

South Australia

Children and Young People (Safety and Support) Bill 2024

A BILL FOR

An Act to protect children and young people and keep them safe from harm and preferably with their families, to support and strengthen families and communities to improve outcomes for children and young people, to support children and young people who are in care, to promote working in partnership with families and carers, to support children and young people leaving care, to repeal the *Children and Young People (Safety) Act 2017*, to make related amendments to other Acts, and for other purposes.

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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 and Young People (Safety and Support) Act 2024*.

2—Commencement

(1) This Act comes into operation on a day to be fixed by proclamation.

(2) Section 27(6) of the *Legislation Interpretation Act 2021* does not apply to this Act or a provision of this Act.

3—Interpretation

(1) In this Act—

Aboriginal person means a person who—

(a) is of Aboriginal descent; and

(b) regards themselves as Aboriginal (or, in the case of a child or young person, is regarded as Aboriginal by a member of their family or community); and

(c) is accepted as Aboriginal by the relevant Aboriginal community;

Note—

See also section 42.

active efforts, or ***standard of active efforts***, in relation to an Aboriginal or Torres Strait Islander child or young person—see section 44;

administrative unit has the same meaning as in the *Public Sector Act 2009*;

approved carer means—

(a) a person who is the subject of an approval under section 146 that is in force; or

(b) any other person, or person of a class, prescribed by the regulations;

assessment order means an assessment order under section 110;

at risk of harm and ***at risk of significant harm***—see section 4;

best interests or ***best interests principle***—see section 11;

case plan, in relation to a child or young person, means a case plan prepared under section 128, as in force from time to time;

Charter of Rights for Children and Young People in Care or ***Charter*** means the Charter of Rights for Children and Young People in Care prepared under section 14, as in force from time to time;

Chief Executive means the Chief Executive of the Department;

Child and Young Person's Visitor means the Child and Young Person's Visitor established under section 31;

child or young person means a person who is under 18 years of age;

child protection officer—see section 27;

Commissioner for Aboriginal Children and Young People has the same meaning as in the *Children and Young People (Oversight and Advocacy Bodies) Act 2016*;

Commissioner for Children and Young People has the same meaning as in the *Children and Young People (Oversight and Advocacy Bodies) Act 2016*;

contact arrangements means contact arrangements determined under Part 12 Division 3, as in force from time to time;

Contact Arrangements Review Panel means the Contact Arrangements Review Panel established by the Minister under section 139;

Court means the Youth Court of South Australia;

cumulative harm means harm that arises from repeated or persistent instances of abuse, neglect or other forms of maltreatment, or by an accumulation of multiple different experiences of abuse, neglect or other forms of maltreatment;

delegated decision maker, for an Aboriginal or Torres Strait Islander child or young person, means a recognised Aboriginal or Torres Strait Islander entity to whom the Chief Executive has delegated functions under section 49 in respect of the child or young person;

Department means the administrative unit of the Public Service specified by the Minister by notice in the Gazette for the purposes of this definition;

effective intervention or ***principle of effective intervention***—see section 12;

family—

(a) in relation to any child or young person—includes—

(i) the child or young person's extended family; and

(ii) members of the child or young person's family who are not biologically related to the child or young person; and

(b) in relation to an Aboriginal or Torres Strait Islander child or young person—includes any person regarded as a member of the family of the child or young person in accordance with Aboriginal or Torres Strait Islander concepts of family, including extended family structures and kinship systems based on practice and custom;

family group conference means a family group conference convened—

(a) by the Chief Executive under section 93; or

(b) by the Court under section 109;

Family Group Conference Guidelines means the Family Group Conference Guidelines published by the Chief Executive under section 92;

family-led decision making, in relation to Aboriginal and Torres Strait Islander children and young people—see section 46;

guardian, of a child or young person, means the guardian or guardians of the child or young person pursuant to an order of the Court under this Act;

