

House of Assembly—No 100

As laid on the table and read a first time, 12 November 2020

South Australia

**Children and Young People (Safety)
(Miscellaneous) Amendment Bill 2020**

A BILL FOR

An Act to amend the *Children and Young People (Safety) Act 2017* and to make a related amendment to the *Births, Deaths and Marriages Registration Act 1996*.

Contents

Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Amendment provisions

Part 2—Amendment of *Children and Young People (Safety) Act 2017*

- 4 Amendment of section 8—Other needs of children and young people
- 5 Amendment of section 11—Placement principles
- 6 Substitution of section 12
- Part 3A—Aboriginal and Torres Strait Islander children and young people
 - 12 Application of Part
 - 12A Objects of Part
 - 12B Aboriginal and Torres Strait Islander Child Placement Principle paramount
 - 12C Aboriginal and Torres Strait Islander Child Placement Principle
- 7 Amendment of section 34—Chief Executive may investigate circumstances of a child or young person
- 8 Insertion of section 34A
 - 34A Powers of Chief Executive etc in relation to investigation of circumstances of child or young person
- 9 Amendment of section 35—Chief Executive may direct that child or young person be examined and assessed
- 10 Amendment of section 36—Chief Executive may direct person to undergo certain assessments
- 11 Amendment of section 37—Random drug and alcohol testing
- 12 Amendment of section 51—Parties to proceedings
- 13 Amendment of section 53—Orders that may be made by Court
- 14 Insertion of section 53A
 - 53A Special provisions relating to certain applications and orders
- 15 Amendment of section 54—Consent orders
- 16 Amendment of section 56—Adjournments
- 17 Insertion of section 56A
 - 56A Court not to make certain orders relating to placement or contact arrangements
- 18 Amendment of section 59—Onus on objector to prove certain orders should not be made
- 19 Amendment of section 77—Temporary placement of child or young person where approved carer not available
- 20 Amendment of section 85—Review of circumstances of child or young person under long-term guardianship of Chief Executive
- 21 Amendment of section 86—Direction not to communicate with etc child or young person
- 22 Insertion of Chapter 7A

Chapter 7A—Adoption of children and young people from care

Part 1—Preliminary

- 113A Interpretation
- 113B Application of Chapter
- 113C Modification of *Adoption Act 1988*

Part 2—Eligible carers

- 113D Eligible carers
- 113E Assessment of suitability of prospective adoptive parents
- 113F Eligible carer need not be in relationship

Part 3—Orders under *Adoption Act 1988*

- 113G Applications for adoption
- 113H Copy of application to be served on birth parents
- 113I Consent of certain children and young people required
- 113J Consent of birth parent not required
- 113K Views of child or young person to be heard
- 113L Right of birth parents etc to be heard
- 113M Court to have regard to additional matters
- 113N Child or young person to have legal representation in proceedings
- 113O Court not bound by rules of evidence

Part 4—Miscellaneous

- 113P Additional annual reporting obligations
- 113Q Minister to review operation of Chapter
- 23 Amendment of section 152—Sharing of information between certain persons and bodies
- 24 Amendment of section 157—Internal review
- 25 Amendment of section 158—Review of decisions by South Australian Civil and Administrative Tribunal
- 26 Insertion of section 161A
 - 161A Restrictions on publication of names and identifying information
- 27 Amendment of section 164—Confidentiality
- 28 Amendment of section 167—Evidentiary provision
- 29 Amendment of section 168—Service
- 30 Amendment of section 170—Regulations

Schedule 1—Related amendments and transitional provisions

Part 1—Amendment of *Births, Deaths and Marriages Registration Act 1996*

- 1 Amendment of section 38A—Notification by court appointed guardians

Part 2—Transitional and savings etc provisions

- 2 Application of certain provisions to existing applications etc

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

- 5 This Act may be cited as the *Children and Young People (Safety) (Miscellaneous) Amendment Act 2020*.

2—Commencement

This Act comes 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 and Young People (Safety) Act 2017*

4—Amendment of section 8—Other needs of children and young people

(1) Section 8(2)—delete "requirement" and substitute:

requirements

(2) Section 8—after subsection (3) insert:

(4) Each person or body involved in the administration, operation and enforcement of this Act must, when performing a function or exercising a power in relation to a child or young person, act in the best interests of that child or young person (however, this subsection does not displace, and cannot be used to justify the displacement of, section 7).

5—Amendment of section 11—Placement principles

Section 11(4)—delete subsection (4)

6—Substitution of section 12

Section 12—delete the section and substitute:

Part 3A—Aboriginal and Torres Strait Islander children and young people

12—Application of Part

Except where the contrary intention appears, this Part is in addition to, and does not derogate from, a provision of Part 2 of this Chapter, or any other provision of this Act.

