the custody of the Minister; and
    - (ii) to assist persons who, as children, have been under the guardianship or in the custody of the Minister, to prepare for 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;
  - (ka) to encourage the provision of child safe environments particularly by government and non-government organisations that provide services for, or have contact with, children;
  - (l) generally to do such other things as the Minister believes will further the objects of this Act.
- (2) The Minister must—
- (a) assist in the provision of—
    - (i) services directed at enhancing the quality of care of children and family life by strengthening and supporting families, and thus preventing or reducing the incidence of child abuse and neglect; and
    - (ii) support services to children who have been abused or neglected and their families; and
  - (b) ensure that those support services are offered to children who are known by the Department to have been abused or neglected and their families and that genuine efforts are made to encourage such children and their families to avail themselves of the services.
- (3) The Minister must, at least twice in each calendar year, consult groups representing, or comprised of, children or other persons who are, or have been, under the guardianship, or in the custody, of the Minister.
- (4) The purpose of consultation as required under subsection (3) is to ensure that the Minister regularly receives advice from, and is made aware of the experiences of, persons who are, or have been, under the guardianship, or in the custody, of the Minister.

## **Division 2—The Chief Executive**

### **8A—General functions of the Chief Executive**

The Chief Executive has the following functions:

- (a) to develop codes of conduct and principles of good practice for working with children;
- (b) to provide guidance on appropriate standards of conduct for adults in dealing with children;
- (c) to define appropriate standards of care for ensuring the safety of children;
- (d) to provide guidance on how to deal with cases involving the bullying or harassment of a child;
- (e) to disseminate information about child abuse and neglect so that cases of child abuse and neglect are more readily recognised and more promptly dealt with;
- (f) to provide guidance on how to deal with cases involving the suspected abuse or neglect of a child;
- (g) to provide guidance on the recruitment and supervision of staff of government and non-government organisations who may have contact with children in the course of their employment;
- (h) to ensure, as far as practicable, that procedures for making complaints about cases of suspected child abuse or neglect are easily accessible and, in particular, that they are accessible and responsive to children;
- (i) to monitor progress towards child safe environments in the government and non-government sectors and to report regularly to the Minister on that subject;
- (j) to develop and issue standards to be observed in dealing with information obtained about the criminal history of employees and volunteers who work with children in government or non-government organisations.

## **Division 3—Child safe environments**

### **8B—Powers and obligations of responsible authority in respect of criminal history**

- (1) The responsible authority for an organisation to which this section applies must ensure—
  - (a) that, as soon as reasonably practicable following the commencement of this section, a report on the criminal history (if any) of each person occupying or acting in a prescribed position (whether as an employee, volunteer, agent, contractor or subcontractor) in an organisation for which the authority is responsible on that commencement is obtained from the Commissioner of Police or some other prescribed source; and

- (b) that, before a person is appointed to, or engaged to act in, a prescribed position (whether as an employee, volunteer, agent, contractor or subcontractor) in an organisation for which the authority is responsible, a report on the person's criminal history (if any) is obtained from the Commissioner of Police or some other prescribed source.
- (2) The responsible authority for an organisation to which this section applies may, at any time, as the authority thinks necessary or desirable for the purpose of establishing or maintaining child safe environments, obtain a report from the Commissioner of Police or some other prescribed source on the criminal history (if any) of any person who—
- (a) occupies or acts in a prescribed position (whether as an employee, volunteer, agent, contractor or subcontractor) in an organisation for which the authority is responsible; or
- (b) carries out, or is to carry out, as an indirect service provider, prescribed functions for an organisation for which the authority is responsible.
- (3) The responsible authority must ensure that information about the criminal history contained in reports obtained under this section is dealt with in accordance with the relevant standards.
- (4) If a person comes into possession, in the course of relevant employment, of information about the criminal history of another, the person must not disclose the information except as may be required by or authorised under law.
- Maximum penalty: \$10 000.
- (5) The Chief Executive may, at the request of the responsible authority for a non-government organisation to which this section applies, exercise powers of the responsible authority under this section if satisfied that—
- (a) the responsible authority has sought, but failed to obtain, the cooperation of a person on whose criminal history (if any) the responsible authority is required or authorised to obtain a report; or
- (b) there is some other good reason for doing so.
- (6) This section applies to—
- (a) government organisations; and
- (b) non-government organisations to which its operation is extended by regulation.
- (7) The regulations may, however, exempt organisations, persons and positions, or particular classes of organisations, persons and positions, from the application of this section.
- (8) In this section—

*employment* includes the performance of functions as a contractor or subcontractor, or as a volunteer; and *employer* includes an organisation or person for whom the functions are performed;

*government organisation* means a government department, agency or instrumentality;

*indirect service provider*—a person carries out functions for an organisation as an indirect service provider if the person carries out the functions for some other body or person which, in turn, makes the person's services available to the organisation;

**managing authority** of a non-government organisation, means the board, committee or other body or person in which the management of the organisation is vested;

**non-government organisation** means an organisation that is not a government organisation and includes a local government organisation;

**organisation to which this section applies**—see subsection (6);

**prescribed functions** means—

- (a) regular contact with children or working in close proximity to children on a regular basis; or
- (b) supervision or management of persons in positions requiring or involving regular contact with children or working in close proximity to children on a regular basis; or
- (c) access to records relating to children; or
- (d) functions of a type prescribed by regulation;

**prescribed position** means a position in an organisation to which this section applies that requires or involves prescribed functions;

**relevant employment** means employment by—

- (a) a responsible authority; or
- (b) an organisation that prepares a criminal history report for a responsible authority; or
- (c) an organisation to which a responsible authority communicates information contained in a criminal history report;

**responsible authority** means—

- (a) for a government organisation—the Chief Executive; or
- (b) for a non-government organisation to which this section applies—
  - (i) the managing authority of the organisation; or
  - (ii) if the managing authority has delegated its responsibilities under this section to a body approved by regulation for the purposes of this definition—that body.

## 8C—Obligations of certain organisations

- (1) An organisation to which this section applies must, as soon as practicable following the formation of the organisation, or, in the case of an organisation in existence when this section comes into operation, as soon as possible following the prescribed date, establish appropriate policies and procedures for ensuring—
  - (a) that appropriate reports of abuse or neglect are made under Part 4; and
  - (b) that child safe environments are established and maintained within the organisation.

Maximum penalty: \$10 000.

- (2) Policies and procedures—
  - (a) may vary according to the size, nature and resources of the organisation; but

- (b) must include—
  - (i) the provisions (if any) prescribed by regulation; and
  - (ii) provisions relating to the matters (if any) prescribed by regulation.
- (3) This section applies to an organisation that—
  - (a) provides health, welfare, education, sporting or recreational, religious or spiritual, child care or residential services wholly or partly for children; and
  - (b) is a government department, agency or instrumentality or a local government or non-government organisation.

## **Part 3—Custody agreements**

### **9—Voluntary custody agreements**

- (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) Despite 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

#### 10—Interpretation

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.

#### 11—Notification of abuse or neglect

- (1) If—
  - (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: \$10 000.
- (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 police officer;
  - (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;
  - (ga) a minister of religion;



- (gb) a person who is an employee of, or volunteer in, an organisation formed for religious or spiritual purposes;
  - (h) a teacher in an 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 or non-government organisation that provides health, welfare, education, sporting or recreational, 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
    - (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 on which the suspicion is based.
- (4) This section does not require a priest or other minister of religion to divulge information communicated in the course of a confession made in accordance with the rules and usages of the relevant religion.
- (5) A person does not necessarily exhaust his or her duty of care to a child by giving a notification under this section.
- (6) A person must not threaten or intimidate, or cause damage, loss or disadvantage to, a person to whom this section applies because the person has discharged, or proposes to discharge, his or her duty under subsection (1).

Maximum penalty: \$10 000.

## **12—Protection from liability for voluntary or mandatory notification**

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.

## **13—Confidentiality of notification of abuse or neglect**

- (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 the permission of the court; and
  - (b) unless such permission 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 permission 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 permission 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.