Guardian for Children and Young People has the same meaning as in the *Children and Young People (Oversight and Advocacy Bodies) Act 2016*;

harm—see section 4;

in care—a child or young person is in care if they are in the custody, or under the guardianship, of the Chief Executive or another person (not being a parent of the child) under this Act or a repealed Act (other than where a child or young person is under the guardianship of a person in accordance with a specified person guardianship order or a corresponding order under a repealed Act);

instrument of guardianship means an instrument of guardianship issued under section 86;

interagency practice review panel, in respect of an adverse incident, means an interagency practice review panel established under Part 18 to review and report on the adverse incident;

leaving care plan for a child or young person—see section 168;

legal practitioner has the same meaning as in the *Legal Practitioners Act 1981*;

licensed children's residential facility means a children's residential facility in respect of which a licence is in force under section 159;

licensed foster care agency means a foster care agency carried on pursuant to a licence that is in force under section 153;

parent, of a child or young person, includes—

(a) a step-parent of the child or young person; and

(b) a person who stands *in loco parentis* to the child or young person and has done so for a significant length of time;

placement agency, in relation to a child or young person, means—

(a) if the child or young person was, or is to be, placed with an approved carer by a licensed foster care agency—the licensed foster care agency; or

(b) if the child or young person was, or is to be, placed with an approved carer other than by a licensed foster care agency—the Chief Executive;

quality of care report means a report of a suspicion that—

(a) a child or young person has suffered harm or is at risk of suffering harm; and

(b) the child or young person was in care at the time of the suspected harm or risk of harm; and

(c) the person alleged to have caused the suspected harm or risk of harm was providing care to the child or young person;

Quality of Care Report Guidelines—see section 26;

recognised Aboriginal or Torres Strait Islander entity means an Aboriginal or Torres Strait Islander entity recognised under section 48;

repealed Act means the *Children and Young People (Safety) Act 2017* or the *Children's Protection Act 1993*;

restraining notice means a restraining notice issued under section 87;

reunification or ***reunified***, in relation to a child or young person, means reunification of the child or young person and a parent or parents of the child or young person;

significant harm—see section 4;

specified person guardianship order means—

(a) an order made by the Court under section 111(1)(h); or

(b) an order made by the Court under section 123;

State authority means—

(a) a person who holds an office established by an Act; or

(b) a public sector agency (within the meaning of the *Public Sector Act 2009*); or

(c) South Australia Police; or

(d) a local council; or

(e) any incorporated or unincorporated body—

(i) established for a public purpose by an Act; or

(ii) established for a public purpose under an Act (other than an Act providing for the incorporation of companies or associations, co-operatives, societies or other voluntary organisations); or

(iii) established, or subject to control or direction, by the Governor, a Minister of the Crown or any instrumentality or agency of the Crown or a local council (whether or not established by or under an Act or an enactment); or

(f) any other person or body, or person or body of a class, prescribed by the regulations,

but does not include a person or body prescribed by the regulations to be excluded from the ambit of this definition;

State care placement, in relation to a child or young person, means the placement of the child or young person with a person, or in a place, by the Chief Executive under Part 12 Division 1;

Statement of Commitment to Foster and Kinship Carers or ***Statement*** means the Statement of Commitment to Foster and Kinship Carers prepared under section 16, as in force from time to time;

State residential care facility means a residential care facility established by the Minister under section 162, a repealed Act or the *Family and Community Services Act 1972*;

State Strategy for the Safety and Support of Children and Young People or ***State Strategy*** means the *State Strategy for the Safety and Support of Children and Young People* prepared under Part 5, as in force from time to time;

Torres Strait Islander person means a person who—

(a) is of Torres Strait Islander descent; and

(b) regards themselves as Torres Strait Islander (or, in the case of a child or young person, is regarded as Torres Strait Islander by a member of their family or community); and

(c) is accepted as Torres Strait Islander by the relevant Torres Strait Islander community;

Note—

See also section 42.

working with children check means a working with children check under the *Child Safety (Prohibited Persons) Act 2016*.