12A—Objects of Part

The objects of this Part include—

- (a) maintaining the connection of Aboriginal and Torres Strait Islander children and young people with their family and culture; and
- (b) enabling Aboriginal and Torres Strait Islander people to participate in the care and protection of their children and young people; and
- (c) achieving the objects set out in the preceding paragraphs (as well as reducing the incidence of the removal of Aboriginal and Torres Strait Islander children and young people) by encouraging Aboriginal and Torres Strait Islander people, their children and young people and State authorities to act in partnership when making decisions about the placement of Aboriginal and Torres Strait Islander children and young people under this Act.

12B—Aboriginal and Torres Strait Islander Child Placement Principle paramount

- 5
- (1) Subject to this section, giving effect to the Aboriginal and Torres Strait Islander Child Placement Principle is to be the paramount consideration in the administration, operation and enforcement of this Act as it relates to, or affects, Aboriginal or Torres Strait Islander children and young people.
- 10
- (2) Each person or body performing functions under this Act involving, or relating to, the placement of Aboriginal or Torres Strait Islander children or young people must take active and timely steps to give effect to the Aboriginal and Torres Strait Islander Child Placement Principle.
- (3) Subsections (1) and (2) do not displace, and cannot be used to justify the displacement of, section 7.
- 15
- (4) In the event of any inconsistency between the Aboriginal and Torres Strait Islander Child Placement Principle and the placement principles set out in section 11, the Aboriginal and Torres Strait Islander Child Placement Principle prevails.

12C—Aboriginal and Torres Strait Islander Child Placement Principle

- 20
- (1) The elements set out in this section collectively constitute the *Aboriginal and Torres Strait Islander Child Placement Principle*.
- (2) The following elements apply in relation to decisions affecting Aboriginal or Torres Strait Islander children and young people under this Act:
- 25
- (a) the element (the *prevention element*) that an Aboriginal or Torres Strait Islander child or young person has the right to be brought up within their own family and community and to have access to culturally safe services that will support families to stay together safely;
- 30
- (b) the element (the *partnership element*) that Aboriginal or Torres Strait Islander persons and bodies have the right to participate in—
- 35
- (i) significant decisions under this Act affecting Aboriginal or Torres Strait Islander children and young people; and
- (ii) policy development, service design and service provision in relation to services provided to, or in relation to, Aboriginal or Torres Strait Islander children and young people under this Act;
- 40
- (c) the element (the *placement element*) that, if an Aboriginal or Torres Strait Islander child or young person child is to be placed in care, the child or young person has a right to be placed with a member of their family group;

- 5
- (d) the element (the *participation element*) that an Aboriginal or Torres Strait Islander child or young person and their parents and family members have a right to participate, and be enabled to participate, in the making of significant decisions about the child or young person;
- 10
- (e) the element (the *connection element*) that an Aboriginal or Torres Strait Islander child or young person has a right to be supported to develop and maintain a connection with their family, community, culture, traditions and language, particularly when the child or young person is in the care of a person who is not an Aboriginal or Torres Strait Islander person.
- 15
- (3) Without limiting subsection (2), if an Aboriginal or Torres Strait Islander child or young person is to be placed in care under this Act, the child or young person should, if reasonably practicable, be placed with 1 of the following persons (in order of priority):
- 20
- (a) a member of the child or young person's family;
- (b) a member of the child or young person's community who has a relationship of responsibility for the child or young person;
- (c) a member of the child or young person's community;
- (d) a person of Aboriginal or Torres Strait Islander cultural background (as the case requires),
- 25
- determined in accordance with Aboriginal or Torres Strait Islander traditional practice or custom.
- 30
- (4) If an Aboriginal or Torres Strait Islander child or young person is unable to be placed with a person referred to in subsection (3), or it is not in the best interests of the child or young person to do so, the child or young person should be given the opportunity for continuing contact with their family, community or communities and culture.
- 35
- (5) Before placing an Aboriginal or Torres Strait Islander child or young person under this Act, the Chief Executive must, where reasonably practicable, consult with, and have regard to any submissions of, a recognised Aboriginal or Torres Strait Islander organisation.
- 40
- (6) In addition to the principles set out in sections 10 and 11, the following additional principles apply to the administration of this Act as it relates to Aboriginal or Torres Strait Islander children and young people:
- (a) Aboriginal and Torres Strait Islander people have the right to self-determination;
- (b) the long-term effect of a decision on a child or young person's identity and connection with their family and community must be taken into account.