#### **14—Chief Executive not obliged to take action in certain circumstances**

Nothing in this Act requires the Minister or the Chief Executive 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 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**

#### **15—Interpretation**

In this Division—

*officer* means—

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

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**16—Power to remove children from dangerous situations**

- (1) If an officer believes on reasonable grounds that a child is in a situation of serious danger and that it is necessary to remove the child from that situation in order to protect the child from harm (or further harm), 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.
- (1a) If—
  - (a) a restraining order has been made under section 99AAC of the *Summary Procedure Act 1921* preventing a person from residing with a child; and
  - (b) the child is residing, during the operation of the order, with the person,the child will be taken, for the purposes of this section, to be in a situation of serious danger from which an officer is authorised to remove him or her under subsection (1).
- (2) An officer's powers under this section are subject to the following limitations:
  - (a) a police officer below the rank of inspector may only remove a child from a situation of danger with the prior approval of a police officer of or above the rank of inspector unless he or she believes on reasonable grounds that the delay involved in seeking such an approval would prejudice the child's safety;
  - (b) an employee of the Department may only remove a child from the custody of a guardian with the Chief Executive's prior approval.
- (3) An officer who removes a child under this section must, if possible, return the child to the child's home unless—
  - (a) the child is a child who is under the guardianship, or in the custody, of the Minister; or
  - (b) the officer is of the opinion that it would not be in the best interests of the child to return home.
- (4) If an officer removes a child under this section, and the child is not returned to the child's home under subsection (3), the officer must deliver the child into the care of such person as the Chief Executive, or the Chief Executive's nominee, directs.
- (5) If the Minister does not already have custody of a child who is removed from a situation of danger under this section, the Minister has custody of the child until—
  - (a) the end of the working day following the day on which the child was removed; or
  - (b) the child's return home,(whichever is the earlier).
- (6) The power to remove a child under this section is in addition to, and does not derogate from, the powers of an authorised police officer under section 51(4).

**Division 3—Investigations****19—Investigations**

- (1) If the Chief Executive—
  - (a) suspects on reasonable grounds that a child is at risk; and

- (b) believes that the matters causing the child to be at risk are not being adequately addressed,

the Chief Executive must cause an assessment of, or investigation into, the circumstances of the child to be carried out or must effect an alternative response which more appropriately addresses the potential or actual risk to the child.

- (2) For the purposes of an investigation, the Chief Executive 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 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 if—
  - (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 police officers 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.
- (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**

### **20—Application for order**

- (1) If the Chief Executive 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 may apply to the Youth Court for an order under this Division.

- (2) If the Chief Executive suspects on reasonable grounds that a child is at risk as a result of the abuse of an illicit drug by a parent, guardian or other person, the Chief Executive must apply for an order under this Division directing the parent, guardian or other person to undergo a drug assessment (unless the Chief Executive is satisfied that an appropriate assessment of the parent, guardian or other person has already occurred, or is to occur).

## **21—Orders Court may make**

- (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;
- (ab) an order authorising or directing the assessment, by such person as the Court may appoint, of a parent, guardian or other person who has, or is responsible for, the care of a child to determine the capacity of that parent or other person to care for and protect the child;

**Example—**

Such an order could, for example, direct a parent, guardian or other person to undergo a drug assessment.

- (b) an order authorising the Chief Executive 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 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 6 weeks) specified in the order; and
  - (b) may, on application by the Chief Executive, 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.

## **22—Variation or discharge of orders**

- (1) The Chief Executive 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.

## **23—Power of adjournment**

- (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 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 with a written report of that examination, assessment or treatment;
  - (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.

## **24—Obligation to answer questions or furnish reports**

- (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.

## **25—Orders not appealable**

No appeal lies against an order under this Division.

## **Division 5—Examination and assessment of children**

### **26—Examination and assessment of children**

- (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 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 despite 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 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

### 26A—Definitions

- (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.

### 26B—Protection of children at risk of genital mutilation

- (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 police officer or by the Chief Executive.
- (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 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**

#### **27—Family care meetings to be convened by Minister**

- (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.

#### **28—Purpose of family care meetings**

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.

#### **29—Convening a family care meeting**

- (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.

#### **30—Invited participants**

- (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, 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.

### **31—Constitution of family care meeting**

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 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 employee of the administrative unit of the Public Service charged with the administration of the *Education Act 1972* 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.

### **32—Procedures**

- (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.

### **33—Review of arrangements**

- (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.

- (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 2 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.

### **34—Certain matters not admissible**

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.

### **35—Procedure where decisions not made or implemented**

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.

### **36—Guardians whose whereabouts are unknown**

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

## **Division 2—Care and protection orders**

### **37—Application for care and protection order**

- (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.
- (1a) If the Minister—
- (a) knows or suspects on reasonable grounds—
    - (i) that a child is at risk as a result of drug abuse by a parent, guardian or other person; and
    - (ii) that the cause of the child being at risk is not being adequately addressed; and
  - (b) is of the opinion that the most appropriate response is an order under this Division for one or more of the following purposes:
    - (i) to ensure that the parent, guardian or other person undergoes appropriate treatment for drug abuse;

- (ii) to ensure that the parent, guardian or other person submits to periodic testing for drug abuse;
- (iii) to authorise or require the release of information regarding the treatment or the results of the test to the Chief Executive,

the Minister must apply to the Youth Court for such an order.

(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.

### **38—Court's power to make orders**

- (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 1 or more of the following powers:
  - (a) the Court may require a parent, guardian or other person who has the care 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 or some other specified person or authority for the duration of the undertaking;

**Example—**

A parent, guardian or other person could, for example, be required to enter into an undertaking to undergo treatment for drug abuse, to submit to periodic testing for drug use and to authorise the release of information regarding such treatment, and the results of such testing, to the Chief Executive.

- (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 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) requiring a parent, guardian or other person who has the care of a child to undertake specified courses of instruction, or programmed activities, in order to increase his or her capacity to care for and protect the child; or
    - (iv) dealing with any other matter.
- (2) Before the Court makes an order giving custody or guardianship of a child to a person who is not a parent of the child, the Court must be satisfied—
- (a) that there is no parent able, willing and available to provide adequate care and protection for the child; and
  - (b) that the order is the best available solution having regard to—
    - (i) the child's need for care and protection (including emotional security); and
    - (ii) the child's age, developmental needs and emotional attachments.
- (2a) If a child is to be placed in guardianship the Court must consider the importance of settled and stable living arrangements for the child and, as a general rule, a long term guardianship order (ie an order under subsection (1)(d)) is to be preferred to a series of temporary arrangements for the custody or guardianship of the child.

- (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) If the Chief Executive 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.

### **39—Adjournments**

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).

### **40—Variation or revocation of orders**

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.

### **42—Conference of parties**

- (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.

### **43—Effect of guardianship order**

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.



#### **44—Non-compliance with orders**

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.

### **Part 6—Procedural matters**

#### **45—Evidence etc**

- (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.

#### **46—Service of applications on parties**

- (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 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) if 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.

#### **47—Joinder of parties**

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 on a person who is not a party to the proceedings, the Court—

- (a) may join that person as a party to the proceedings; and
- (b) must allow him or her a reasonable opportunity to make representations to the Court as to why such an order should not be made.

#### **47A—Right of other interested persons to be heard**

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.

#### **48—Legal representation of child**

- (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.
- (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.
- (3) A child (whether represented by a legal practitioner or not) must be given a reasonable opportunity to give the child's own views personally to the Court about his or her ongoing care and protection unless the Court is satisfied that—
- (a) the child is not capable of doing so; or
  - (b) to do so would give rise to an unacceptable risk to the child's wellbeing.

#### **49—Court may refer a matter to a family care meeting**

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.

#### **50—Orders for costs**

If the Court dismisses an application under this Act by the Chief Executive 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.

### **Part 7—Children under Minister's care and protection**

#### **Division 1—Powers of Minister**

#### **51—Powers of Minister in relation to children under the Minister's care and protection**

- (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, if 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.

## **52—Review of circumstances of child under long term guardianship of Minister**

- (1) If 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.

## **Division 2—Offences relating to children under Minister's care and protection**

### **52AA—Definition**

In this Division—

*child* means a child who is under the guardianship, or in the custody, of the Minister.

