

Legislative Council—No 43A

As reported with amendments, report adopted, Standing Orders suspended and passed remaining stages, 6 March 2013

South Australia

Children's Protection (Long-term Removal Review Panel) Amendment Bill 2012

A BILL FOR

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

Contents

Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Amendment provisions

Part 2—Amendment of *Children's Protection Act 1993*

- 4 Amendment of section 6—Interpretation
 - 5 Insertion of heading to Part 5 Division 2 Subdivision 1
 - 6 Amendment of section 37—Application for care and protection order
 - 7 Insertion of Part 5 Division 2 Subdivision 2
 - Subdivision 2—Long-term guardianship orders
 - 44A Long-term Removal Review Panel
 - 44B Terms and conditions of appointment
 - 44C Presiding member
 - 44D Panel's procedures
 - 44E Panel's powers
 - 44F Confidentiality of information
 - 44G Minister to refer certain proposed applications to Long-term Removal Review Panel
 - 44H Minister may refer other matters to Long-term Removal Review Panel
 - 8 Amendment of section 52—Review of circumstances of child under long term guardianship of Minister
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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 (Long-term Removal Review Panel) Amendment Act 2012*.

5 2—Commencement

This Act will come into operation 3 months 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 6—Interpretation

Section 6(1)—after the definition of *licensed children's residential facility* insert:

Long-term Removal Review Panel—see section 44A;

5—Insertion of heading to Part 5 Division 2 Subdivision 1

Part 5 Division 2—before section 37 insert:

Subdivision 1—Orders of Youth Court

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

5 Section 37(1) and (2)—after "the Minister may" wherever occurring insert:
, subject to Subdivision 2 (Long-term guardianship orders),

7—Insertion of Part 5 Division 2 Subdivision 2

After section 44 insert:

Subdivision 2—Long-term guardianship orders

44A—Long-term Removal Review Panel

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- (1) The Long-term Removal Review Panel is established.
- (2) The Panel consists of at least 5 members appointed by the Governor, of whom—
 - (a) 1 member must be a child psychologist; and
 - (b) 1 member must be a legal practitioner of at least 5 years standing; and
 - (c) the remaining members must be persons who collectively have, in the opinion of the Minister—
 - (i) knowledge, skills and experience in relation to family preservation models; and
 - (ii) experience in acting as an advocate for children at family care meetings; and
 - (iii) experience in social work involving children; and
 - (iv) such other knowledge, skills or experience as the Minister considers appropriate having regard to the functions of the Panel under section 44G.
- (3) A person may only be appointed to the Panel if he or she has not, in the 2 year period preceding the appointment, been employed or engaged by the Minister or the Department.

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44B—Terms and conditions of appointment

- (1) A member of the Panel will be appointed on conditions determined by the Minister and for a term, not exceeding 3 years, specified in the instrument of appointment and, at the expiration of a term of appointment, is eligible for reappointment.
- (2) However, a member of the Panel may not hold office for consecutive terms that exceed 6 years in total.

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- (3) The Governor may remove a member of the Panel from office—
- (a) for breach of, or non-compliance with, a condition of appointment; or
 - (b) for misconduct; or
 - (c) for failure or incapacity to carry out official duties satisfactorily.
- (4) The office of a member of the Panel becomes vacant if the member—
- (a) dies; or
 - (b) completes a term of office and is not reappointed; or
 - (c) resigns by written notice to the Minister; or
 - (d) ceases to satisfy the qualification by virtue of which the member was eligible for appointment to the Panel; or
 - (e) is removed from office under subsection (3).

44C—Presiding member

The Minister must appoint a member of the Panel to preside at meetings of the Panel.

44D—Panel's procedures

The Panel will, subject to direction by the Minister as to the procedures it is to adopt, determine its own procedures.

44E—Panel's powers

- (1) The Panel may—
- (a) inform itself as to any matter under consideration by the Panel in such manner as the Panel thinks fit; and
 - (b) invite interested persons to make written or oral submissions in relation to any matter under consideration by the Panel; and
 - (c) by notice in writing signed by a member of the Panel—
 - (i) request any person who may be in a position to do so to produce documents, to allow access to documents or other information, or to provide information (in writing) that may be relevant to a matter under consideration by the Panel; or
 - (ii) request any person to attend at a specified time and place before the Panel to answer questions relevant to a matter under consideration by the Panel.
- (2) If a person to whom a request is addressed under subsection (1)(c) refuses or fails, without reasonable excuse, to comply with the request, the person is guilty of an offence.

Maximum penalty: \$10 000.