(2) For the purposes of this Act, a reference to the ***Chief Executive*** in their capacity as guardian of a child or young person will be taken to be a reference to the person for the time being holding or acting in the office of Chief Executive.

(3) For the purposes of this Act, a reference to the ***Chief Executive*** of a State authority will be taken to include a reference to the person for the time being holding or acting in the office of Chief Executive, or any other person who is responsible for the management of the State authority (however described).

(4) For the purposes of this Act, a reference to a ***foster care agency*** will be taken not to include a reference to the Chief Executive.

(5) For the purposes of this Act, a reference to a person being ***found guilty*** of an offence will be taken to include a reference to—

(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).

(6) For the purposes of this Act, a reference to a child or young person being ***removed*** will be taken to include a reference to a custody notice being issued in relation to the child or young person under section 82.

(7) For the purposes of this Act, a reference to care being ***residential*** in nature, or being provided on a residential basis, will be taken to include a reference to such care provided to a child or young person for a limited period only.

4—Meaning of harm and significant harm

(1) For the purposes of this Act, a reference to ***harm*** will be taken to be a reference to physical harm or psychological harm (whether caused by an act or omission) and, without limiting the generality of this subsection, includes such harm caused by sexual, physical, mental or emotional abuse or neglect or exposure to domestic violence.

(2) For the purposes of this Act, a reference to ***significant harm*** will be taken to be a reference to the following kinds of harm:

(a) harm that endangers a child or young person's life;

(b) harm that consists of, or results in, serious impairment of the physical or psychological wellbeing of a child or young person;

(c) harm that results in, or is reasonably likely to result in, a significant adverse impact on the safety or wellbeing of a child or young person.

(3) In this section—

psychological harm does not include emotional reactions such as distress, grief, fear or anger that are a response to the ordinary vicissitudes of life.

5—Meaning of at risk of harm and at risk of significant harm

(1) For the purposes of this Act, a child or young person will be taken to be ***at risk of harm*** if—

(a) the child or young person has suffered harm (being harm of a kind against which a child or young person is ordinarily protected); or

(b) there is a likelihood that the child or young person will suffer harm (being harm of a kind against which a child or young person is ordinarily protected).

(2) For the purposes of this Act, a child or young person will be taken to be ***at risk of significant harm*** if—

(a) the child or young person has suffered significant harm (being significant harm of a kind against which a child or young person is ordinarily protected); or

(b) there is a likelihood that the child or young person will suffer significant harm (being significant harm of a kind against which a child or young person is ordinarily protected); or

(c) there is a likelihood that the child or young person will be removed from the State (whether by their parent or guardian or by some other person) for the purpose of—

(i) being subjected to female genital mutilation or any other medical or other procedure that would be unlawful if performed in this State; or

(ii) taking part in a marriage ceremony (however described) that would be a void marriage, or would otherwise be an invalid marriage, under the *Marriage Act 1961* of the Commonwealth; or

(iii) enabling the child or young person to take part in an activity, or an action to be taken in respect of the child or young person, that would, if it occurred in this State, constitute an offence against the *Criminal Law Consolidation Act 1935* or the *Criminal Code* of the Commonwealth; or

(d) the parents or guardians of the child or young person—

(i) are unable to care for the child or young person; or

(ii) have abandoned the child or young person, or cannot, after reasonable inquiry, be found; or

(iii) are dead; or

(e) any other circumstances of a kind prescribed by the regulations exist in relation to the child or young person.

(3) To avoid doubt, a child or young person will not be taken to be at risk of harm merely because a parent or guardian of the child or young person has a disability.

(4) It is immaterial for the purposes of this Act that any harm or other conduct contemplated by this section took place wholly or partly outside this State.

(5) In determining whether a child or young person is likely to suffer harm or significant harm (as the case may be), regard must be had to not only the current circumstances of the child or young person, but also the impact that cumulative harm is likely to have on the child or young person.

