

South Australia

Children's Protection (Miscellaneous) Amendment Act 2005

An Act to amend the *Children's Protection Act 1993*; and to make a related amendment to the *Family and Community Services Act 1972*.

Contents

Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Amendment provisions

Part 2—Amendment of *Children's Protection Act 1993*

- 4 Substitution of section 3
 - 3 Objects of Act
- 5 Substitution of section 4
 - 4 Fundamental principles
- 6 Amendment of section 6—Interpretation
- 7 Substitution of heading to Part 2
- 8 Amendment of section 8—General functions of the Minister
- 9 Insertion of Part 2 Divisions 2 and 3
 - Division 2—The Chief Executive
 - 8A General functions of the Chief Executive
 - Division 3—Child safe environments
 - 8B Powers and obligations of Chief Executive in respect of criminal history
 - 8C Obligations of certain organisations
- 10 Amendment of section 11—Notification of abuse or neglect
- 11 Substitution of sections 16, 17 and 18
 - 16 Power to remove children from dangerous situations
- 12 Amendment of section 19—Investigations
- 13 Amendment of section 20—Application for order
- 14 Amendment of section 21—Orders Court may make
- 15 Amendment of section 37—Application for care and protection order
- 16 Amendment of section 38—Court's power to make orders
- 17 Amendment of section 48—Legal representation of child
- 18 Insertion of Parts 7A, 7B and 7C
 - Part 7A—The Guardian
 - 52A The Guardian
 - 52B Staff and resources
 - 52C The Guardian's functions and powers
 - 52D The Guardian's reporting obligations

52E Confidentiality of information

Part 7B—The Council for the Care of Children

52F Establishment of the Council

52G Terms of office of members

52H Procedures of the Council

52I Staff and resources

52J Functions of the Council

52K Council's reporting obligations

52L Confidentiality of information

52M Immunity from civil liability

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

Division 1—Constitution and Procedures of Committee

52N Establishment of the Committee

52O Terms of office of members

52P Procedures of the Committee

52Q Staff and resources

52R Immunity from civil liability

Division 2—Functions and powers of the Committee

52S Functions of the Committee

52T Database

52U Reporting cases to the Committee

52V Powers of review

52W Committee's reporting obligations

Division 3—Confidentiality

52X Confidentiality of information

19 Repeal of section 55

Schedule 1—Related amendment of *Family and Community Services Act 1972*

1 Repeal of Part 4 Division 1

Schedule 2—Statute law revision amendment of *Children's Protection Act 1993*

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Children's Protection (Miscellaneous) Amendment Act 2005*.

2—Commencement

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

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Children's Protection Act 1993*

4—Substitution of section 3

Section 3—delete the section and substitute:

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.

5—Substitution of section 4

Section 4—delete the section and substitute:

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.

6—Amendment of section 6—Interpretation

- (1) Section 6(1)—after the definition of *Aboriginal child* insert:

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

- (2) Section 6(1)—after the definition of *abuse or neglect* insert:

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;

- (3) Section 6(2)—before paragraph (a) insert:

- (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

- (4) Section 6(2)(c)—delete "maintain" wherever occurring and substitute in each case:
care for and protect

7—Substitution of heading to Part 2

Heading to Part 2—delete the heading and substitute:

Part 2—The Minister, the Chief Executive and child safe environments

Division 1—The Minister

8—Amendment of section 8—General functions of the Minister

- (1) Section 8(h)—delete paragraph (h) and substitute:

(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;

- (2) Section 8—after paragraph (k) insert:

- (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;

- (3) Section 8—after its present contents as amended by this section (now to be designated as subsection (1)) insert:
- (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.

9—Insertion of Part 2 Divisions 2 and 3

Part 2—after section 8 insert:

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 Chief Executive 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.

10—Amendment of section 11—Notification of abuse or neglect

- (1) Section 11(1), penalty provision—delete the penalty provision and substitute:
Maximum penalty: \$10 000.
- (2) Section 11(2)—after paragraph (g) insert:
 - (ga) a minister of religion;
 - (gb) a person who is an employee of, or volunteer in, an organisation formed for religious or spiritual purposes;
- (3) Section 11(2)(j)—delete "non-government agency" and substitute:
non-government organisation
- (4) Section 11(2)(j)—after "education," insert:
sporting or recreational,
- (5) Section 11—after subsection (3) insert:
 - (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.

