

**Legislative Council—No 37**

As received from the House of Assembly and read a first time, 3 June 2015

South Australia

**Children's Protection (Implementation of  
Coroner's Recommendations) Amendment  
Bill 2015**

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 (Implementation of Coroner's Recommendations) Amendment Act 2015*.

#### 2—Commencement

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

#### 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—Substitution of section 3

Section 3—delete the section and substitute:

#### 3—Objects

- 5 (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:
- 10 (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  
15 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.
- 20 (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

- 25 (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.
- 30 (2) Section 5(2)—delete "the requirements of section 4" and substitute:  
any other requirements under this Act

### 7—Amendment of section 6—Interpretation

Section 6—after subsection (3) insert:

- 35 (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.

5 **8—Amendment of section 19—Investigations**

Section 19—after subsection (1) insert:

- 10 (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.

**9—Amendment of section 20—Application for order**

Section 20—after subsection (1) insert:

- 15 (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.

**10—Amendment of section 26—Examination and assessment of children**

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

or

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

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

Section 27—after subsection (2) insert:

- 25 (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.

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

30 Section 37—after subsection (2) insert:

- 35 (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).

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

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;

### 14—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 44C(5)(a); or  
(b) is lodged with the Court in accordance with section 44C(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 44D);

*instrument of guardianship*—see section 44C(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 44C(3);

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

- 10 (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—
  - 15 (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).

#### 20 **44B—Application of Division**

This Division only applies in relation to a child who—

- (a) is born in this State after the commencement of this section; and
- (b) is not subject to a guardianship order under this or any other Act.

#### 25 **44C—Temporary guardianship instruments and restraining notices**

- 30 (1) The Chief Executive must, if he or she becomes aware that a child 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)).
- 35 (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.
- 40 (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,
- 5 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—
- 10 (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)).
- 15 (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—
- 20 (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.
- 25 (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.
- 30 (8) A person who contravenes or fails to comply with a restraining notice is guilty of an offence.
- Maximum penalty: Imprisonment for 2 years.
- 35 (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.
- 40 (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.

**44D—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.

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**44E—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.

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**44F—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.