(6) In this section—

female genital mutilation means—

(a) clitoridectomy; or

(b) excision of any other part of the female genital organs; or

(c) a procedure to narrow or close the vaginal opening; or

(d) any other mutilation of the female genital organs,

but does not include a sexual reassignment procedure or a medical procedure that has a genuine therapeutic purpose;

sexual reassignment procedure means a surgical procedure to give a female, or a person whose sex is ambivalent, genital characteristics, or ostensible genital characteristics, of a male.

(7) A medical procedure has a genuine therapeutic purpose only if directed at curing or alleviating a physiological disability or physical abnormality.

6—Act to bind, and impose criminal liability on, the Crown

(1) This Act binds the Crown in right of this jurisdiction and, in so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

(2) The Crown is liable for an offence against this Act.

(3) If the Crown is guilty of an offence against this Act, the penalty that may be imposed on the Crown is the penalty that may be imposed on a body corporate.

7—Interaction with other Acts

(1) This Act is to work in conjunction with all of the laws of the State, and, in particular, the *Child Safety (Prohibited Persons) Act 2016* and the *Children and Young People (Oversight and Advocacy Bodies) Act 2016*, to further and achieve the guiding principles and related matters set out in Part 2.

(2) This Act is in addition to, and does not derogate from, any other Act or law.

Part 2—Guiding principles and related matters

Division 1—Preliminary

8—Requirement to give effect to Part

(1) Each person or body engaged in the administration, operation or enforcement of this Act (including, to avoid doubt, the Court and a delegated decision maker) must, to the extent that it is consistent with section 10 to do so, perform their functions so as to give effect to and further the guiding principles and related matters set out in this Part.

(2) However, a failure to comply with subsection (1) does not, of itself, affect the validity of an act or omission under this Act.

Division 2—Parliamentary recognition of children and young people

9—Parliamentary recognition of children and young people

(1) The Parliament of South Australia recognises that—

(a) children and young people are valued citizens of the State; and

(b) the future of the State is inextricably bound to the wellbeing of all its children and young people; and

(c) it is of vital importance to the State, and all of its citizens, that all children and young people are given the opportunity to thrive.

(2) The Parliament of South Australia recognises that, as a State, we want each child and young person to benefit from (at least) the following outcomes:

(a) to be safe from harm;

(b) to do well at all levels of learning and to have skills for life;

(c) to enjoy a full sense of wellbeing;

(d) to be active citizens who have a voice and influence,

and the Parliament of South Australia accordingly commits to promoting these outcomes.

(3) The Parliament of South Australia recognises that children and young people can reasonably expect to be loved by their families and treated with respect and dignity by those with whom they interact.

(4) The Parliament of South Australia recognises that—

(a) it is the duty of every person in the State to safeguard and promote the outcomes set out in subsection (2); and

(b) the provisions of this Act, and compliance with its provisions, form only a small part of the way in which the State, the agencies of the State, the Commonwealth and every citizen of the State discharge that duty.

(5) The Parliament of South Australia recognises that the provision of services to children and young people and their families that address the underlying risk factors that contribute to child abuse and neglect are critical in preventing children and young people from being in care.

(6) The Parliament of South Australia recognises—

(a) the impact of laws and policies of past governments that led to the Stolen Generations (being the removal of Aboriginal and Torres Strait Islander children and young people from their families and communities) and that such laws and policies continue to have a strong impact on Aboriginal and Torres Strait Islander communities today; and

(b) that the State has a responsibility to implement measures to safeguard and promote the cultural identity of Aboriginal and Torres Strait Islander children and young people and enable Aboriginal and Torres Strait Islander self-determination by ensuring connections to family, community, culture and Country are maintained at the highest level, and that decisions are made in partnership with Aboriginal and Torres Strait Islander children and young people and their families and communities.

(7) It is the intention of the Parliament of South Australia that the performance of functions in the administration and operation of this Act be done in collaboration with, and with the cooperation of, children and young people and their families, rather than simply being done to or for them.