### **52AAB—Direction not to harbour, conceal or communicate with child**

- (1) The Chief Executive may, by written notice, direct a person not to communicate, or attempt to communicate, with a specified child (in any way or in a way specified in the notice) during a specified period.
- (2) The Chief Executive may, by written notice, direct a person not to harbour or conceal, or attempt to harbour or conceal, or assist another person to harbour or conceal, a specified child during a specified period.
- (3) The Chief Executive must not issue a notice under subsection (1) or (2) unless he or she believes that the issuing of the notice is reasonably necessary—
  - (a) to avert a risk that the child specified in the notice will—
    - (i) be abused or neglected, or be exposed to the abuse or neglect of another child; or
    - (ii) engage in, or be exposed to, conduct that is an offence against Part 5 of the *Controlled Substances Act 1984*; or
  - (b) to otherwise prevent harm to the child.

- (4) A person who, without reasonable excuse, contravenes or fails to comply with a direction under subsection (1) is guilty of an offence.  
Maximum penalty: \$4 000 or imprisonment for 1 year.
- (5) A person who, without reasonable excuse, contravenes or fails to comply with a direction under subsection (2) is guilty of an offence.  
Maximum penalty: \$15 000 or imprisonment for 4 years.
- (6) A notice under this section must be served personally on the person to whom the notice is directed.
- (7) However, if personal service cannot be effected promptly, it will be sufficient service for the notice—
  - (a) to be left for the person with someone apparently over the age of 18 years; or
  - (b) to be posted in an envelope addressed to the person,  
at the person's address.

### **52AAC—Offence of harbouring or concealing a child etc**

- (1) A person must not—
  - (a) harbour or conceal, or assist another person to harbour or conceal, a child; or
  - (b) prevent, or assist another person to prevent, the return of a child to a State care placement,if the person knows that the child is absent from a State care placement without lawful authority.  
Maximum penalty: \$12 000 or imprisonment for 1 year.
- (2) In this section—  
*State care placement*, in relation to a child, means placement of the child in the care of a person, or in a place, by the Minister pursuant to section 51(1).

## **Part 7A—The Guardian, the Youth Advisory Committee and the Charter**

### **Division 1—The Guardian**

#### **52A—The Guardian**

- (1) There is to be a Guardian for Children and Young Persons.
- (2) The Guardian is to be appointed by the Governor on terms and conditions determined by the Governor.
- (3) Subject to this section, the Guardian holds office for the term (not exceeding 5 years) stated in the instrument of appointment and is then eligible for re-appointment.
- (4) The office of the Guardian becomes vacant if the Guardian—
  - (a) dies; or
  - (b) completes a term of office and is not re-appointed; or

- (c) resigns by notice of resignation given to the Minister; or
  - (d) is convicted either within or outside the State of an indictable offence or an offence carrying a maximum penalty of imprisonment for 12 months or more; or
  - (da) becomes bankrupt or applies as a debtor to take the benefit of the laws relating to bankruptcy; or
  - (db) becomes, in the opinion of the Governor, mentally or physically incapable of carrying out satisfactorily the duties of office; or
  - (dc) becomes a member of the Parliament of this State or any other State of the Commonwealth or of the Commonwealth or becomes a member of a Legislative Assembly of a Territory of the Commonwealth; or
  - (e) is removed from office by the Governor under subsection (5).
- (5) The Governor may remove the Guardian from office on the presentation of an address from both Houses of Parliament seeking the Guardian's removal.
- (6) The Governor may suspend the Guardian from office on the ground of incompetence or misbehaviour and, in that event—
- (a) a full statement of the reason for the suspension must be laid before both Houses of Parliament within 3 sitting days of the suspension; and
  - (b) if, at the expiration of 1 month from the date on which the statement was laid before Parliament, an address from both Houses of Parliament seeking the Guardian's removal has not been presented to the Governor, the Guardian must be restored to office.
- (7) Except as provided by this section, the Guardian may not be removed or suspended from office, nor will the office of the Guardian become vacant.

### **52AB—Independence**

- (1) In performing and exercising his or her functions and powers under this Act, the Guardian must act independently, impartially and in the public interest.
- (2) The Minister cannot control how the Guardian is to exercise the Guardian's statutory functions and powers and cannot give any direction with respect to the content of any report prepared by the Guardian.

**Note—**

This provision does not derogate from any express power of the Minister under this Act.

### **52B—Staff and resources**

The Minister must provide the Guardian with the staff and other resources that the Guardian reasonably needs for carrying out the Guardian's functions.

### **52C—The Guardian's functions and powers**

- (1) The Guardian's functions are as follows:
  - (a) to promote the best interests of children under the guardianship, or in the custody, of the Minister, and in particular those in alternative care;

- (b) to act as an advocate for the interests of children under the guardianship, or in the custody, of the Minister and, in particular, for any such child who has suffered, or is alleged to have suffered, sexual abuse;
  - (c) to monitor the circumstances of children under the guardianship, or in the custody, of the Minister;
  - (d) to provide advice to the Minister on the quality of the provision of care for children under the guardianship, or in the custody of, the Minister and on whether the children's needs are being met;
  - (e) to inquire into, and provide advice to the Minister in relation to, systemic reform necessary to improve the quality of care provided for children in alternative care;
  - (f) to investigate and report to the Minister on matters referred to the Guardian by the Minister.
- (2) In carrying out functions under this section, the Guardian must—
- (a) encourage children who are affected by issues that the Guardian has under consideration to express their own views and give proper weight to those views; and
  - (b) pay particular attention to the needs of children under the guardianship, or in the custody, of the Minister who have a physical, psychological or intellectual disability; and
  - (c) receive and consider information, reports and materials relevant to carrying out the Guardian's statutory functions.
- (3) The Guardian has the powers necessary or expedient for, or incidental to, the performance of the Guardian's functions.

### **52CA—Use and obtaining of information**

- (1) A government or non-government organisation that is involved in the provision of services to children must, at the Guardian's request, provide the Guardian with information relevant to the performance of the Guardian's functions.
- (2) If the Guardian has reason to believe that a person is capable of providing information or producing a document that may be relevant to the performance of the Guardian's functions, the Guardian may, by notice in writing provided to the person, require the person to do 1 or more of the following:
- (a) to provide that information to the Guardian in writing signed by that person or, in the case of a body corporate, by an officer of the body corporate;
  - (b) to produce that document to the Guardian;
  - (c) to attend before a person specified in the notice and answer relevant questions or produce relevant documents.
- (3) A notice under subsection (2) is to specify the period within which, or the time, day and place at which, the person is required to provide the information or document, or to attend.

- (4) A notice under subsection (2) must provide a period of time for compliance with a requirement under that subsection that has been determined by the Guardian to be reasonable in the circumstances.
- (5) A person must comply with a requirement under subsection (2).  
Maximum penalty: \$5 000.
- (6) If a document is produced in accordance with a requirement under this section, the Guardian may take possession of, make copies of, or take extracts from, the document.

### **52D—The Guardian's reporting obligations**

- (1) The Guardian must report periodically to the Minister (as required by the Minister) on the performance of the Guardian's statutory functions.
- (2) The Guardian must, on or before 31 October in each year, report to the Minister on the performance of the Guardian's statutory functions during the preceding financial year.
- (3) The Minister must, within 6 sitting days after receiving a report from the Guardian, have copies of the report laid before both Houses of Parliament.

### **52DA—Other reports**

- (1) The Guardian may, at any time, prepare a report to the Minister on any matter arising out of the exercise of the Guardian's functions under this Act.
- (2) The Minister must—
  - (a) if Parliament is sitting—have copies of a report received under this section laid before both Houses of Parliament within 6 sitting days; or
  - (b) if Parliament is not sitting—deliver copies of the report to the President of the Legislative Council and the Speaker of the House of Assembly so that they may—
    - (i) immediately cause the report to be published; and
    - (ii) lay the report before their respective Houses at the earliest opportunity.
- (3) A report will, when published under subsection (2)(b)(i), be taken for the purposes of any other Act or law to be a report of the Parliament published under the authority of the Legislative Council and the House of Assembly.

### **52E—Confidentiality of information**

Information about individual cases disclosed to the Guardian or a member of the Guardian's staff is to be kept confidential and is not liable to disclosure under the *Freedom of Information Act 1991*.

## **Division 2—Youth Advisory Committee**

### **52EA—Youth Advisory Committee**

- (1) The Guardian must establish and maintain a Youth Advisory Committee.
- (2) Subject to subsection (3), membership of the Committee is to be determined by the Guardian.