(7) The regulations may make further provision in relation to the placement of Aboriginal children and Torres Strait Islander children under this Act.

(8) In this section—

recognised Aboriginal or Torres Strait Islander organisation means—

- (a) in relation to the placement of an Aboriginal child or young person—an organisation that the Minister, after consulting with the Aboriginal community or a section of the Aboriginal community, declares by notice in the Gazette to be a recognised Aboriginal organisation for the purposes of this section; or
- (b) in relation to the placement of a Torres Strait Islander child or young person—an organisation that the Minister, after consulting with the Torres Strait Islander community or a section of the Torres Strait Islander community, declares by notice in the Gazette to be a recognised Torres Strait Islander organisation for the purposes of this section.

7—Amendment of section 34—Chief Executive may investigate circumstances of a child or young person

Section 34(1)—after paragraph (a) insert:

- (ab) if the Court makes an order under section 53(1)(ba); or

8—Insertion of section 34A

After section 34 insert:

34A—Powers of Chief Executive etc in relation to investigation of circumstances of child or young person

- (1) Without limiting any other power of the Chief Executive or a child protection officer under this Act, the Chief Executive or a child protection officer may, in relation to the investigation of the circumstances of a child or young person under section 34, do 1 or more of the following:
 - (a) direct any person to answer, to the best of the person's knowledge, information or belief, questions put by a child protection officer;
 - (b) direct any person who has examined, assessed or treated the child or young person to provide to the Chief Executive a written report of that examination, assessment or treatment;
 - (c) in the case of an investigation referred to in section 34(1)(ab)—direct any person who has examined, assessed or treated a person who is a party to the application for the order under section 53(1)(ba) to provide to the Chief Executive a written report of that examination, assessment or treatment;

(d) give such other directions as may be reasonably necessary for the purposes of the investigation.

(2) A person must not, without reasonable excuse, refuse or fail to comply with a direction under this section.

Maximum penalty: Imprisonment for 6 months or \$10 000.

(3) Subsection (2) does not apply to a child or young person to whom a direction is given under this section.

9—Amendment of section 35—Chief Executive may direct that child or young person be examined and assessed

(1) Section 35(1)—after paragraph (c) insert:

(ca) if the Chief Executive determines that it is, having regard to the operation of Chapter 2, necessary or appropriate for a child or young person to be examined and assessed; or

(2) Section 35(2)—delete ", by notice in writing, direct the child or young person to undergo such examination or assessment as may be specified in the notice." and substitute:

do 1 or more of the following:

(a) direct a specified parent or guardian, or other person who has custody or care of the child or young person, to take the child or young person to a specified person or place for the purpose of having the child or young person examined or assessed;

(b) in the case of a child or young person who is 16 years of age or more—direct the child or young person to undergo an examination or assessment of a specified kind;

(c) if the Chief Executive is of the opinion that it is reasonably necessary to enable an examination or assessment to occur, direct a specified person to do, or not to do, a specified thing.

(3) Section 35—after subsection (2) insert:

(2a) A direction under this section—

(a) must be in writing; and

(b) must be given to the person personally; and

(c) must specify the person by whom, or the place at which, the examination or assessment is to be conducted; and

(d) must specify the nature of the examination or assessment that is to be conducted; and

(e) must specify the period within which the direction is to be complied with; and

(f) must comply with any other requirements set out in the regulations.

(4) Section 35—after subsection (6) insert:

(7) A person must not, without reasonable excuse, refuse or fail to comply with a direction under this section.

Maximum penalty: Imprisonment for 6 months or \$10 000.

5 (8) Subsection (7) does not apply to a child or young person to whom a direction is given under this section.

10—Amendment of section 36—Chief Executive may direct person to undergo certain assessments

(1) Section 36—after subsection (2) insert:

10 (2a) If the Chief Executive reasonably suspects that a child or young person is at risk as a result of impaired mental health on the part of a parent, guardian or other person who has, or is responsible for, the care of the child or young person, the Chief Executive may, by notice in writing, direct the parent, guardian or other person to undergo an
15 approved mental health assessment.

(2) Section 36—after subsection (7) insert:

(8) For the purposes of this section, a reference to an *approved mental health assessment* will be taken to be a reference to a mental health assessment of a kind approved by the Chief Executive by notice in
20 the Gazette.

