

**Legislative Council—No 50**

As received from the House of Assembly and read a first time, 6 September 2018

South Australia

**Children and Young People (Safety)  
(Miscellaneous) Amendment Bill 2018**

A BILL FOR

An Act to amend the *Children and Young People (Safety) Act 2017* and to make related amendments to the *Children's Protections Law Reform (Transitional Arrangements and Related Amendments) Act 2017*.

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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 and Young People (Safety) (Miscellaneous) Amendment Act 2018*.

### **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 and Young People (Safety) Act 2017***

### **4—Amendment of section 18—Meaning of *at risk***

Section 18(1)(c)(ii)—delete "*Marriage Act 1972*" and substitute:

*Marriage Act 1961*

### **5—Amendment of section 43—Custody of removed child or young person**

Section 43—after its present contents (now to be designated as subsection (1)) insert:

- (2) However, subject to the regulations, the Chief Executive may exercise a power under this Act in respect of a child or young person delivered into the care of a person determined by the Chief Executive under section 42 as if the child or young person were in the custody of the Chief Executive.

### **6—Amendment of section 50—When application can be made for Court orders**

- (1) Section 50(4)—delete "Before applying for a prescribed Court order in relation to a child or young person removed from a person under this Act, the Chief Executive must" and substitute:

Except in the circumstances set out in the regulations, the Chief Executive must, before applying for a prescribed Court order in relation to a child or young person removed from a person under this Act,

- (2) Section 50(5), definition of *prescribed Court order*, (d)—delete "definition." and substitute:

definition,

but does not include an order of a kind declared by the regulations not to be included in the ambit of this definition.

**7—Amendment of section 59—Onus on objector to prove order should not be made**

Section 59—after subsection (1) insert:

- 5 (1a) However, this section does not apply to proceedings of a kind prescribed by the regulations.

**8—Amendment of section 90—Long-term care plan to be prepared**

Section 90(3)—delete subsection (3)

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

10 Section 91—after subsection (2) insert:

- (2a) The Chief Executive must cause a copy of the long-term care plan in respect of the child or young person to be provided to the Court in any application under subsection (1).

**10—Amendment of section 92—Application of Part**

15 Section 92—after its present contents (now to be designated as subsection (1)) insert:

- (2) This Part does not apply to the following children and young people:
- (a) a child or young person placed under the long-term guardianship of a person following an application under section 91;
  - 20 (b) a child or young person placed under the long-term guardianship of a person (other than the Minister) under the *Children's Protection Act 1993*;
  - (c) a child or young person of a kind prescribed by the regulations.

**11—Amendment of section 95—Review by Contact Arrangements Review Panel**

25 Section 95(1)—delete subsection (1) and substitute:

- (1) Subject to this Part, the following persons may apply to the Contact Arrangements Review Panel for a review of a determination of the Chief Executive under section 93 in respect of contact arrangements relating to a particular child or young person:
- 30 (a) the child or young person;
  - (b) a person allowed contact with the child or young person pursuant to the determination;
  - 35 (c) a person who is refused contact with the child or young person pursuant to the determination.

**12—Amendment of section 121—Interpretation**

Section 121(1), definition of *child welfare law*—after paragraph (a) insert:

- (ab) the *Children's Protection Act 1993*;

**13—Amendment of section 142—Disclosure of information**

5 (1) Section 142—delete "this Act" and substitute:

a prescribed child protection law

(2) Section 142—after its present contents (now to be designated as subsection (1)) insert:

(2) In this section—

*prescribed child protection law* means—

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(a) this Act;

(b) the *Children's Protection Act 1993*;

(c) any other Act prescribed by the regulations for the purposes of this paragraph.

**14—Amendment of section 161—Payment of money to Chief Executive on behalf of child or young person**

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Section 161(2), (3) and (4)—delete subsections (2), (3) and (4) and substitute:

(2) The Chief Executive must cause any money received on behalf of a child or young person—

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(a) to be held by the Public Trustee on behalf of the child or young person in accordance with the scheme set out in the regulations; or

(b) to be deposited in an ADI account in the name of the child or young person.

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(3) Without limiting the regulations that may be made under subsection (2)(a), the regulations may make provisions relating to the transfer of money to the Public Trustee, interest payable on money held by the Public Trustee, and the application of money held by the Public Trustee, under this section.