(8) The Parliament of South Australia recognises the *UN Convention on the Rights of the Child* and the *UN Declaration on the Rights of Indigenous Peoples* as documents that inform the administration and operation of this Act.

Division 3—Guiding principles

10—Paramount principle—safety of children and young people

(1) The paramount principle in the administration, operation and enforcement of this Act is to ensure that children and young people are safe and protected from harm.

(2) No other principle or requirement set out in this Act displaces, or can be used to justify the displacement of, the paramount principle.

11—Best interests principle

(1) It is a principle of this Act (the ***best interests principle***) that the best interests of each child and young person are to be upheld and effected in all decision making under this Act (and a reference in this Act to a particular decision being in the best interests of a child or young person will be taken to be a reference to the decision being made in accordance with the best interests principle).

(2) In considering what is in the best interests of a particular child or young person, regard should be given to such of the following as may be relevant in the circumstances:

(a) the need to protect the child or young person from harm and risks of harm;

(b) the desirability of the child or young person's family having primary responsibility for the child or young person's upbringing, protection and development;

(c) the need to support the child or young person's family to ensure the child or young person's safety and wellbeing within their family and community;

(d) the emotional, social and psychological needs of the child or young person, including—

(i) the need to be heard and have their views considered; and

(ii) the need for love and attachment; and

(iii) the need for the child or young person to be given the opportunity to achieve their full potential;

(e) the desirability of making decisions and taking actions in a timely manner (particularly in the case of a young child) in order to promote permanence and stability;

(f) if the child or young person is able to form their own views on a matter concerning their care—the need to support them to express those views freely in accordance with the developmental capacity of the child or young person and the circumstances, and for those views to be given due weight;

(g) if the child or young person has been removed from their parents or family—the need to ensure that they have the ability to know, explore and maintain their identity and values, including those relating to their culture, language or religion;

(h) if the child or young person is removed from the care of a person under this Act or a repealed Act—the need to place the child or young person in a safe, nurturing, stable and secure environment;

(i) if the child or young person has a disability—the need to ensure that the child or young person is treated in a way that preserves their identity and respects their developing capacity;

(j) the desirability of using family group conferences to make informed decisions as to the arrangements for the care of the child or young person;

(k) in respect of case planning for the child or young person—

(i) the desirability of placing, so far as may be appropriate, the child or young person with the following persons in the following order:

(A) a person who is a member of the child or young person's family (including the child or young person's siblings);

(B) a person with whom the child or young person has an existing relationship;

(C) a person who is willing and able to encourage and support the child or young person to develop and maintain contact with the child or young person's parents, siblings and other family members, and with other people who are significant to the child or young person (subject to any decisions made under this Act in relation to such contact);

(ii) the desirability of connection between the child or young person and their family being maintained.

(3) However, nothing in subsection (2) limits the matters that may be given regard in considering what is in the best interests of a child or young person.

12—Principle of effective intervention

It is a principle of this Act (the ***principle of effective intervention***) that decisions made, actions taken and support offered under this Act relating to a particular child or young person should be timely, direct and fit for purpose given the circumstances of the child or young person.

Division 4—Voices of children and young people to be heard

13—Voices of children and young people to be heard

(1) Subject to this Act, each person or body involved in the operation and administration of this Act must take reasonable steps to ensure that—

(a) the voice of a child or young person is heard in the course of making a prescribed decision that affects the child or young person; and

(b) the child or young person is provided with such information or documents (being information or documents in the possession of the person or body) as may be reasonably necessary to inform the child or young person's views in relation to the prescribed decision.

(2) The requirements set out in subsection (1) do not apply to the Court or SACAT.

Note—

See sections 106 and 199 for provisions about voices of children and young people being heard in Court and SACAT proceedings.

(3) Without limiting the ways in which the voice of a child or young person may be heard, a child or young person's views may be presented—

(a) in the absence of any particular person; or

(b) with the accompaniment of a support person nominated by the child or young person; or

(c) in person, in writing or by audio or audiovisual recording.