11—Amendment of section 37—Random drug and alcohol testing

Section 37(3)(a)—delete "forensic material consisting of hair or blood" and substitute:
specified forensic material

12—Amendment of section 51—Parties to proceedings

25 Section 51(1)—delete subsection (1) and substitute:

(1) The following persons are parties to an application for an order under section 53, or for the variation, extension or revocation of such an order:

30 (a) in the case of an application for an order referred to in section 53(1)(h)—each person under whose guardianship the child or young person is to be placed;

(b) in the case of an application for revocation or discharge of an order referred to in section 53(1)(h)—the Chief Executive;

35 (c) in any case—

(i) the applicant; or

(ii) the child or young person who is the subject of the application; or

40 (iii) each parent or guardian of the child or young person.

13—Amendment of section 53—Orders that may be made by Court

(1) Section 53(1)—after paragraph (b) insert:

- (ba) subject to section 53A, an order granting custody of the child or young person to the Chief Executive for a specified period not exceeding 8 weeks while an investigation of the circumstances of the child or young person is carried out;

(2) Section 53(2)—delete "The" and substitute:

Subject to section 53A, the

14—Insertion of section 53A

After section 53 insert:

53A—Special provisions relating to certain applications and orders

- (1) An order under section 53(1)(ba) may only be made in relation to a particular child or young person once in any 6 month period.
- (2) Despite section 56, but without limiting this section, an application for an order under section 53(1)(ba) may only be adjourned once (and the period of the adjournment cannot exceed 7 days).
- (3) Despite section 56, the Court must determine an application for an order under section 53(1)(ba) within 2 weeks after the application is made.
- (4) The Court may, on an application by the Chief Executive, extend the period that an order under section 53(1)(ba) remains in force for a period not exceeding 4 weeks.
- (5) The Court must not make interim orders under section 53(2) that are inconsistent with this section.
- (6) No appeal lies against an order made on an application for an order under section 53(1)(ba), or an application under subsection (4).

15—Amendment of section 54—Consent orders

(1) Section 54(1)—delete "the parties to the proceeding" and substitute:

such of the parties to the proceedings who participated in the proceedings

(2) Section 54(2)—after "An order" insert:

referred to in subsection (1)

16—Amendment of section 56—Adjournments

Section 56—after subsection (1) insert:

- (1a) The Court cannot exercise its general power of adjournment in relation to an application under this Act so that the period between the lodging of the application and the commencement of the hearing to determine a contested application exceeds 10 weeks.

17—Insertion of section 56A

After section 56 insert:

56A—Court not to make certain orders relating to placement or contact arrangements

- 5 Nothing in this Part authorises the Court to make orders of the following kinds:
- 10 (a) an order relating to a child or young person who is in the custody, or under the guardianship, of the Chief Executive (being an order that relates to a matter set out in section 84(1));
- 15 (b) an order making contact arrangements (however described) in respect of a child or young person;
- (c) an order varying or revoking contact arrangements determined by the Chief Executive or the Contact Arrangements Review Panel under Chapter 7 Part 4,
- (and to the extent that an order of the Court purports to make, vary or revoke such arrangements, the order will be void and of no effect).

18—Amendment of section 59—Onus on objector to prove certain orders should not be made

- 20 (1) Section 59(1)—delete "orders relating to a child or young person who is, pursuant to an order of the Court, under the guardianship, or in the custody, of the Chief Executive or another person or persons" and substitute:
- an order referred to in section 53(1)(h)
- (2) Section 59(1a)—delete subsection (1a)

25 19—Amendment of section 77—Temporary placement of child or young person where approved carer not available

- (1) Section 77—after subsection (1) insert:
- 30 (1a) The Chief Executive may place a child or young person with a person under subsection (1) despite it being reasonably practicable to place the child or young person in the care of a particular approved carer if the Chief Executive is satisfied that to place the child or young person under subsection (1) is (having regard to the operation of Chapter 2 of the Act as well as the circumstances relating to the child or young person) preferable to placing the child or young person with the approved carer.
- 35 (2) Section 77(2)(b)—after "must" insert:
- , other than a placement referred to in subsection (1a),

20—Amendment of section 85—Review of circumstances of child or young person under long-term guardianship of Chief Executive

Section 85(1)(a)—delete "Minister" and substitute:

Chief Executive

5 **21—Amendment of section 86—Direction not to communicate with etc child or young person**

(1) Section 86—after subsection (1) insert:

10 (1a) The Chief Executive may, by notice in writing, direct a specified person not to be in the company of, or otherwise associate with, a specified child or young person who is in the custody, or under the guardianship, of the Chief Executive during the period specified in the notice.

(2) Section 86—after subsection (4) insert:

15 (4a) Despite section 267 of the *Criminal Law Consolidation Act 1935* or any other Act or law, a child or young person with whom a person communicates or attempts to communicate in contravention of a direction under this section commits no offence in relation to the communication or attempted communication.