**15—Amendment of Schedule 1—Repeal and related amendment**

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Schedule 1 Part 2 clause 2—after paragraph (b) insert:

(ba) section 8C;

(bb) Part 2 Division 4;

## Schedule 1—Related amendments and transitional provisions etc

### Part 1—Amendment of *Children's Protections Law Reform (Transitional Arrangements and Related Amendments) Act 2017*

#### 1—Amendment of section 12—Transitional provisions—foster parents

Section 12(1)(a)—delete "section, an approved foster parent under section 43 of the *Family and Community Services Act 1972*" and substitute:

section—

- (i) an approved foster parent under section 43 of the *Family and Community Services Act 1972*; or
- (ii) an approved carer under the *Children and Young People (Safety) Act 2017*; and

#### 2—Amendment of section 13—Transitional provisions—licensed foster care agencies

Section 13(1)(a)—delete "section, licensed as a foster care agency under section 48 of the *Family and Community Services Act 1972*" and substitute:

section—

- (i) licensed as a foster care agency under section 48 of the *Family and Community Services Act 1972*; or
- (ii) licensed as a foster care agency under the *Children and Young People (Safety) Act 2017*; and

#### 3—Amendment of section 14—Transitional provisions—licensed children's residential facilities

Section 14(1)(a)—delete "section, the holder of a licence to maintain a children's residential facility under section 51 of the *Family and Community Services Act 1972*" and substitute:

section—

- (i) the holder of a licence to maintain a children's residential facility under section 51 of the *Family and Community Services Act 1972*; or
- (ii) the holder of a licence to maintain a children's residential facility under the *Children and Young People (Safety) Act 2017*; and

#### 4—Insertion of section 23A

After section 23 insert:

##### **23A—Certain placements to continue as placements under *Children and Young People (Safety) Act 2017***

5                   A placement of a child or young person by the Minister under the  
repealed Act will be taken to continue in effect as if the child or  
young person were so placed by the Chief Executive under section  
77 or 84 of the *Children and Young People (Safety) Act 2017* (as the  
10                   case requires) (and the placement will, for the purposes of that Act,  
be taken to be a placement under the relevant section).

#### 5—Insertion of section 26A

After section 26 insert:

##### **26A—Certain proceedings continued as proceedings under *Children and Young People (Safety) Act 2017***

15                   Despite a provision of any other Act or law, proceedings under the  
repealed Act commenced, but not finally determined, in the Youth  
Court of South Australia before 22 October 2018 will continue and  
will, for all purposes, be taken to be proceedings commenced under  
Chapter 6 of the *Children and Young People (Safety) Act 2017*.

#### 6—Insertion of sections 31A and 31B

After section 31 insert:

##### **31A—Certain orders under section 38 of repealed Act to continue as orders under *Children and Young People (Safety) Act 2017***

25                   An order of the Court under section 38 of the repealed Act in force  
immediately before the commencement of this section (not being an  
order referred to in section 32(1) of this Act) will be taken to  
continue in accordance with its terms and will, for the purposes of  
the *Children and Young People (Safety) Act 2017*, be taken to be an  
30                   order under section 53 of that Act.

##### **31B—Certain orders under repealed Act to continue as interim orders under *Children and Young People (Safety) Act 2017***

35                   The following orders of the Court under the repealed Act in force  
immediately before the commencement of this section will be taken  
to continue in accordance with their terms and will, for the purposes  
of the *Children and Young People (Safety) Act 2017*, be taken to be  
interim orders made by the Court under section 53 of that Act:

- (a) an order referred to in section 39(2)(b) of the repealed Act;
- (b) an order made under section 21(1) of the repealed Act.

## Part 2—Transitional provisions etc

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

5 (1) This clause applies to money received pursuant to section 84 of the *Family and Community Services Act 1972*, or section 161 of the *Children and Young People (Safety) Act 2017* (as in force before the commencement of section 14 of this Act), that is being held on behalf of a child or young person, regardless of where the money is being held.

10 (2) Any money to which this clause applies will, on the commencement of this clause, be taken to be money received by the Chief Executive pursuant to section 161 of the *Children and Young People (Safety) Act 2017* (as amended by section 14 of this Act) and is to be dealt with in accordance with that section.

(3) In this clause—

*Chief Executive* has the same meaning as in the *Children and Young People (Safety) Act 2017*.