(4) However, a person or body need not comply with this section if the person or body determines that—

(a) it would not be in the best interests of the child or young person to do so; or

(b) the developmental capacity of the child or young person is such that compliance with this section would be inappropriate.

(5) This section applies whether or not the child or young person is represented by a legal practitioner.

(6) Nothing in this section requires a child or young person to participate in a particular decision if they do not wish to do so.

(7) In this section—

prescribed decision that affects a child or young person, means—

(a) a decision relating to, or made at, a family group conference relating to the arrangements for the care of the child or young person; or

(b) a decision relating to the preparation of a case plan for the child or young person; or

(c) a decision relating to the placement of the child or young person with an approved carer or other person; or

(d) a decision relating to the contact arrangements for the child or young person; or

(e) a decision relating to a review of the child or young person's circumstances; or

(f) a decision relating to the preparation of a leaving care plan for the child or young person; or

(g) a decision relating to an internal review under section 197; or

(h) a decision, or a decision of a class, prescribed by the regulations.

Division 5—Charter of Rights for Children and Young People in Care

14—Charter of Rights for Children and Young People in Care

(1) The Guardian for Children and Young People must prepare and maintain a *Charter of Rights for Children and Young People in Care*.

(2) The Guardian for Children and Young People must review the Charter at least every 5 years.

(3) In preparing or reviewing the Charter, the Guardian for Children and Young People must invite submissions from, and consult with, to such extent as may be reasonable, interested persons (including persons who are, or have been, in the custody, or under the guardianship, of the Minister or the Chief Executive) with a view to obtaining a wide range of views in relation to the matters under consideration.

(4) The Guardian for Children and Young People must submit the Charter to the Minister for approval.

(5) The Minister may—

(a) approve the Charter; or

(b) require an alteration to the Charter, after consultation with the Guardian for Children and Young People, and then approve the Charter as altered.

(6) The Charter has effect from the day on which it is approved by the Minister.

(7) The Minister must cause the Charter to be published on a website determined by the Minister.

(8) The Minister must, within 6 sitting days after approving the Charter, cause a copy of the Charter to be laid before both Houses of Parliament.

(9) Each person or body engaged in the administration, operation or enforcement of a relevant law (other than the Court or SACAT) must, to the extent that it is consistent with section 10 to do so in a particular case, perform their functions so as to give effect to the Charter.

(10) However, the Charter does not create legally enforceable rights or entitlements.

(11) In this section—

relevant law means—

(a) this Act; and

(b) any Act relating to the detention of a youth in a training centre; and

(c) any other Act prescribed by the regulations.

15—Chief Executive must provide copy of Charter to certain children and young people

(1) The Chief Executive must, as soon as is reasonably practicable after a child or young person is placed in the custody, or under the guardianship, of the Chief Executive under this Act, provide to the child or young person a copy of the Charter and information about, and the contact details of, the Guardian for Children and Young People.

(2) However, the Chief Executive need not comply with this section if the Chief Executive is of the opinion that the child or young person is not reasonably capable of understanding the Charter.

Division 6—Statement of Commitment to Foster and Kinship Carers

16—Statement of Commitment to Foster and Kinship Carers

(1) The Minister must prepare and maintain a *Statement of Commitment to Foster and Kinship Carers*.

(2) The Minister must review the Statement at least every 5 years.

(3) In preparing or reviewing the Statement, the Minister must—

(a) invite submissions from, and consult with, the persons or bodies (if any) prescribed by the regulations (and may consult with any other person or body the Minister considers appropriate); and

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

(4) The Minister must cause the Statement to be published on a website determined by the Minister.

(5) The Minister must, within 6 sitting days after approving the Statement, cause a copy of the Statement to be laid before both Houses of Parliament.

(6) Each person or body engaged in the administration, operation or enforcement of this Act (other than the Court or SACAT) must, to the extent that it is consistent with section 10 to do so in a particular case, perform their functions so as to give effect to the Statement.

(7) However, the Statement does not create legally enforceable rights or entitlements.