(3) Section 86—after subsection (5) insert:

20 (6) Despite a provision of the *Evidence Act 1929* or any other Act or law, a child or young person to whom a direction under this section relates is competent, but is not compellable, to give evidence in proceedings relating to a charge of an offence against this section.

22—Insertion of Chapter 7A

25 After section 113 insert:

Chapter 7A—Adoption of children and young people from care

Part 1—Preliminary

113A—Interpretation

30 (1) In this Chapter—

adoptive parent has the same meaning as in the *Adoption Act 1988*;

birth parent has the same meaning as in the *Adoption Act 1988*;

eligible carer—see section 113D;

eligible child or young person means a child or young person (not being an Aboriginal or Torres Strait Islander child or young person) who—

- 5 (a) is, pursuant to an order of the Court under this Act or the repealed Act, under the guardianship of the Chief Executive, or another person or persons, until they attain 18 years of age; and
- 10 (b) has been in the guardianship of the Chief Executive or the other person or persons for not less than the prescribed qualifying period;

prescribed qualifying period means—

- 15 (a) if the regulations prescribe a period for the purposes of this paragraph—that period; or
- (b) if the regulations do not prescribe such a period—a period of not less than 2 years;

qualifying relationship has the same meaning as in the *Adoption Act 1988*;

repealed Act means the *Children's Protection Act 1993*.

- 20 (2) For the purposes of this Chapter, a reference to an order of the Court, or other thing done, under the repealed Act will be taken to include a reference to such an order or thing as modified or otherwise affected by the operation of the *Children's Protection Law Reform (Transitional Arrangements and Related Amendments) Act 2017*.

113B—Application of Chapter

- 25 (1) Except where the contrary intention appears, nothing in this Chapter limits a provision of Chapter 2 or any other provision of this Act.
- (2) This Chapter does not apply to, or in relation to, an Aboriginal or Torres Strait Islander child or young person.

113C—Modification of *Adoption Act 1988*

- 30 (1) The operation of the *Adoption Act 1988* in relation to an adoption contemplated by this Chapter is modified as follows:
- 35 (a) the objects of the *Adoption Act 1988* will be taken to include promoting the use of adoption, where appropriate, as an option to support permanency and stability for children and young people in care and in furthering the objects of this Act;
- (b) a reference in that Act to a party to an adoption will be taken not to include a reference to the birth parents of a child;
- 40 (c) a reference in that Act to a guardian will be taken to be a reference to an eligible carer (and a reference to guardianship is to be construed accordingly);
- (d) section 8A of that Act does not apply;

- 5
- (e) section 10(1) of that Act is modified such that, in considering whether adoption is preferable to any alternative order that may be made under the laws of the State or the Commonwealth, the Court—
- (i) must disregard any order that may be made under this Act; and
- (ii) must have regard to the operation of Part 2 of Chapter 2 of this Act;
- 10
- (f) section 12 of that Act does not apply;
- (g) an adoption order may only be made in favour of 2 persons if each person is, at the time the order is made, an eligible carer;
- (h) Part 2 Division 2 of that Act does not apply;
- 15
- (i) the consent of the child or young person has, if relevant, been obtained in accordance with section 113I;
- (j) a reference in section 22 of that Act to a report prepared by or on behalf of the Chief Executive will be taken to be a reference to a report prepared under section 113E;
- 20
- (k) section 25 of that Act does not apply;
- (l) section 26A of that Act does not apply;
- (m) section 28 of that Act does not apply in relation to consideration of a kind approved by the Chief Executive under this Act;
- 25
- (n) section 29 of that Act does not apply in relation to negotiations of a kind approved by the Chief Executive under this Act;
- (o) the Chief Executive is entitled to intervene in any proceedings under the *Adoption Act 1988* in relation to an adoption contemplated by this Chapter;
- 30
- (p) Part 4 of the *Adoption Regulations 2004* does not apply in relation to an adoption contemplated by this Chapter;
- (q) the fees and charges payable under that Act do not apply in relation to an adoption contemplated by this Chapter;
- 35
- (r) any other provision of that Act will be taken to be modified to the extent necessary to give effect to a preceding paragraph.
- (2) Without limiting subsection (1), the provisions of this Chapter apply to an adoption under the *Adoption Act 1988* contemplated by this Chapter.
- 40
- (3) Except as referred to in a preceding subsection, nothing in this Chapter limits a provision of *Adoption Act 1988*.