- (3) The Committee is to include children who are, or have been, under the guardianship, or in the custody, of the Minister.
- (4) The Committee's primary function is to assist the Guardian in the performance of the Guardian's functions by ensuring that the Guardian is aware of the experiences of, and receives advice from, children who are, or have been, under the guardianship, or in the custody, of the Minister.
- (5) The Committee has such other functions as are assigned to the Committee by the Guardian.
- (6) The Guardian may consult the Committee, or members of the Committee, as the Guardian thinks fit.
- (7) The Committee will, subject to direction by the Guardian as to the procedures it is to adopt, determine its own procedures.

### **Division 3—Charter of Rights for Children and Young People in Care**

#### **52EB—Development of Charter**

- (1) The Guardian must develop a draft *Charter of Rights for Children and Young People in Care*.
- (2) The Guardian must, in developing the draft Charter, have regard to the fact that the State Government is responsible for the care and wellbeing of children who are under the guardianship, or in the custody, of the Minister.
- (3) The draft must be presented to the Minister within 12 months following the commencement of this Division or within such longer period as the Minister may allow.

#### **52EC—Review of Charter**

The Guardian—

- (a) may review the Charter at any time; and
- (b) must review the Charter at least every 5 years.

#### **52ED—Consultation**

In developing or reviewing the Charter, the Guardian must invite submissions from, and consult with, to such extent as may be reasonable, interested persons (including persons who are, or have been, under the guardianship, or in the custody, of the Minister) with a view to obtaining a wide range of views in relation to the matters under consideration.

#### **52EE—Approval of Charter**

- (1) The Minister may, on the receipt of a draft Charter or a variation of the Charter from the Guardian—
  - (a) approve the Charter or the variation; or
  - (b) require an alteration to the Charter or the variation, after consultation with the Guardian, and then approve the Charter or variation as altered.

- (2) The Minister must then cause a copy of the Charter or variation (as the case may be) to be laid before both Houses of Parliament.

### **52EF—Obligations of persons involved with children in care**

- (1) A person exercising functions or powers under a relevant law must, in any dealings with, or in relation to, a child who is under the guardianship, or in the custody, of the Minister, have regard to, and seek to implement to the fullest extent possible, the terms of the Charter.
- (2) However, the Charter cannot create legally enforceable rights or entitlements.
- (3) In this section—  
*relevant law* means—
  - (a) this Act; or
  - (b) the *Family and Community Services Act 1972*; or
  - (c) any law relating to the detention of a youth in a training centre.

## **Division 4—Offences**

### **52EG—Offence relating to intimidation**

A person must not persuade or attempt to persuade by threat or intimidation another person—

- (a) to fail to cooperate with the Guardian in the performance or exercise of the Guardian's powers or functions under this Act; or
- (b) to fail to provide information or a document to the Guardian as authorised or required under this Act; or
- (c) to provide information or a document that is false or misleading in a material particular, or to provide information or a document in a manner that will make the information or document false or misleading in a material particular, to the Guardian under this Act.

Maximum penalty: \$10 000.

### **52EH—Offence relating to reprisals**

- (1) A person must not treat another person unfavourably on the ground that a person—
  - (a) has cooperated with the Guardian in the performance or exercise of powers or functions under this Act; or
  - (b) has provided information or documents to the Guardian as authorised or required under this Act,

or on the ground that he or she knows that a person intends to do either of these things, or suspects that a person has done, or intends to do, either of these things.

Maximum penalty: \$10 000.

- (2) It is sufficient for a contravention of subsection (1) if the ground specified in subsection (1) is a significant factor in inducing the person to take the particular action against the other person.

- (3) Unfavourable treatment on the ground that a person—
- (a) has made a false allegation; or
  - (b) has not acted in good faith,
- does not constitute a contravention of subsection (1).

#### **52EI—Offence relating to obstruction etc**

A person must not, without reasonable excuse, obstruct, hinder, resist or improperly influence, or attempt to obstruct, hinder, resist or improperly influence, the Guardian in the performance or exercise of a function or power under this Act.

Maximum penalty: \$10 000.

#### **52EJ—Offence relating to the provision of information**

A person must not—

- (a) provide to the Guardian information that the person knows is false or misleading in a material particular; or
- (b) refuse or fail to include in information provided to the Guardian other information without which the information provided is, to the knowledge of the person, false or misleading in a material particular.

Maximum penalty: \$10 000.

### **Part 7B—The Council for the Care of Children**

#### **52F—Establishment of the Council**

- (1) The Council for the Care of Children is established.
- (2) The Council consists of—
  - (a) not less than 5 and not more than 10 members appointed by the Governor; and
  - (b) the chief executives of departments of government designated by the Minister as departments closely involved in issues related to the care and protection of children.
- (3) The Council's membership must include—
  - (a) at least 1 Aboriginal member; and
  - (b) at least 2 young people with experience of alternative care,

and at least one-third of the total number of members of the Council must be men and at least one-third must be women.
- (4) The Minister may, before an appointment is made to the Council, call for nominations from a government or non-government organisation that should, in the Minister's opinion, be represented on the Council.
- (5) The Governor will appoint a member of the Council to chair the Council.

- (6) The Council is to be subject to direction by the Minister but—
- (a) the Council cannot be directed to make a particular finding or recommendation; and
  - (b) a direction is to be published in the annual report of the Council relating to the period in which the direction was given.

### **52G—Terms of office of members**

- (1) Subject to this section, a member of the Council holds office for the term (not exceeding 2 years) stated in the instrument of appointment and is then eligible for re-appointment.
- (2) The office of a member of the Council becomes vacant—
- (a) if the member—
    - (i) dies; or
    - (ii) completes a term of office and is not re-appointed; or
    - (iii) resigns by notice of resignation given to the Minister; or
    - (iv) is absent from 3 consecutive meetings of the Council without the Council's permission (but the member does not vacate his or her office if the Minister excuses the absence); or
    - (v) is convicted either within or outside the State of an indictable offence or an offence carrying a maximum penalty of imprisonment for 12 months or more; or
    - (vi) is removed from office by the Governor under subsection (3); or
  - (b) if the member was appointed as nominee of a particular organisation and the organisation notifies the Minister, in writing, that the member no longer represents the organisation.
- (3) The Governor may remove a member of the Council from office for—
- (a) breach of, or non-compliance with, a condition of appointment; or
  - (b) failure to disclose to the Council a personal or pecuniary interest of which the member is aware that may conflict with the member's duties of office; or
  - (c) neglect of duty; or
  - (d) mental or physical incapacity to carry out duties of office satisfactorily; or
  - (e) dishonourable conduct; or
  - (f) any other reason considered sufficient by the Minister.

### **52H—Procedures of the Council**

- (1) The Council will, subject to this section and any directions of the Minister, determine its own procedures.
- (2) The Council must meet at least 5 times in each year.
- (3) The person appointed to chair the Council will preside at a meeting of the Council and, in the absence of that person, a member chosen by the members present at the meeting will preside.

- (4) A question arising for decision at a meeting of the Council will be decided by a majority of the votes cast by the members present at the meeting.
- (5) Each member present at a meeting of the Council will be entitled to one vote on any question arising for decision at the meeting and, if the votes are equal, the person presiding will have a casting vote.
- (6) The Council may delegate to a member, or a sub-committee of its members, any of its powers or functions under this Act.

### **52I—Staff and resources**

The Minister must provide the Council with the staff and other resources that it reasonably needs for carrying out its functions.

### **52J—Functions of the Council**

The Council's functions are as follows:

- (a) to keep under review the operation of this Act and the *Family and Community Services Act 1972* so far as it affects the interests of children;
- (b) to provide advice to the Government on the rights and interests of children;
- (c) to report to the Government on progress achieved towards—
  - (i) keeping children safe from harm; and
  - (ii) ensuring that all children are cared for in a way that allows them to realise their full potential; and
  - (iii) improving the physical and mental health, and the emotional wellbeing, of children; and
  - (iv) improving access for children to educational and vocational training; and
  - (v) improving access for children to sporting and healthy recreational activities; and
  - (vi) ensuring that children are properly prepared for taking their position in society as responsible citizens; and
  - (vii) maintaining the cultural identity of children;
- (d) to promote the safe care of children by their families (or surrogate families) and communities with particular reference to vulnerable children including—
  - (i) children under the guardianship, or in the custody, of the Minister; and
  - (ii) Aboriginal children; and
  - (iii) children with disabilities;
- (e) to provide advice to the Minister on—
  - (i) creating environments that are safe for children; and
  - (ii) raising community awareness of the relationship between the needs of children for care and protection and their developmental needs; and

- (iii) initiatives involving the community as a whole for the protection or care of children; and
  - (iv) policy issues that may require government action or legislative reform; and
  - (v) priorities for research;
- (f) to investigate and report to the Minister on matters referred to the Council for advice.

