

South Australia

Children's Protection (Implementation of Coroner's Recommendations) Amendment Act 2016

An Act to amend the *Children's Protection Act 1993*.

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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 (Implementation of Coroner's Recommendations) Amendment Act 2016*.

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

- (1) The primary object of this Act is to keep children safe from harm and in the administration of this Act that object must, in all cases, be the paramount consideration.
- (2) Without limiting subsection (1), the Act also has the following objects:
 - (a) to ensure as far as practicable that all children are cared for in a way that allows them to reach their full potential; and
 - (b) to recognise the importance of families to children and promote caring attitudes and responses towards children among families and 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.
- (3) If decisions are to be made under this Act in relation to a child, the decision maker must have regard to the views of the child (if the child is willing and able to express such views).

5—Repeal of section 4

Section 4—delete the section

6—Amendment of section 5—Provisions relating to dealing with Aboriginal or Torres Strait Islander children

- (1) Section 5—before subsection (1) insert:
 - (a1) In dealing with matters relating to Aboriginal or Torres Strait Islander children, the Aboriginal and Torres Strait Islander Child Placement Principle is to be observed.
- (2) Section 5(2)—delete "the requirements of section 4" and substitute:

any other requirements under this Act

7—Amendment of section 6—Interpretation

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

drug includes alcohol;
- (2) Section 6—after subsection (3) insert:
 - (4) In assessing whether—
 - (a) there is a significant risk that a child will suffer serious harm to his or her physical, psychological or emotional wellbeing;
or
 - (b) a child has been, or is being, abused or neglected,
for the purposes of this Act, regard must be had to not only the current circumstances of the child's care but also the history of the child's care and the likely cumulative effect on the child of that history.

8—Insertion of Part 2 Division 4

After section 8D insert:

Division 4—Matters to be included in annual report of Department

8E—Matters to be included in annual report of Department

- (1) The annual report of the Department must include the following information in respect of the period covered by the annual report:
 - (a) information setting out—
 - (i) the number of applications made under sections 20(1) and 22; and
 - (ii) the number and general nature of any orders made under the Act in relation to those applications;
 - (b) information setting out the number and general nature of any orders made under section 21(1)(ab);
 - (c) information setting out—
 - (i) the number of applications made under section 37(1) or (1a); and

- (ii) the number and general nature of any orders made under the Act in relation to those applications.
- (2) This section is in addition to, and does not derogate from, any other requirement under this Act or the *Public Sector Act 2009*.

9—Amendment of section 19—Investigations

Section 19—after subsection (1) insert:

- (1a) If the Chief Executive issues an instrument of guardianship or a restraining notice in relation to a child under Part 5 Division 3, the Chief Executive must cause an assessment of, or investigation into, the circumstances of the child to be carried out.

10—Amendment of section 20—Application for order

(1) Section 20—after subsection (1) insert:

- (1a) If the Chief Executive issues an instrument of guardianship or a restraining notice in relation to a child under Part 5 Division 3, the Chief Executive may apply to the Youth Court for an order under this Division.

(2) Section 20(2)—delete subsection (2) and substitute:

- (2) Without limiting subsection (1) or (1a), if the Chief Executive is of the opinion that a child is at risk as a result of the abuse of a drug by a parent, guardian or other person, the Chief Executive must apply for an order under subsection (1) directing the parent, guardian or other person to undergo a drug assessment.
- (3) However, the Chief Executive need not apply for an order referred to in subsection (2) if he or she is satisfied that—
 - (a) a drug assessment of the parent, guardian or other person has already occurred, or is occurring (whether pursuant to an application under this section or otherwise); and
 - (b) that drug assessment is of a kind appropriate for the purposes of this Act; and
 - (c) the results of the drug assessment have been, or will be, made available to the Chief Executive; and
 - (d) in the case of a drug assessment that has already occurred—having regard to when the drug assessment occurred, an additional drug assessment under that subsection is not necessary.

11—Amendment of section 26—Examination and assessment of children

Section 26(1)—after paragraph (b) insert:

or

- (c) an instrument of guardianship or a restraining notice in relation to a child is in force under Part 5 Division 3,

12—Amendment of section 27—Family care meetings to be convened by Minister

Section 27—after subsection (2) insert:

- (2a) However, subsections (1) and (2) do not apply in relation to a child if the Chief Executive has issued, or intends to issue, an instrument of guardianship or a restraining notice in relation to the child under Part 5 Division 3.

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

Section 37—after subsection (2) insert:

- (3) If an instrument of guardianship or a restraining notice has been issued under Division 3, the Minister must, as soon as practicable after the issue of the instrument or notice (and in any case within the applicable guardianship period or restraining notice period) apply to the Youth Court for an order under this Division (and in such a case the grounds of the application will be taken to be that the instrument of guardianship or restraining notice was properly issued under Division 3).