Part 2—Eligible carers

113D—Eligible carers

(1) For the purposes of this Act, the following persons are *eligible carers* in respect of a child or young person:

- 5 (a) a person under whose guardianship (whether solely or with another person) a child or young person is placed until they attain 18 years of age by order of the Court under this Act or the repealed Act;
- 10 (b) an approved carer in whose care an eligible child or young person (being an eligible child who is under the guardianship of the Chief Executive until they attain 18 years of age) has been for the prescribed qualifying period;
- 15 (c) an approved carer, or an approved carer of a class, prescribed by the regulations,

in each case being a person who has been assessed in accordance with section 113E as being a suitable adoptive parent in respect of the child or young person and who satisfies any other requirements set out in the regulations for the purposes of this subsection.

20 (2) The regulations may make further provision in relation to eligible carers (including provisions prohibiting or limiting a specified person or class of persons from being an eligible carer).

113E—Assessment of suitability of prospective adoptive parents

25 Before making an adoption order contemplated by this Chapter, the Court must be provided with the results of an assessment of the suitability of each prospective adoptive parent conducted in accordance with any requirements set out in the regulations.

113F—Eligible carer need not be in relationship

30 An adoption order contemplated by this Chapter may be made in favour of 1 person (who may, but need not, be in a qualifying relationship or a relationship of any kind).

Part 3—Orders under *Adoption Act 1988*

113G—Applications for adoption

35 Despite a provision of the *Adoption Act 1988* or any rules of court, an application for an adoption order contemplated by this Chapter may only be made—

- 40 (a) in the case of an eligible child who is under the guardianship of the Chief Executive—by the Chief Executive; or
- (b) in any other case—by an eligible carer in respect of the child or young person with the written consent of the Chief Executive.

113H—Copy of application to be served on birth parents

- 5
- (1) A copy of an application for an adoption order contemplated by this Chapter must be served personally on each birth parent of the child or young person.
- (2) A copy of an application must be endorsed with a notification of the place, date and time for the hearing of the application.
- 10
- (3) If it is not reasonably practicable to serve a copy of an application personally on a birth parent, or the whereabouts of a birth parent cannot, after reasonable enquiries, be ascertained, the copy of the application may be served on that person in accordance with section 168 or in any other manner authorised by the Court.
- 15
- (4) The Court must not proceed to hear an application for an adoption order contemplated by this Chapter unless each birth parent served with the application has had at least 3 business days of notice of the hearing.
- (5) The Court may, for any proper reason, dispense with service under this section, or reduce the period between service and the time for the hearing of the application.

113I—Consent of certain children and young people required

- 20
- (1) Subject to this section, an adoption order contemplated by this Chapter will not be made in relation to a child or young person over the age of 12 years unless—
- 25
- (a) the child or young person has consented to the adoption; and
- (b) the Court is satisfied, after interviewing the child or young person in private, that the child or young person's consent is genuine and the child or young person does not wish to revoke it.
- (2) The consent of a child or young person—
- 30
- (a) must be in writing; and
- (b) must be witnessed in a manner determined by the Chief Executive; and
- 35
- (c) must be endorsed by a person authorised by the Chief Executive to make such an endorsement with a statement to the effect that the child or young person has been counselled by that person.
- (3) The Court may dispense with the consent of a child or young person in relation to an adoption order contemplated by this Chapter where it appears to the Court—
- 40
- (a) that the child or young person is not capable of properly considering the question of consent, or giving such consent;
- or

(b) that it is in the best interests of the child or young person that the adoption order be made despite the lack of, or refusal, of such consent.

5 (4) Despite a provision of the *Adoption Act 1988* or any other Act or law, an adoption order contemplated by this Chapter in relation to a child or young person who is not more than 12 years of age does not require the consent of the child or young person (and such an order may be made where the child or young person refuses consent or otherwise objects to the making of the order).

10 **113J—Consent of birth parent not required**

15 Despite a provision of the *Adoption Act 1988* or any other Act or law, an adoption order contemplated by this Chapter may be made in the absence of the consent of either or both of the birth parents of the child or young person, or where either or both of the birth parents refuse such consent.

113K—Views of child or young person to be heard

20 (1) In proceedings on an application for an adoption order contemplated by this chapter, a child or young person to whom the application relates must be given a reasonable opportunity to personally present to the Court their views related to the proposed adoption.

(2) However, subsection (1) does not apply if the Court is satisfied that—

- 25 (a) the child or young person is not capable of doing so; or
(b) to do so would not be in the best interests of the child or young person.

(3) Subsection (1) applies whether or not the child or young person is represented by a legal practitioner in the proceedings.

113L—Right of birth parents etc to be heard

30 (1) In proceedings on an application for an adoption order contemplated by this Chapter, the Court may, on the application of a birth parent or birth parents, or a sibling or siblings, of the child or young person, hear submissions the applicant wishes to make in respect of the child or young person, despite the fact that the applicant is not a party to the proceedings.