### **52K—Council's reporting obligations**

- (1) The Council must report periodically to the Minister (as required by the Minister) on the performance of its statutory functions.
- (2) The Council must, on or before 31 October in each year, report to the Minister on the performance of its statutory functions during the preceding financial year.
- (3) The Minister must, within 6 sitting days after receiving a report under subsection (2), have copies of the report laid before both Houses of Parliament.

### **52L—Confidentiality of information**

- (1) Information about individual cases disclosed to the Council or a person employed (or formerly employed) to assist the Council is to be kept confidential and is not liable to disclosure under the *Freedom of Information Act 1991*.
- (2) This section does not, however, prevent the disclosure of information about suspected offences or suspected child abuse or neglect to the appropriate authorities.

## **Part 7C—The Child Death and Serious Injury Review Committee**

### **Division 1—Constitution and procedures of Committee**

#### **52N—Establishment of the Committee**

- (1) The Child Death and Serious Injury Review Committee is established.
- (2) The Committee is to be subject to direction by the Minister but—
  - (a) the Committee cannot be directed to make a particular finding or recommendation; and
  - (b) a direction must be published in the annual report of the Committee relating to the period in which the direction was given.
- (3) The Committee consists of the members (not more than 20) appointed by the Governor.
- (4) At least one-third of the total number of members of the Committee must be men and at least one-third must be women.
- (5) The Minister may, before appointments are made to the Committee, call for nominations from organisations (including departments and agencies of the government) that should, in the Minister's opinion, be represented on the Committee.
- (6) The Governor will appoint a member of the Committee to chair the Committee.

## 52O—Terms of office of members

- (1) Subject to this section, a member of the Committee holds office for the term (not exceeding 2 years) stated in the instrument of appointment and is then eligible for re-appointment.
- (2) The office of a member of the Committee becomes vacant—
  - (a) if the member—
    - (i) dies; or
    - (ii) completes a term of office and is not re-appointed; or
    - (iii) resigns by notice of resignation given to the Minister; or
    - (iv) is absent from 3 consecutive meetings of the Committee without the Committee's permission (but the member does not vacate his or her office if the Minister excuses the absence); or
    - (v) is convicted either within or outside the State of an indictable offence or an offence carrying a maximum penalty of imprisonment for 12 months or more; or
    - (vi) is removed from office by the Governor under subsection (3); or
  - (b) if the member was appointed as nominee of a particular organisation and the organisation notifies the Minister, in writing, that the member no longer represents the organisation.
- (3) The Governor may remove a member of the Committee from office for—
  - (a) breach of, or non-compliance with, a condition of appointment; or
  - (b) failure to disclose to the Committee a personal or pecuniary interest of which the member is aware that may conflict with the member's duties of office; or
  - (c) neglect of duty; or
  - (d) mental or physical incapacity to carry out duties of office satisfactorily; or
  - (e) dishonourable conduct; or
  - (f) any other reason considered sufficient by the Minister.

## 52P—Procedures of the Committee

- (1) The Committee will, subject to this section and any directions of the Minister, determine its own procedures.
- (2) The Committee must meet at least 5 times in each year.
- (3) The person appointed to chair the Committee will preside at a meeting of the Committee and, in the absence of that person, a member chosen by the members present at the meeting will preside.
- (4) A question arising for decision at a meeting of the Committee will be decided by a majority of the votes cast by the members present at the meeting.
- (5) Each member present at a meeting of the Committee will be entitled to one vote on any question arising for decision at the meeting and, if the votes are equal, the person presiding will have a casting vote.

- (6) The Committee may delegate to a member, or a sub-committee of its members, any of its powers or functions under this Act.

### **52Q—Staff and resources**

- (1) The Minister must provide the Committee with the staff and other resources that it reasonably needs for carrying out its functions and exercising its powers.
- (2) The Committee may, with the Minister's approval, engage an expert to assist it in the review of a particular case or in carrying out any other aspect of its functions.

## **Division 2—Functions and powers of the Committee**

### **52S—Functions of the Committee**

- (1) The Committee's principal functions are—
- (a) to review cases in which children die or suffer serious injury with a view to identifying legislative or administrative means of preventing similar cases of death or serious injury in the future; and
  - (b) to make, and monitor the implementation of, recommendations for avoiding preventable child death or serious injury.
- (2) A review may be carried out if—
- (a) the incident resulting in the child's death or serious injury occurred in the State; or
  - (b) the child was, at the time of the death or serious injury, ordinarily resident in the State.
- (3) The Committee should review a case of child death or serious injury if—
- (a) the death or serious injury was due to abuse or neglect or there are grounds to suspect that the death or serious injury may be due to abuse or neglect; or
  - (b) there are grounds to believe that the death or serious injury might have been prevented by some kind of systemic change; or
  - (c) there had been, within 3 years before the incident resulting in the death or serious injury, a notification to the Department of suspected abuse or neglect of the child, or a member of the child's family; or
  - (d) the child was, at the time of death or serious injury, under the guardianship, or in the custody, of the Minister or was in custody or detention or in the care of a government agency; or
  - (e) the case has been referred to the Committee by the State Coroner.
- (4) The Committee is not, however, to review a case of child death or serious injury unless there is no risk that the review would compromise an ongoing criminal investigation of the case and—
- (a) a coronial inquiry has been completed; or
  - (b) the State Coroner requests the Committee to carry out a review; or
  - (c) the State Coroner indicates that there is no present intention to carry out a coronial inquiry.



- (5) A review is, as a general rule, carried out by examination of coronial and other records and reports relevant to the case under review.
- (6) The purpose of the Committee's review is—
  - (a) to identify trends and patterns in cases of child death and serious injury; and
  - (b) to review policies, practices and procedures designed to prevent child death or serious injury (and, in particular, those implemented on the Committee's recommendation); and
  - (c) to provide an objective basis for the Committee's recommendations.
- (7) The Committee is not to make any finding about civil or criminal liability.

### **52T—Database**

- (1) The Committee will maintain a database of child deaths and serious injuries and their circumstances and causes.
- (2) No person is to have access to the database except the following:
  - (a) a person authorised by the Commissioner of Police;
  - (b) a person authorised by the State Coroner;
  - (c) a member of the Committee;
  - (d) a person authorised by the Committee or the Minister.
- (3) The Committee will maintain links with interstate, national and international bodies carrying out similar work.

### **52U—Reporting cases to the Committee**

- (1) The Committee may enter into arrangements with an agency or instrumentality of the government under which information about child deaths and serious injuries will be passed on to the Committee.
- (2) An agency or instrumentality of the government may enter into, and carry out its obligations under, an arrangement under this section despite any statutory provision against the disclosure of confidential information or any rule of the common law or equity.

### **52V—Powers of review**

- (1) The Committee, or a person authorised by the Committee to conduct a review of a case of child death or serious injury, may request any person who may be in a position to do so to produce documents, to allow access to documents or other information, or to provide information (in writing) that may be relevant to the review.
- (2) A person to whom a request is addressed under subsection (1) must comply with it.  
Maximum penalty: \$10 000.
- (3) However—
  - (a) a parent, relative or foster parent (within the meaning of the *Family and Community Services Act 1972*) of the child cannot be compelled to comply with a request under subsection (1) and commits no offence by refusing to comply with it; and

- (b) a person commits no offence by refusing to comply with a request under subsection (1) if the information sought would tend to incriminate the person of an offence and the person refuses to comply with the request on that ground; and
  - (c) a person commits no offence by refusing to comply with a request under subsection (1) if the document or other information to which the request relates is protected by legal professional privilege and the person refuses to comply with the request on that ground; and
  - (d) a request cannot be validly made of a person to disclose or allow access to information that is subject to the operation of Part 7 or 8 of the *Health Care Act 2008*.
- (4) A person does not, by complying with a request under subsection (1), contravene—
- (a) a statutory prohibition against the disclosure of confidential information; or
  - (b) any rule of the common law or equity; or
  - (c) any principle of professional ethics.

