

Legislative Council—No 31

As introduced and read a first time, 21 July 2010

South Australia

**Children's Protection (Grandparents and Family
Care) Amendment Bill 2010**

A BILL FOR

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 (Grandparents and Family Care) Amendment Act 2010*.

5 2—Commencement

This Act will come into operation 1 month after the day on which it is assented to by the Governor.

3—Amendment provisions

10 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—Amendment of section 3—Objects of Act

Section 3—after paragraph (d) insert:

and

- 5 (e) to recognise the important role that grandparents and other members of a child's extended family can play in providing nurture, care and protection to a child, including when the child is at risk.

5—Amendment of section 4—Fundamental principles

(1) Section 4(4)—after paragraph (a) insert:

10 **Note—**

Under section 6, *family* is defined to include a child's extended family and, in the case of Aboriginal or Torres Strait Islander children, persons related according to kinship rules.

(2) Section 4—after subsection (5) insert:

- 15 (5a) Subject to the other provisions of this section, a child who is to be placed in alternative care should, if possible, be placed with his or her grandparents or another member of the child's family.

6—Amendment of section 9—Voluntary custody agreements

Section 9—after subsection (7) insert:

- 20 (8) Subject to section 4, a child of whom the Minister has the custody by virtue of a custody agreement should, if possible, reside with the child's grandparents or another member of the child's family.

7—Amendment of section 21—Orders Court may make

Section 21—after subsection (1) insert:

- 25 (1a) The Court may, when determining an application under this Division, recommend to the Minister that consideration be given to placing the child the subject of the application with the child's family or with a particular member of the child's family.

8—Amendment of section 28—Purpose of family care meetings

30 Section 28—after its present contents (now to be designated as subsection (1)) insert:

- (2) Consideration must be given at a family care meeting as to whether the care and protection of a child would best be secured by an arrangement whereby the child is placed with his or her grandparents or other members of his or her family.

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

Section 37—after subsection (1a) insert:

- 5 (1b) If the Minister is of the opinion that a child who is the subject of an application under subsection (1) or (1a) should not reside with the child's parents, the Minister must include in the application—
- (a) a statement of that opinion; and
 - (b) an indication of the Minister's opinion as to whether the child should be placed with another member of the child's family; and
 - 10 (c) the reasons for the opinions referred to in paragraphs (a) and (b).

10—Insertion of section 47AA

After section 47 insert:

47AA—Right of member of child's family to be heard

- 15 (1) If a member of the family of a child who is the subject of proceedings to which this section applies notifies the Court, by notice in a form approved by the Senior Judge, that he or she wishes to participate in the proceedings, the Court may do 1 or more of the following:
- 20 (a) invite the family member to attend any hearing of the proceedings;
 - (b) join the family member as a party to the proceedings;
 - (c) hear submissions from the family member in relation to the proceedings (whether or not the family member is joined as a party to the proceedings).
- 25 (2) The Court may, before exercising its powers under subsection (1), conduct a hearing for the purpose of determining whether the family member should be invited to participate in the proceedings, and, if so, the nature of the participation.
- 30 (3) A family member who participates in proceedings is entitled to be represented at the proceedings by a legal practitioner.
- (4) If an employee of the Department is aware that a member of a child's family wishes to participate in proceedings relating to the care and protection of the child, the employee must advise the family member of his or her rights under this section in relation to proceedings to which this section applies involving the child.
- 35 (5) This section applies to proceedings on an application for—
- (a) an investigation and assessment order; or
 - (b) a care and protection order; or
 - 40 (c) an order under Part 8 to transfer a child protection order or a child protection proceeding.

11—Amendment of section 47A—Right of other interested parties to be heard

Section 47A(a)—delete paragraph (a)

12—Amendment of section 51—Powers of Minister in relation to children under the Minister's care and protection

5 Section 51(2)—delete "the Minister must, if appropriate, have regard to the desirability of securing settled and permanent living arrangements for the child" and substitute:

the Minister must—

- 10 (a) if appropriate, have regard to the desirability of securing settled and permanent living arrangements for the child; and
- (b) if it is not possible or desirable to place the child, or permit the child to remain, with a parent of the child—endeavour to place the child with the child's grandparents or another member of the child's family.

13—Amendment of section 52C—Guardian's functions and powers

15 Section 52C(1)—after paragraph (e) insert:

- (ea) to inquire into, and provide advice to the Minister in relation to, the extent to which the Minister, the Court and the Department have endeavoured to ensure that, where possible, children in alternative care are placed with family members;

20 **14—Amendment of section 52F—Establishment of Council**

Section 52F(3)—after paragraph (b) insert:

and

- 25 (c) at least 1 person who has experience of maintaining and caring for a child to whom the person is related (other than as a parent) on a residential basis,

15—Amendment of section 52J—Functions of Council

Section 52J(e)—after subparagraph (v) insert:

and

- 30 (vi) ensuring that children in alternative care are, to the fullest extent possible, placed with grandparents or other family members who are able to care for them and that family members are given the opportunity to participate in caring for children who require alternative care and are provided with financial support (where appropriate) in respect of such care;

16—Insertion of section 55

Before section 56 insert:

55—Assistance to disabled persons caring for children

- 5
- (1) A person involved in the administration of this Act must ensure that a family member of a child who wishes to participate in providing for the care and maintenance of the child is not discouraged from doing so merely because the family member is disabled.
- 10
- (2) The Chief Executive must ensure that a disabled person in whose care a child has been placed pursuant to an order of a court, an exercise of administrative powers under an Act or an agreement made by a family care meeting is provided with any assistance the person reasonably requires to enable the person to provide for the care and maintenance of the child.

17—Insertion of section 60A

15 After section 60 insert:

60A—Information to be included in annual report

The annual report of the Department must include the following information:

- 20
- (a) the number of children placed in alternative care with a family member (other than the child's parent) during the relevant year, including the number of such placements as a percentage of all placements for that year;
- 25
- (b) the number of children under the guardianship of the Minister pursuant to an order of the Court under section 38(1)(d) placed in alternative care with a family member (other than the child's parent) during the relevant year, including the number of such placements as a percentage of all placements for that year;
- 30
- (c) a summary, preferably in a statistical form, of the reasons given where children in alternative care have been placed with persons who are not family members;
- 35
- (d) summaries of particular cases involving successful placement of children with family members (other than parents) and successful placement of children with persons unrelated to the child.