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

(1) Section 38—before subsection (1) insert:

- (a1) The Court may, on an application under this Division, make an order under this section if the Court is satisfied—
- (a) that the grounds of the application have been made out; and
- (b) that an order under this section should be made in respect of the child.

(2) Section 38(1)—delete "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" and substitute:

In an order under this section, the Court may exercise 1 or more of the following powers

(3) Section 38(1)—after paragraph (e) insert:

- (ea) if an instrument of guardianship or a restraining notice is in force and the application has been made under section 37(3)—the Court may revoke the instrument or notice;

15—Amendment of section 39—Adjournments

Section 39—before its present contents (now to be designated as subsection (2)) insert:

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

16—Insertion of Part 5 Division 3

After section 44 insert:

Division 3—Chief Executive to take action in relation to persons with qualifying offences

44A—Interpretation

(1) In this Division—

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

- (a) is served on the offender in accordance with section 44B(5)(a); or
- (b) is lodged with the Court in accordance with section 44B(5)(b),

whichever occurs first, and ending 60 days later (or such longer period as may be allowed by the Court on an application under section 44C);

instrument of guardianship—see section 44B(1);

parent, of a child, does not include a stepmother or stepfather of the child;

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

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

restraining notice—see section 44B(3);

restraining notice period means the period commencing at the time at which the restraining notice is served on the offender in accordance with section 44B(5)(a) and ending 60 days later (or such longer period as may be allowed by the Court on an application under section 44C).

- (2) For the purposes of this Division, a reference to a person being ***found guilty*** of an offence will be taken to include a reference to—
- (a) a finding of a court under Part 8A of the *Criminal Law Consolidation Act 1935* that the objective elements of an offence are established (whether or not the person was found not guilty of the offence, or was found to be mentally unfit to stand trial, pursuant to Division 2 or 3 of that Part); or
 - (b) any finding of a court of another jurisdiction that corresponds to a finding referred to in paragraph (a).

44B—Temporary guardianship instruments and restraining notices

- (1) The Chief Executive must, if he or she becomes aware that a child born after the commencement of this subsection is residing with a parent of the child who has been found guilty of a qualifying offence (the ***offender***), issue an instrument under this section (an ***instrument of guardianship***) in respect of the child.
- (2) If the Chief Executive issues an instrument of guardianship, the child specified in the instrument will, for all purposes, be under the guardianship of the Minister during the guardianship period (subject to an order of the Court on an application under section 37(3)).
- (3) The Chief Executive must, if he or she becomes aware that a child is residing, or is about to reside, with a person (not being a parent of the child) who has been found guilty of a qualifying offence (the ***offender***), issue a notice under this section (a ***restraining notice***) to the offender, unless the Chief Executive is of the opinion that it is inappropriate to do so in the circumstances.
- (4) A restraining notice may prohibit the offender from—
- (a) residing in the same premises as the child;
 - (b) coming within a specified distance of the child's residence;
 - (c) having any contact with the child (except in the presence of a specified person or class of person);
 - (d) having any contact at all with the child,
- during the restraining notice period (subject to an order of the Court on an application under section 37(3)).
- (5) An instrument of guardianship or restraining notice issued in relation to an offender—
- (a) must be served on the offender as soon as practicable after it has been issued; and

- (b) must be lodged with the Court in accordance with any requirements prescribed by the regulations (and may be so lodged whether or not it has been served in accordance with paragraph (a)).
- (6) Subject to subsection (7), this Act will be taken to apply to an instrument of guardianship, while it remains in force, as if it were an order of the Court under Division 2 and as if the parties to that order were—
 - (a) the parents of the child to whom the instrument relates; and
 - (b) the child to whom the instrument relates; and
 - (c) a person who would, but for the instrument, have had custody or guardianship of the child to whom the instrument relates; and
 - (d) the Minister.
- (7) Until the Minister makes an application to the Court under section 37(3) in relation to an instrument of guardianship, any application to the Court under section 40 in relation to the instrument may only seek to vary arrangements for the custody, care, protection, health, welfare or education of the child.
- (8) A person who contravenes or fails to comply with a restraining notice is guilty of an offence.
Maximum penalty: Imprisonment for 2 years.
- (9) A person does not commit an offence against subsection (8) in respect of an act or omission unless the person knew that the act or omission constituted a contravention of, or failure to comply with, the notice or was reckless as to that fact.
- (10) For the purposes of this section, a newborn child who has not yet been discharged from hospital will be taken to be residing with a person if the child is likely to reside with the person on being discharged.

44C—Court may grant an extension of time

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

44D—Evidentiary

In any legal proceedings, an apparently genuine document purporting to be an instrument of guardianship or a restraining notice is, in the absence of proof to the contrary, proof of the instrument or notice and its terms.

44E—Information to be provided to Chief Executive

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