### **52W—Committee's reporting obligations**

- (1) The Committee must report periodically to the Minister (as required by the Minister) on the performance of its statutory functions.
- (2) The Committee must, on or before 31 October in each year, report to the Minister on the performance of its statutory functions during the preceding financial year.
- (3) The Minister must, within 6 sitting days after receiving a report under subsection (2), have copies of the report laid before both Houses of Parliament.

## **Division 3—Confidentiality**

### **52X—Confidentiality of information**

- (1) Information about individual cases disclosed to the Committee or a person employed (or formerly employed) to assist the Committee is to be kept confidential and is not liable to disclosure under the *Freedom of Information Act 1991*.
- (2) A member of the Committee, or a person who has been employed in duties related to the functions of the Committee, must not disclose confidential information obtained as a result of his or her official position.  
Maximum penalty: \$10 000.
- (3) However—
  - (a) information about possible criminal offences must be reported by the Committee to the Commissioner of Police; and
  - (b) if the Committee comes into possession of information suggesting that a child may be at risk of abuse or neglect, the Committee must pass the information on to the appropriate authorities; and
  - (c) information relevant to a coronial inquiry or possible coronial inquiry is to be passed on to the State Coroner.

## Part 8—Transfer of child protection orders and proceedings

### Division 1—Introductory

#### 53—Purpose of Part

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.

#### 54—Interpretation

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

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

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

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

*child welfare law* means—

- (a) this Act; or
- (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**

### **54A—When Chief Executive may transfer order**

- (1) The Chief Executive may transfer a child protection order (the **home order**) to a participating State if—
  - (a) in 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 must not take into account the period for which it is possible under that law for such an order to be in force.
- (3) For the purposes of transferring a child protection order to a participating State, the Chief Executive may vary the terms of the order so that it makes provision for any matter in terms that could be included in a child protection order of that type made in the participating State.
- (4) The Chief Executive must specify in the transferred order the period for which it is to remain in force.
- (5) That period must be—
- (a) if the same period as that of the home order is possible for the transferred order under the child welfare law of the participating State commencing on and including the date of the registration of the order in that State—that period; or
  - (b) in any other case—as similar a period as is possible under that law but in no case longer than the period of the home order.

#### **54B—Persons whose consent is required**

- (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 of a licensed children's residential facility or to any other organisation or its chief executive, consent to the transfer is required from the child's guardians and the chief executive of the facility or organisation;
  - (c) if the home order requires the child to be under the supervision of the Chief Executive or some other specified person or authority, consent to the transfer is required from the child's 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.

#### **54C—Chief Executive to have regard to certain matters**

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

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

#### **54D—Notification to child and his or her guardians**

- (1) If the Chief Executive has decided to transfer a child protection order to a participating State under this Division, the Chief Executive 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.

#### **54E—Limited period for review of decision**

- (1) Any person who is required to be notified of a decision of the Chief Executive to transfer a child protection order to a participating State under this 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 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 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**

#### **54F—When Court may make order under this Division**

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; 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.

#### **54G—Type of order**

- (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.

#### **54H—Court to have regard to certain matters**

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

- (a) whether the Chief Executive or an interstate officer is in the better position to exercise the powers and responsibilities under a child protection order relating to the child; and
- (b) the desirability of a child protection order being an order under the child welfare law of the State where the child resides; and
- (c) any information given to the Court by the Chief Executive under section 54I.

#### **54I—Duty of Chief Executive to inform the Court of certain matters**

If the Chief Executive is aware that—

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

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

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

#### **54J—When Court may make order under this Division**

- (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; 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.

#### **54K—Court to have regard to certain matters**

- (1) In determining an application to transfer a proceeding under this Division the Court must have regard to—
  - (a) whether any other proceedings relating to the child are pending, or have previously been heard and determined, under the child welfare law in the participating State; and
  - (b) the place where any of the matters giving rise to the proceeding in the Court arose; and
  - (c) the place of residence, or likely place of residence, of the child, his or her guardians and any other people who are significant to the child; and



- (d) whether the Chief Executive or an interstate officer is in the better position to exercise the powers and responsibilities under a child protection order relating to the child; and
  - (e) the desirability of a child protection order being an order under the child welfare law of the State where the child resides; and
  - (f) any information given to the Court by the Chief Executive under subsection (2).
- (2) If the Chief Executive is aware that—
- (a) a sentencing order, other than a fine, is in force in respect of the child who is the subject of an application under this Division; or
  - (b) a criminal proceeding is pending against that child in any court,
- the Chief Executive must, as soon as possible, inform the Court of that fact and of the details of the sentencing order or pending criminal proceeding.

#### **54L—Interim order**

- (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**

#### **54M—Filing and registration of interstate documents**

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

- (b) the time for instituting a review or appeal has not expired,  
under the interstate law.

### **54N—Notification by Registrar**

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

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

### **54O—Effect of registration**

- (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.

### **54P—Revocation of registration**

- (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; 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.
- (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**

### **54Q—Appeals**

- (1) An appeal against a final order of the Court—
  - (a) if made in a proceeding to transfer a child protection order to a participating State, must be lodged within 10 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.

### **54R—Effect of registration of transferred order**

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

### **54S—Transfer of Court file**

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

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

### **54T—Hearing and determination of transferred proceeding**

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

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

### **54U—Disclosure of information**

Despite anything to the contrary in this Act, the Chief Executive 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 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.

### **54V—Discretion of Chief Executive to consent to transfer**

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

### **54W—Evidence of consent of relevant interstate officer**

A document or a copy of a document—

- (a) purporting to be the written consent of the relevant interstate officer to—
  - (i) the transfer of a child protection order to a participating State and to the proposed terms of the child protection order to be transferred; or
  - (ii) the transfer of a child protection proceeding pending in the Court to the appropriate court in a participating State; and
- (b) purporting to be signed by the relevant interstate officer or 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.

## **Part 9—Miscellaneous**

### **56—Referrals to the Chief Executive**

If the Youth Court, a Youth Justice Co-ordinator or a police officer, 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.

### **57—Delegation**

- (1) The Minister or the Chief Executive 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.

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**58—Duty to maintain confidentiality**

- (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 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.

**59—Reports of family care meetings not to be published**

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.

**59A—Restrictions on reports of proceedings**

- (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.

### **60—Officers must produce evidence of authority**

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.

### **61—Hindering a person in execution of duty**

A person who hinders or obstructs the Chief Executive, 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.

### **63—Regulations**

- (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.
- (3) Regulations under this Act may—
  - (a) be of general or limited application; and
  - (b) make different provision according to the matters or circumstances to which they are expressed to apply; and
  - (c) provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Chief Executive (or a delegate of the Chief Executive); and
  - (d) refer to or incorporate, wholly or partially and with or without modification, a code, standard or other document prepared or published by a prescribed person or body, either as in force at the time the regulations are made or as in force from time to time.