35 (2) However, subsection (1) does not apply if the Court is satisfied that to allow the applicant to do so would not be in the best interests of the child or young person.

113M—Court to have regard to additional matters

- (1) Before making an adoption order contemplated by this Chapter, the Court must have regard to the following matters:
- (a) the extent to which the child or young person has formed an attachment to the prospective adoptive parents and any members of their family;
 - (b) any submissions made in accordance with section 113L;
 - (c) any other matter prescribed by the regulations.
- (2) To avoid doubt, nothing in this section requires the Court to seek to give effect to a submission made in accordance with section 113L.
- (3) The requirements under this section are in addition to, and do not derogate from, any other matter to which the Court must have regard.

113N—Child or young person to have legal representation in proceedings

- (1) Subject to this section, the Court must not hear an application for an adoption order contemplated by this Chapter unless—
- (a) the child or young person to whom the application relates is represented in the proceedings by a legal practitioner; or
 - (b) the Court is satisfied that the child or young person has made an informed and independent decision not to be so represented.
- (2) In acting for a child or young person in relation to an adoption order contemplated by this Chapter, a legal practitioner must, to the extent that it is consistent with the legal practitioner's duty to the court to do so, comply with the following provisions:
- (a) the legal practitioner must, as far as is reasonably practicable, act in accordance with any instructions given by the child or young person;
 - (b) to the extent that the child or young person has not given, or is not capable of giving, instructions, the legal practitioner must act in accordance with the legal practitioner's own view of the best interests of the child or young person;
 - (c) the legal practitioner must, in a manner appropriate to the capacity of the child or young person to understand, explain to the child or young person the nature of the legal practitioner's role in relation to the child or young person (including any limitations on the legal practitioner's ability to act in accordance with their instructions);
 - (d) in any proceedings before the Court, the legal practitioner must explain to the Court the basis on which submissions are made, having regard to the preceding paragraphs.

- (3) A legal practitioner cannot, in complying with this section, be held to have breached any code of professional etiquette or ethics, or to have departed from any accepted form of professional conduct.

113O—Court not bound by rules of evidence

5 Subject to this Chapter, in any proceedings under this Chapter the Court—

- (a) is not bound by the rules of evidence but may inform itself as it thinks fit; and
- 10 (b) must act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms.

Part 4—Miscellaneous

113P—Additional annual reporting obligations

- 15 (1) The Chief Executive must, not later than 30 September in each year, submit to the Minister a report setting out—
- (a) the number, and general nature, of adoptions of children and young people under this Chapter; and
- (b) any other matter prescribed by the regulations for the purposes of this paragraph.
- 20 (2) The Minister must, as soon as is reasonably practicable after receipt of a report under this section, cause a copy of the report to be published on a website determined by the Minister.
- (3) The Minister must, within 6 sitting days after receipt of a report under this section, cause a copy of the report to be laid before each
- 25 House of Parliament.
- (4) The requirements of this section are in addition to any other reporting obligation of the Chief Executive (however, a report under this section may be included in the annual report of the Chief Executive under the *Public Sector Act 2009*).

113Q—Minister to review operation of Chapter

- 30 (1) The Minister must cause a review of the operation of this Chapter to be conducted and a report on the review to be prepared and submitted to the Minister.
- (2) The review and the report must be completed after the fourth, but
- 35 before the fifth, anniversary of the commencement of this Act.
- (3) The Minister must cause a copy of the report submitted under subsection (1) to be laid before both Houses of Parliament within 6 sitting days after receiving the report.

23—Amendment of section 152—Sharing of information between certain persons and bodies

Section 152(1)(d)—after "Injury" insert:

Review

5 **24—Amendment of section 157—Internal review**

Section 157(1)—after "Act" insert:

(other than a decision under section 112A or any other decision of a prescribed kind)

10 **25—Amendment of section 158—Review of decisions by South Australian Civil and Administrative Tribunal**

(1) Section 158(1)(a)—after "Chapter" insert:

, section 112A or any other decision of a prescribed kind

(2) Section 158—after subsection (5) insert:

(6) Despite a provision of the *South Australian Civil and Administrative Tribunal Act 2013*—

- 15
- (a) the South Australian Civil and Administrative Tribunal must not require parties in an application under this section to attend a compulsory conference (whether under section 50 of that Act or otherwise); and
- 20
- (b) section 42 of that Act does not apply in relation to an application under this section.

