

House of Assembly—No 164

As laid on the table and read a first time, 29 September 2016

South Australia

**Children's Protection (Guardianship) Amendment
Bill 2016**

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

- 5 This Act may be cited as the *Children's Protection (Guardianship) Amendment Act 2016*.

2—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*

10 3—Insertion of Part 5 Division 1A

After section 36 insert:

Division 1A—Foster parents who wish to become guardians

36A—Purpose and interpretation

- 15 (1) The purpose of this Division is to assist suitable foster parents and kinship carers who have been responsible for the care and control of a child for more than 2 years to become guardians of the child.
- 20 (2) A reference in this Division to a *proposed guardianship arrangement* will be taken to be a reference to a guardianship arrangement sought by a foster parent or kinship carer in respect of such a child.

36B—Certain foster parents and kinship carers may apply for guardianship

(1) An application in respect of a proposed guardianship arrangement may be made by, or on behalf of—

- 5 (a) a foster parent of a child or young person; or
 (b) a kinship carer of a child or young person,

in whose care the child or young person has been for a period of at least 2 years (or such shorter period as the Chief Executive may determine) (the *applicant*).

10 (2) An application under subsection (1)—

- (a) must be made in a manner and form determined by the Chief Executive; and
 (b) must be accompanied by such information and documents as the Chief Executive may require; and
15 (c) must be accompanied by the prescribed fee.

(3) In this section—

20 *kinship carer*, of a child or young person, means a step-parent, brother, sister, uncle, aunt, grandfather or grandmother of the child or young person with whom a child or young person has been placed under this Act or the *Family and Community Services Act 1972*.

36C—Preliminary assessment of application

(1) The Chief Executive must, as soon as is reasonably practicable after receiving an application, cause an assessment to be undertaken of whether the applicant is suitable to be the guardian of the child or young person to whom the application relates.

(2) The regulations may make further provision in relation to an assessment under subsection (1).

36D—Case plan to be prepared

30 (1) If, following an assessment under section 36C, the Chief Executive is satisfied that an applicant is suitable to be the guardian of a child or young person, the Chief Executive must cause a plan (a *case plan*) to be prepared in respect of each child or young person who is to be placed under the guardianship of the applicant.

35 (2) A case plan must contain the information required by the regulations (and may contain any other information the Chief Executive thinks fit).

36E—Independent Assessment Panel

40 (1) The Minister must establish a panel (the *Independent Assessment Panel*) for the purposes of making recommendations in respect of proposed guardianship arrangements.

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- (2) The panel consists of up to 6 members appointed by the Minister, being persons who collectively have, in the opinion of the Minister, the knowledge, skills and experience necessary to enable the panel to carry out its functions under this Division.
- (3) The Minister must, before appointing a member to the panel, call for expressions of interest under a scheme determined by the Minister for the purposes of this section.
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- (4) Subject to this Act, a member of the independent assessment panel will hold office on conditions, and for a term (not exceeding 2 years), determined by the Minister and specified in the instrument of appointment and is, at the expiration of a term of office, eligible for reappointment.
- (5) The Minister may appoint a person to be the deputy of a member of the panel.
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- (6) A deputy may act as a member of the panel during any period of absence of the member in relation to whom the deputy has been appointed.
- (7) The panel is subject to the direction and control of the Minister (however the Minister must not give directions in relation to a decision of the panel in a particular case).
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- (8) A member of the panel may be removed by the Minister for any reason the Minister thinks fit.
- (9) The panel may, by agreement with the Minister responsible for an administrative unit of the Public Service, make use of the services of the staff, equipment or facilities of that administrative unit.
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- (10) Subject to this Act and any direction of the Minister, the panel may determine its own procedures.
- (11) An act or proceeding of the panel is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.
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36F—Assessment of proposed guardianship arrangement

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- (1) The Chief Executive must, as soon as is reasonably practicable after a case plan is prepared in respect of each child or young person the subject of an application under this Part, cause the proposed guardianship arrangement to be assessed in accordance with this section.
- (2) As assessment of a proposed guardianship arrangement must comply with the following provisions:
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- (a) the assessment must be undertaken by the Independent Assessment Panel;
- (b) the panel must consider—

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- (i) whether the proposed guardianship arrangement is, in all of the circumstances, in the best interests of the child; and
- (ii) whether the proposed guardianship arrangement is consistent with the objects of this Act; and
- (iii) whether the panel wishes to make any submissions to be put before the Youth Court in an application for orders under Division 2;
- 10 (c) the assessment must comply with any other requirement set out in the regulations for the purposes of this paragraph.
- (3) On completing an assessment, the Independent Assessment Panel must prepare a report for the Chief Executive setting out—
- 15 (a) the panel's recommendations as to whether orders should, or should not, be made placing a child or young person under the guardianship of the applicant (and, if the panel recommends that such orders should not be made, the reasons for the recommendation); and
- (b) if the panel wishes to make submissions to be put before the Youth Court in an application for orders under Division 2—those submissions.
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36G—Chief Executive to apply to Court for order to give effect to proposed guardianship arrangement

- 25 (1) The Chief Executive must, if the Independent Assessment Panel so recommends, apply to the Court for such orders under Division 2 as the Chief Executive considers necessary or appropriate to give effect to a proposed guardianship arrangement.
- (2) The Chief Executive must cause a copy of any submissions made by the Independent Assessment Panel in respect of a proposed guardianship arrangement to be put before the Youth Court.
- 30 (3) The Chief Executive must cause a copy of the case plan in respect of a child who is the subject of a proposed guardianship plan to be filed with the Youth Court.
- (4) An application to the Youth Court under subsection (1) must be made without undue delay.

35 **4—Amendment of section 37—Application for care and protection order**

Section 37—after subsection (3) insert:

- (4) If the Chief Executive is acting pursuant to section 36G, the Chief Executive may apply to the Youth Court for an order under this Division.

5—Amendment of section 38—Court's powers to make orders

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

- (2) If a person objects to the making of an order by the Youth Court arising out of an application under section 37(4), or any consequential or ancillary order, the onus is on the person to prove to the Youth Court that the order should not be made.

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