## Legislative history

### Notes

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

### Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1993	93	<i>Children's Protection Act 1993</i>	4.11.1993	1.1.1994 ( <i>Gazette 4.11.1993 p2166</i> ) except ss 27—36, 49 & 59—5.1.1995 ( <i>Gazette 5.1.1995 p6</i> )
1995	24	<i>Statutes Amendment (Female Genital Mutilation and Child Protection) Act 1995</i>	27.4.1995	ss 6 & 7—1.5.1995 ( <i>Gazette 27.4.1995 p1563</i> ); s 5—27.4.1997 (s 7(5) <i>Acts Interpretation Act 1915</i> )
1996	68	<i>Statutes Amendment (Sentencing of Young Offenders) Act 1996</i>	15.8.1996	8.10.1996 ( <i>Gazette 29.8.1996 p810</i> )
1999	42	<i>Statutes Amendment and Repeal (Justice Portfolio) Act 1999</i>	5.8.1999	Pt 4 (ss 11—24)—3.10.1999 ( <i>Gazette 23.9.1999 p1208</i> )
2000	16	<i>Children's Protection (Mandatory Reporting and Reciprocal Arrangements) Amendment Act 2000</i>	1.6.2000	1.7.2000 ( <i>Gazette 29.6.2000 p3413</i> )
2005	76	<i>Children's Protection (Miscellaneous) Amendment Act 2005</i>	8.12.2005	Pt 2 (ss 4, 5, 6(2)—(4), 8, 11, 17—19) & Sch 2—1.2.2006 ( <i>Gazette 19.1.2006 p237</i> ); ss 13—16—1.10.2006 ( <i>Gazette 21.9.2006 p3273</i> ); ss 6(1), 7, 9, 10 & 12—31.12.2006 ( <i>Gazette 14.12.2006 p4363</i> )
2006	17	<i>Statutes Amendment (New Rules of Civil Procedure) Act 2006</i>	6.7.2006	Pt 15 (s 53)—4.9.2006 ( <i>Gazette 17.8.2006 p2831</i> )
2008	3	<i>Health Care Act 2008</i>	13.3.2008	Sch 4 (cl 2)—1.7.2008 ( <i>Gazette 26.6.2008 p2563</i> )
2009	65	<i>Children's Protection (Implementation of Report Recommendations) Amendment Act 2009</i>	10.12.2009	Pt 2 (ss 5(3)—(5), 6, 10—19)—31.12.2009 ( <i>Gazette 17.12.2009 p6349</i> ) except ss 4, 5(1), (2), 7—9 & 20—1.1.2011 ( <i>Gazette 29.7.2010 p3921</i> )
<b>2009</b>	<b>78</b>	<b><i>Statutes Amendment (Children's Protection) Act 2009</i></b>	<b>10.12.2009</b>	<b>Pt 2 (ss 4—6)—1.8.2010 (<i>Gazette 17.6.2010 p3077</i>)</b>
2009	84	<i>Statutes Amendment (Public Sector Consequential Amendments) Act 2009</i>	10.12.2009	Pt 26 (ss 50—52)—1.2.2010 ( <i>Gazette 28.1.2010 p320</i> )

## Provisions amended

New entries appear in bold.

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

Provision	How varied	Commencement
Pt 1		
s 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	1.2.2006
s 3	substituted by 76/2005 s 4	1.2.2006
s 4	substituted by 76/2005 s 5	1.2.2006
s 4(5)	amended by 65/2009 s 4(1), (2)	1.1.2011—not incorporated
s 5		
s 5(2)	amended by 76/2005 Sch 2	1.2.2006
s 6		
s 6(1)		
Aboriginal and Torres Strait Islander Child Placement Principle	inserted by 65/2009 s 5(1)	1.1.2011—not incorporated
Aboriginal Child Placement Principle	inserted by 76/2005 s 6(1)	31.12.2006
	deleted by 65/2009 s 5(2)	1.1.2011—not incorporated
alternative care	inserted by 76/2005 s 6(2)	1.2.2006
authorised police officer	amended by 76/2005 Sch 2	1.2.2006
Chief Executive	amended by 76/2005 Sch 2	1.2.2006
dentist	amended by 76/2005 Sch 2	1.2.2006
Department	amended by 76/2005 Sch 2	1.2.2006
government organisation	inserted by 65/2009 s 5(3)	31.12.2009
licensed children's residential facility	inserted by 16/2000 s 3(a)	1.7.2000
medical practitioner	amended by 76/2005 Sch 2	1.2.2006
non-government organisation	inserted by 65/2009 s 5(4)	31.12.2009
pharmacist	inserted by 16/2000 s 3(b)	1.7.2000
	amended by 76/2005 Sch 2	1.2.2006
psychologist	amended by 76/2005 Sch 2	1.2.2006
Senior Judge	inserted by 68/1996 s 4	8.10.1996
s 6(1a)	inserted by 65/2009 s 5(5)	31.12.2009
s 6(2)	amended by 76/2005 s 6(3), (4)	1.2.2006
s 6(3)	inserted by 16/2000 s 3(c)	1.7.2000
Pt 2		
heading	substituted by 76/2005 s 7	31.12.2006
Pt 2 Div 1		



heading	inserted by 76/2005 s 7	31.12.2006
s 8		
s 8(1)	s 8 amended and redesignated as s 8(1) by 76/2005 s 8(1)—(3)	1.2.2006
s 8(2)	inserted by 76/2005 s 8(3)	1.2.2006
s 8(3) and (4)	inserted by 65/2009 s 6	31.12.2009
Pt 2 Div 2	inserted by 76/2005 s 9	31.12.2006
Pt 2 Div 3	inserted by 76/2005 s 9	31.12.2006
s 8B		
s 8B(1)	substituted by 65/2009 s 7(1)	1.1.2011—not incorporated
s 8B(2)	amended by 65/2009 s 7(2)	1.1.2011—not incorporated
s 8B(3) and (4)	deleted by 65/2009 s 7(3)	1.1.2011—not incorporated
s 8B(5)	amended by 65/2009 s 7(4)	1.1.2011—not incorporated
s 8B(6)	amended by 65/2009 s 7(5)	1.1.2011—not incorporated
s 8B(7)	substituted by 65/2009 s 7(6)	1.1.2011—not incorporated
s 8B(8)		
employment	amended by 65/2009 s 7(7)	1.1.2011—not incorporated
government organisation	deleted by 65/2009 s 7(8)	1.1.2011—not incorporated
non-government organisation	deleted by 65/2009 s 7(9)	1.1.2011—not incorporated
prescribed functions	amended by 65/2009 s 7(10), (11)	1.1.2011—not incorporated
relevant employment	deleted by 65/2009 s 7(12)	1.1.2011—not incorporated
responsible authority	amended by 65/2009 s 7(13)	1.1.2011—not incorporated
s 8C		
s 8C(1)	amended by 65/2009 s 8(1)	1.1.2011—not incorporated
s 8C(1a)	inserted by 65/2009 s 8(2)	1.1.2011—not incorporated
s 8C(2)	amended by 65/2009 s 8(3)	1.1.2011—not incorporated
s 8C(3)	substituted by 65/2009 s 8(4)	1.1.2011—not incorporated
s 8C(4)	inserted by 65/2009 s 8(4)	1.1.2011—not incorporated
s 8D	inserted by 65/2009 s 9	1.1.2011—not incorporated
Pt 3		
s 9		
s 9(2)	amended by 76/2005 Sch 2	1.2.2006
Pt 4		
Pt 4 Div 1		
s 11		
s 11(1)	amended by 42/1999 s 11(a)	3.10.1999
	amended by 76/2005 Sch 2	1.2.2006
	amended by 76/2005 s 10(1)	31.12.2006
s 11(2)	amended by 42/1999 s 11(b)	3.10.1999
	amended by 16/2000 s 4(a)	1.7.2000

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	amended by 76/2005 Sch 2	1.2.2006
	amended by 76/2005 s 10(2)—(4)	31.12.2006
	amended by 65/2009 s 10(1)	31.12.2009
s 11(3)	amended by 76/2005 Sch 2	1.2.2006
s 11(4)	deleted by 16/2000 s 4(b)	1.7.2000
	inserted by 76/2005 s 10(5)	31.12.2006
s 11(5)	inserted by 76/2005 s 10(5)	31.12.2006
s 11(6)	inserted by 65/2009 s 10(2)	31.12.2009
s 13		
s 13(2)	amended by 42/1999 s 12	3.10.1999
s 13(3)	amended by 17/2006 s 53(1), (2)	4.9.2006
s 13(4)	amended by 17/2006 s 53(3)	4.9.2006
s 13(5)	amended by 17/2006 s 53(4)	4.9.2006
s 14	amended by 76/2005 Sch 2	1.2.2006
Pt 4 Div 2		
s 15	amended by 76/2005 Sch 2	1.2.2006
<i>s 16 before substitution by 76/2005</i>		
s 16(2)	<i>amended by 42/1999 s 13</i>	<i>3.10.1999</i>
s 16	substituted by 76/2005 s 11	1.2.2006
<b>s 16(1a)</b>	<b>inserted by 78/2009 s 4</b>	<b>1.8.2010</b>
s 16(6)	inserted by 65/2009 s 11	31.12.2009
<i>ss 17 and 18</i>	<i>deleted by 76/2005 s 11</i>	<i>1.2.2006</i>
Pt 4 Div 3		
s 19		
s 19(1)	amended by 76/2005 Sch 2	1.2.2006
	substituted by 76/2005 s 12	31.12.2006
s 19(2), (4) and (5)	amended by 76/2005 Sch 2	1.2.2006
s 19(6)	amended by 42/1999 s 14	3.10.1999
Pt 4 Div 4		
s 20		
s 20(1)	s 20 amended by 76/2005 Sch 2	1.2.2006
	s 20 redesignated as s 20(1) by 76/2005 s 13	1.10.2006
s 20(2)	inserted by 76/2005 s 13	1.10.2006
s 21		
s 21(1)	amended by 76/2005 Sch 2	1.2.2006
	amended by 76/2005 s 14(1)	1.10.2006
s 21(2)	amended by 76/2005 Sch 2	1.2.2006
	amended by 76/2005 s 14(2)	1.10.2006
s 21(4)	amended by 42/1999 s 15	3.10.1999
s 22		
s 22(1)	amended by 76/2005 Sch 2	1.2.2006