26—Insertion of section 161A

After section 161 insert:

25 **161A—Restrictions on publication of names and identifying information**

- (1) This section applies to a child or young person—
- 30
- (a) who is the subject of, or appears in, or is likely to be the subject of or appear in, proceedings before the Court or the South Australian Civil and Administrative Tribunal under this Act; or
- (b) who is the subject of, or otherwise takes part in, or is likely to be the subject of or take part in, a family group conference or other action taken under this Act (other than Court or Tribunal proceedings); or
- 35
- (c) who is, or is likely to be, mentioned or otherwise involved in a matter referred to in a preceding paragraph; or
- (d) who is, or has ever been, under the guardianship or in the custody of the Minister or the Chief Executive under this Act or the *Children's Protection Act 1993*; or

- (e) who is the subject of, or is mentioned in, a report prepared or authorised under this Act.
- (2) However, this section ceases to apply to a child or young person when—
- 5 (a) the child or young person attains 25 years of age; or
- (b) the child or young person dies,
- whichever occurs first.
- (3) A person who, in any form that may be accessible by a person in the State, publishes or broadcasts information that expressly states or
- 10 implies—
- (a) that a particular child or young person is a child or young person to whom this section applies; or
- (b) that a matter referred to in subsection (1) applies, or applied, to a particular child or young person,
- 15 is guilty of an offence.
- Maximum penalty:
- (a) in the case of a natural person—\$50 000; or
- (b) in the case of a body corporate—\$120 000.
- (4) However, subsection (3) does not apply to—
- 20 (a) the publication or broadcasting of an official report of the proceedings of the Court or of the South Australian Civil and Administrative Tribunal that includes the name of a child or young person in relation to whom this section applies; or
- 25 (b) the publication by the Coroner's Court of its findings in an inquest concerning the suspected death of a child or young person (whether or not the inquest relates to a child or young person in relation to whom this section applies); or
- 30 (c) the publication or broadcasting of the name of a child or young person, or other information from which the identity of a child or young person in relation to whom this section applies can be ascertained, with the consent of—
- (i) the Court or the South Australian Civil and Administrative Tribunal; or
- 35 (ii) in the case of a child or young person who is 16 years of age or more—the child or young person; or
- (iii) in the case of a child or young person who is under the guardianship of, or in the custody of, the Chief Executive—the Chief Executive; or
- 40

- (iv) in the case of a child or young person whose suspected death is the subject of an inquest by the Coroner's Court and the Coroner's Court considers that the publication or broadcasting would be in the public interest—the Coroner's Court.

- (5) For the purposes of this section, the publication of information to a website that provides the opportunity for, or facilitates or enables, dissemination of information to the public or a section of the public (whether or not the particular publication results in the dissemination of information to the public or a section of the public) constitutes the publication of information to the public or a section of the public.

27—Amendment of section 164—Confidentiality

Section 164(1)—after paragraph (f) insert:

or

- (g) if the disclosure is reasonably required to lessen or prevent a serious threat to the life, health or safety of a person or persons.

28—Amendment of section 167—Evidentiary provision

Section 167(1)—after paragraph (f) insert:

or

- (g) that a specified person was, or was not, a child or young person to whom section 161A applied at a specified time.

29—Amendment of section 168—Service

- (1) Section 168—after paragraph (a) insert:

- (ab) in the case to be given to or served on a child or young person—be left with a parent, guardian, approved carer or other person over 18 years of age in whose care the child or young person is placed;

- (2) Section 168(b)—delete "16" and substitute:

18

30—Amendment of section 170—Regulations

Section 170(3)(c) and (ca)—delete paragraphs (c) and (ca) and substitute:

- (c) make provisions of a saving or transitional nature; and

Schedule 1—Related amendments and transitional provisions

Part 1—Amendment of *Births, Deaths and Marriages Registration Act 1996*

1—Amendment of section 38A—Notification by court appointed guardians

Section 38A(4), definition of *court appointed guardian*—after "Executive)" insert:

appointed as guardian of a person

Part 2—Transitional and savings etc provisions

2—Application of certain provisions to existing applications etc

- 5 (1) The following provisions of the *Children and Young People (Safety) Act 2017* (as amended or enacted by this Act) apply only to, or in relation to, an application or placement made after the commencement of this clause:
- (a) section 8(4);
 - (b) Part 3A;
 - (c) section 56(1a);
 - 10 (d) section 157 and 158, to the extent that those provisions relate to a review of a decision under section 112A of the *Children and Young People (Safety) Act 2017*;
 - (e) section 158(6).
- (2) Section 59 of the *Children and Young People (Safety) Act 2017* (as amended by this Act) applies to—
- 15 (a) applications made but not finally determined before the commencement of this clause; and
 - (b) applications made after the commencement of this clause.