11—Substitution of sections 16, 17 and 18

Sections 16, 17 and 18—delete the sections and substitute:

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.

- (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).

12—Amendment of section 19—Investigations

Section 19(1)—delete subsection (1) and substitute:

- (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.

13—Amendment of section 20—Application for order

Section 20—after its present contents (now to be designated as subsection (1)) insert:

- (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).

14—Amendment of section 21—Orders Court may make

(1) Section 21(1)—after paragraph (a) insert:

- (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.

(2) Section 21(2)(a)—delete "four weeks" and substitute:

6 weeks

15—Amendment of section 37—Application for care and protection order

Section 37—after subsection (1) insert:

(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.

16—Amendment of section 38—Court's power to make orders

- (1) Section 38(1)(a)—delete "any guardian of the child" and substitute:

a parent, guardian or other person who has the care of the child

- (2) Section 38(1)—after paragraph (a) insert:

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.

- (3) Section 38(1)(f)(iii)—delete subparagraph (iii) and substitute:

(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.

- (4) Section 38(2)—delete subsection (2) and substitute:

(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.

17—Amendment of section 48—Legal representation of child

- (1) Section 48(1)—delete the parenthetical passage following paragraph (b)

- (2) Section 48—after subsection (2) insert:

(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.

18—Insertion of Parts 7A, 7B and 7C

After Part 7 insert:

Part 7A—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
 - (e) is removed from office by the Governor under subsection (5).
- (5) The Governor may remove the Guardian from office for—
 - (a) breach of, or non-compliance with, a condition of appointment; or
 - (b) failure to disclose a personal or pecuniary interest of which the Guardian is aware that may conflict with the Guardian'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.
- (6) Subject to subsection (7), the Guardian is to be subject to the Minister's direction.

- (7) The Guardian is not, however, subject to directions—
- (a) preventing or restricting the Guardian from carrying out inquiries and investigations that the Guardian considers necessary for the proper performance of statutory functions; or
 - (b) preventing or restricting the Guardian from communicating with any body or person; or
 - (c) as to the nature or content of advice, reports or recommendations given or made in the performance of statutory functions.
- (8) Any direction given to the Guardian by the Minister must be in writing.

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;
 - (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.
- (4) 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.

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.

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*.

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.

52M—Immunity from civil liability

- (1) No civil liability attaches to the Council, a member of the Council, or a member of the Council's staff for an act or omission in the exercise or purported exercise of official powers or functions.
- (2) An action that would, but for subsection (1), lie against the Council, a member of the Council, or a member of the Council's staff, lies instead against the Crown.
- (3) This section does not prejudice rights of action of the Crown itself in respect of an act or omission not in good faith.

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.

52R—Immunity from civil liability

- (1) No civil liability attaches to the Committee, a member of the Committee, or a member of the Committee's staff for an act or omission in the exercise or purported exercise of official powers or functions.
- (2) An action that would, but for subsection (1), lie against the Committee, a member of the Committee, or a member of the Committee's staff, lies instead against the Crown.
- (3) This section does not prejudice rights of action of the Crown itself in respect of an act or omission not in good faith.

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 who has access to confidential information by virtue of an authorisation under section 64D of the *South Australian Health Commission Act 1976* to disclose or allow access to that information.
- (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.