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s 23		
s 23(3)	amended by 76/2005 Sch 2	1.2.2006
s 23(5)	amended by 42/1999 s 16	3.10.1999
s 24		
s 24(1)	amended by 42/1999 s 17	3.10.1999
Pt 4 Div 5		
s 26		
s 26(1), (3) and (4)	amended by 76/2005 Sch 2	1.2.2006
Pt 4 Div 6	inserted by 24/1995 s 5	27.4.1997
s 26B		
s 26B(2)	amended by 76/2005 Sch 2	1.2.2006
Pt 5		
s 27	substituted by 24/1995 s 6	1.5.1995
s 31	amended by 76/2005 Sch 2	1.2.2006
s 33		
s 33(2)	amended by 76/2005 Sch 2	1.2.2006
s 37		
s 37(1a)	inserted by 76/2005 s 15	1.10.2006
s 38		
s 38(1)	amended by 16/2000 s 5	1.7.2000
	amended by 76/2005 Sch 2	1.2.2006
	amended by 76/2005 s 16(1)—(3)	1.10.2006
s 38(2)	substituted by 76/2005 s 16(4)	1.10.2006
s 38(2a)	inserted by 76/2005 s 16(4)	1.10.2006
s 38(4)	amended by 76/2005 Sch 2	1.2.2006
<i>s 41</i>	<i>deleted by 16/2000 s 6</i>	<i>1.7.2000</i>
s 44	amended by 42/1999 s 18	3.10.1999
Pt 6		
s 45		
s 45(1)	substituted by 16/2000 s 7	1.7.2000
s 46		
s 46(1)	amended by 16/2000 s 8(a)	1.7.2000
	amended by 76/2005 Sch 2	1.2.2006
s 46(2)	amended by 16/2000 s 8(b)	1.7.2000
	amended by 76/2005 Sch 2	1.2.2006
s 47	amended by 16/2000 s 9	1.7.2000
	amended by 76/2005 Sch 2	1.2.2006
s 47A	inserted by 16/2000 s 10	1.7.2000
s 48		
s 48(1)	amended by 76/2005 s 17(1)	1.2.2006
s 48(3)	inserted by 76/2005 s 17(2)	1.2.2006
s 50	amended by 76/2005 Sch 2	1.2.2006
Pt 7		

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Pt 7 Div 1		
<b>heading</b>	<b>inserted by 78/2009 s 5</b>	<b>1.8.2010</b>
s 51		
s 51(2)	amended by 76/2005 Sch 2	1.2.2006
s 52		
s 52(1)	amended by 76/2005 Sch 2	1.2.2006
<b>Pt 7 Div 2</b>	<b>inserted by 78/2009 s 6</b>	<b>1.8.2010</b>
Pt 7A	inserted by 76/2005 s 18	1.2.2006
heading	substituted by 65/2009 s 12	31.12.2009
Pt 7A Div 1		
heading	inserted by 65/2009 s 12	31.12.2009
s 52A		
s 52A(4)	amended by 65/2009 s 13(1)	31.12.2009
s 52A(5)—(7)	substituted by 65/2009 s 13(2)	31.12.2009
s 52A(8)	<i>deleted by 65/2009 s 13(2)</i>	<i>31.12.2009</i>
s 52AB	inserted by 65/2009 s 14	31.12.2009
s 52C		
s 52C(1)	amended by 65/2009 s 15(1)	31.12.2009
s 52C(4)	<i>deleted by 65/2009 s 15(2)</i>	<i>31.12.2009</i>
s 52CA	inserted by 65/2009 s 16	31.12.2009
s 52DA	inserted by 65/2009 s 17	31.12.2009
Pt 7A Divs 2—4	inserted by 65/2009 s 18	31.12.2009
Pt 7B	inserted by 76/2005 s 18	1.2.2006
s 52M	<i>deleted by 84/2009 s 50</i>	<i>1.2.2010</i>
s 52R	<i>deleted by 84/2009 s 51</i>	<i>1.2.2010</i>
Pt 7C	inserted by 76/2005 s 18	1.2.2006
s 52V		
s 52V(3)	amended by 3/2008 Sch 4 cl 2	1.7.2008
Pt 8	substituted by 16/2000 s 11	1.7.2000
s 54		
s 54(1)		
child protection order	amended by 76/2005 Sch 2	1.2.2006
s 54A		
s 54A(1)—(4)	amended by 76/2005 Sch 2	1.2.2006
s 54B		
s 54B(1)	amended by 76/2005 Sch 2	1.2.2006
s 54C	amended by 76/2005 Sch 2	1.2.2006
s 54D		
s 54D(1)	amended by 76/2005 Sch 2	1.2.2006
s 54E		
s 54E(1), (2) and (7)	amended by 76/2005 Sch 2	1.2.2006
s 54F	amended by 76/2005 Sch 2	1.2.2006

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ss 54H and 54I	amended by 76/2005 Sch 2	1.2.2006
s 54J		
s 54J(1)	amended by 76/2005 Sch 2	1.2.2006
s 54K		
s 54K(1) and (2)	amended by 76/2005 Sch 2	1.2.2006
s 54M		
s 54M(1)—(3)	amended by 76/2005 Sch 2	1.2.2006
s 54P		
s 54P(1)	amended by 76/2005 Sch 2	1.2.2006
s 54U	amended by 76/2005 Sch 2	1.2.2006
s 54V		
s 54V(1) and (2)	amended by 76/2005 Sch 2	1.2.2006
Pt 9		
<i>s 55 before deletion by 76/2005</i>		
s 55(2)	<i>amended by 24/1995 s 7(a)</i>	<i>1.5.1995</i>
s 55(4)	<i>amended by 24/1995 s 7(b)</i>	<i>1.5.1995</i>
s 55	<i>deleted by 76/2005 s 19</i>	<i>1.2.2006</i>
s 56	amended by 76/2005 Sch 2	1.2.2006
s 57		
s 57(1)	amended by 16/2000 s 12 amended by 76/2005 Sch 2	1.7.2000 1.2.2006
s 58		
s 58(1)	amended by 42/1999 s 19	3.10.1999
s 58(2)	amended by 42/1999 s 19 amended by 76/2005 Sch 2	3.10.1999 1.2.2006
s 59	amended by 42/1999 s 20	3.10.1999
s 59A	inserted by 42/1999 s 21	3.10.1999
s 60	amended by 42/1999 s 22	3.10.1999
s 61	amended by 42/1999 s 23 amended by 76/2005 Sch 2	3.10.1999 1.2.2006
s 62	<i>deleted by 84/2009 s 52</i>	<i>1.2.2010</i>
s 63		
s 63(2)	amended by 42/1999 s 24	3.10.1999
s 63(3)	inserted by 65/2009 s 19	31.12.2009
Sch 1	inserted by 65/2009 s 20	1.1.2011—not incorporated

## Transitional etc provisions associated with Act or amendments

### *Statutes Repeal and Amendment (Children's Protection and Young Offenders) Act 1993*

#### 3—Interpretation

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*.

#### 20—Transitional provisions—in need of care proceedings

- (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.

#### Historical versions

Reprint No 1—1.5.1995

Reprint No 2—8.10.1996

Reprint No 3—27.4.1997

Reprint No 4—3.10.1999

Reprint No 5—1.7.2000

1.2.2006  
4.9.2006  
1.10.2006  
31.12.2006  
1.7.2008  
31.12.2009  
1.2.2010