- (3) A person who, having attended before the Panel in response to a request under subsection (1)(c), refuses or fails, without reasonable excuse, to answer a question relevant to a matter under consideration by the Panel is guilty of an offence.

Maximum penalty: \$10 000.

- (4) However—

- (a) a person commits no offence by refusing to comply with a request under subsection (1)(c), or to answer a question, if the information sought would tend to incriminate the person of an offence and the person refuses to comply with the request or to answer the question on that ground; and
- (b) a person commits no offence by refusing to comply with a request under subsection (1)(c), or to answer a question, if the document or other information to which the request or question relates is protected by legal professional privilege and the person refuses to comply with the request or to answer the question on that ground; and
- (c) a request cannot be validly made of a person to disclose or allow access to information that is subject to the operation of Part 7 or 8 of the *Health Care Act 2008*.

- (5) A person does not, by making submissions to the Panel under subsection (1)(b) or complying with a request or answering a question under subsection (1)(c), contravene—

- (a) a statutory prohibition against the disclosure of confidential information; or
- (b) any rule of the common law or equity; or
- (c) any principle of professional ethics.

44F—Confidentiality of information

- (1) Information about individual cases disclosed to the Panel or a member of the Panel's staff is to be kept confidential and is not liable to disclosure under the *Freedom of Information Act 1991*.
- (2) A member of the Panel, or a person who has been employed in duties related to the functions of the Panel, must not disclose confidential information obtained as a result of his or her official position.

Maximum penalty: \$10 000.

44G—Minister to refer certain proposed applications to Long-term Removal Review Panel

- (1) The Minister must, if proposing to apply to the Court for an order in respect of a child under section 38(1)(d)—
- (a) notify the Long-term Removal Review Panel of his or her intention to make the application; and

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- (b) provide the Panel with all information and material held by the Department in respect of the child and the child's family; and
- (c) identify for the Panel any information or material on which he or she intends to rely in support of the application.
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- (2) The Panel may, following consideration of the proposal—
- (a) recommend that the application proceed as proposed by the Minister; or
- (b) recommend that the Minister instead seek an order in respect of the child under section 38(1)(c); or
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- (c) make any other recommendation in connection with the proposal or in relation to the child (including a recommendation as to consequential orders that should be sought by the Minister in connection with an application for an order in respect of the child).
- (3) The Panel must provide the Minister with written reasons for its recommendation.
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- (4) If the Panel recommends that the Minister should not proceed with a proposal to apply to the Court for an order in respect of a child under section 38(1)(d), the Minister should not proceed with the application unless the Minister considers, after having due regard to the reasons for the recommendation, that such an order would be in the best interests of the child.
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- (5) The Minister must follow any other recommendation made by the Panel unless he or she considers, after having due regard to the reasons for the recommendation, that to follow the recommendation would not be in the best interests of the child to whom the recommendation relates.
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- (6) The Panel must, when considering a proposal of the Minister, and in formulating recommendations to be made in relation to a proposal, keep under constant consideration the best interests of the child to whom the proposal relates.
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- (7) If the Minister decides not to follow a recommendation of the Panel—
- (a) the Minister must provide the Panel with a written report of his or her decision and the reasons for the decision; and
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- (b) a summary of the report that does not identify the individual case and does not disclose information that could be expected to lead to the identification of any person to whom the decision relates must be included in the annual report of the Department for the year in which the decision was made.

- 5 (8) If the Minister applies to the Court for an order in respect of a child under section 38(1)(d), the Minister must provide the Court with a copy of the Panel's recommendation in respect of the application and, if the Minister has decided not to follow the recommendation, a copy of his or her report to the Panel under subsection (7)(a).

44H—Minister may refer other matters to Long-term Removal Review Panel

- 10 (1) The Minister may refer any other matter relating to long term guardianship of children for the consideration of the Panel.
- (2) After considering a matter referred under subsection (1), the Panel must provide the Minister with a written report setting out the Panel's conclusions and the reasons for those conclusions.
- 15 (3) Despite section 44F(1), a report prepared for the Minister pursuant to a referral under subsection (1) is liable to disclosure under the *Freedom of Information Act 1991*.

8—Amendment of section 52—Review of circumstances of child under long term guardianship of Minister

- 20 (1) Section 52(2)—delete "a panel appointed by the Minister for the purpose" and substitute:
the Long-term Removal Review Panel
- (2) Section 52(3)—delete "panel carrying out a review must" and substitute:
Panel must, in carrying out a review,
- (3) Section 52(4)—delete "a review panel" and substitute:
the Panel
- 25 (4) Section 52(5)—delete "the panel's" and substitute:
the Panel's