19—Repeal of section 55

Section 55—delete the section

Schedule 1—Related amendment of *Family and Community Services Act 1972*

1—Repeal of Part 4 Division 1

Part 4 Division 1—delete Division 1

Schedule 2—Statute law revision amendment of *Children's Protection Act 1993*

Provision amended	How amended
Section 5(2)(b)	Delete "where" and substitute: if
Section 6(1) definition of <i>authorised police officer</i>	Delete "member of the police force" wherever occurring and substitute in each case: police officer
definition of <i>Chief Executive Officer</i>	Delete " <i>Officer</i> " Delete "officer"
definition of <i>dentist</i>	Delete "dentist under the <i>Dentists Act 1984</i> " and substitute: dental practitioner under the law of this State
definition of <i>Department</i>	Delete "the <i>Department for Family and Community Services</i> " and substitute: the administrative unit of the Public Service prescribed by regulation for the purposes of this definition
definition of <i>medical practitioner</i>	Delete "on the general register under the <i>Medical Practitioners Act 1983</i> " and substitute: as a medical practitioner under the law of this State
definition of <i>pharmacist</i>	delete " <i>Pharmacists Act 1991</i> " and substitute: law of this State
definition of <i>psychologist</i>	delete " <i>Psychological Practices Act 1973</i> " and substitute: law of this State
Section 9(2)	Delete "Notwithstanding" and substitute: Despite
Section 11(1)	Delete "Where" and substitute: If

Provision amended	How amended
Section 11(2)(e)	Delete "member of the police force" and substitute: police officer
Section 11(2)(h)	Delete "any" and substitute: an
Section 11(3)	Delete "upon" and substitute: on
Section 14	Delete "Officer" wherever occurring
Section 15(a)	Delete "member of the police force" and substitute: police officer
Section 19	Delete "Officer" wherever occurring
Section 19(4)	Delete "where" and substitute: if
Section 19(5)	Delete "members of the police force" and substitute: police officers
Section 20	Delete "Officer" wherever occurring
Section 21	Delete "Officer" wherever occurring
Section 22(1)	Delete "Officer"
Section 23(3)	Delete "Officer" wherever occurring
Section 26	Delete "Officer" wherever occurring
Section 26(3)	Delete "notwithstanding" and substitute: despite
Section 26B(2)	Delete "member of the police force" and substitute: police officer
	Delete "Officer"
Section 31(c)	Delete "Officer"
Section 31(d)(i)	Delete "an Education Department employee" and substitute: an employee of the administrative unit of the Public Service charged with the administration of the <i>Education Act 1972</i>
Section 33(2)(b)	Delete "any two" and substitute: 2
Section 38(1)	Delete "any one" and substitute: 1
Section 38(1)(a)	Delete "Officer"
Section 38(1)(b)(iii)	Delete "officer"

Provision amended	How amended
Section 38(4)	Delete "Where the Chief Executive Officer" and substitute: <div style="text-align: center;">If the Chief Executive</div>
Section 46(1)	Delete "Officer"
Section 46(2)(c)	Delete "where" and substitute: <div style="text-align: center;">if</div>
Section 47	Delete "upon" and substitute: <div style="text-align: center;">on</div>
Section 50	Delete "Officer"
Section 51(2)	Delete "where" and substitute: <div style="text-align: center;">if</div>
Section 52(1)	Delete "Where" and substitute: <div style="text-align: center;">If</div>
Section 54(1) definition of <i>child protection order</i>	Delete "officer" wherever occurring
Section 54A	Delete "Officer" wherever occurring
Section 54B(1)(b)	Delete "officer" wherever occurring
Section 54B(1)(c)	Delete "Officer" wherever occurring
Section 54C	Delete "Officer" wherever occurring
Section 54D(1)	Delete "Officer" wherever occurring
Section 54E	Delete "Officer" wherever occurring
Section 54F(a)	Delete "Officer"
Section 54H	Delete "Officer" wherever occurring
Section 54I	Delete "Officer" wherever occurring
Section 54J(a)	Delete "Officer"
Section 54K	Delete "Officer" wherever occurring
Section 54M	Delete "Officer" wherever occurring
Section 54P(1)(a)	Delete "Officer"
Section 54U	Delete "Officer" wherever occurring
Section 54V	Delete "Where" wherever occurring and substitute in each case: <div style="text-align: center;">If</div>
	Delete "Officer" wherever occurring
Section 56	Delete "member of the police force" and substitute: <div style="text-align: center;">police officer</div>
	Delete "Officer"
Section 57(1)	Delete "Officer"

No 76 of 2005—Children's Protection (Miscellaneous) Amendment Act 2005
Statute law revision amendment of *Children's Protection Act 1993*—Schedule 2

Provision amended	How amended
Section 58(2)	Delete "any personal" and substitute: personal
Section 61	Delete "Officer"