Part 3—Administration

Division 1—Minister

17—Functions of Minister

(1) The functions of the Minister under this Act include—

(a) promoting a partnership approach between the Government, local councils, non-government agencies, families and carers; and

(b) promoting and assisting in the development of coordinated strategies for effective intervention in cases where children and young people may be at risk of harm; and

(c) promoting and assisting in the development of coordinated strategies and policies to give effect to the State Strategy; and

(d) promoting, supporting and adequately resourcing evidence based programs delivering preventative and support services directed towards strengthening and supporting families, reducing the incidence of child abuse and neglect and maximising the wellbeing of children and young people; and

(e) promoting, encouraging or undertaking research into matters affecting children and young people; and

(f) generally taking such other actions as the Minister believes will promote the safety and wellbeing of children and young people.

(2) Without limiting this section, the Minister has the following additional functions in relation to Aboriginal and Torres Strait Islander children and young people and the operation of Part 4:

(a) working in partnership with and providing support to Aboriginal and Torres Strait Islander communities to build capacity to facilitate delegated decision making and family-led decision making under this Act;

(b) collaborating with and assisting Aboriginal and Torres Strait Islander communities to develop and implement strategies to ensure that Aboriginal and Torres Strait Islander children and young people are, so far as is reasonably practicable, protected from harm;

(c) such other functions as may be prescribed by the regulations.

(3) Without limiting a provision of any other Act or law, the Minister must, in relation to the administration, operation and enforcement of this Act—

(a) ensure that education relating to the operation of section 71 is made available to persons who are required under that section to report a suspicion that a child or young person is, or may be, at risk of significant harm; and

(b) promote and support the provision of courses of instruction relating to the prevention of child abuse and neglect by tertiary institutions in this State; and

(c) collect and publish statistical data in relation to the protection of children and young people in this State.

(4) Without limiting a preceding subsection, the Minister must also ensure that—

(a) the services referred to in subsection (1)(d) are offered to children and young people and their families; and

(b) genuine efforts are made to encourage children and young people and their families to avail themselves of those services.

18—Minister may direct Chief Executives of certain State authorities to meet to discuss interagency approach

(1) The Minister may, after consultation with the Ministers responsible for the relevant prescribed State authorities and in accordance with any requirements set out in the regulations, from time to time direct the Chief Executives of 2 or more prescribed State authorities to meet for the purpose of discussing an interagency response to prevent harm from being caused to a specified child or young person, or to children and young people of a specified class.

(2) A meeting required under this section—

(a) is to be conducted in a timely manner; and

(b) is to be chaired by the Chief Executive specified by the Minister; and

(c) must consider any matters specified by the Minister.

(3) For the purposes of this section, a reference to a child or young person will be taken to include a reference to a care leaver.

(4) In this section—

care leaver means a person who—

(a) is under 25 years of age; and

(b) has, at any point, been in care under this Act or a repealed Act; and

(c) is leaving, or has left, such care;

prescribed State authority means—

(a) the administrative unit of the Public Service that is responsible for assisting a Minister in the administration of this Act; and

(b) the administrative unit of the Public Service that is responsible for assisting a Minister in the administration of the *Education and Children's Services Act 2019*; and

(c) the administrative unit of the Public Service that is responsible for assisting a Minister for the administration of the *Health Care Act 2008*; and

(d) the administrative unit of the Public Service that is responsible for assisting a Minister for the administration of the *Youth Justice Administration Act 2016*; and

(e) any other State authority prescribed by the regulations for the purposes of this paragraph.

19—Minister may enter agreements for provision of services to children and young people and their families

(1) The Minister may, in accordance with any requirements set out in the regulations, enter into agreements for the provision or promotion of services to children and young people and their families.

(2) The Minister may enter into such an agreement with—

(a) a person with appropriate experience, qualifications or expertise in the provision or promotion of the services; or

(b) a body established for the purpose of providing or promoting services to children and young people and their families that employs staff with appropriate experience, qualifications or expertise in the provision or promotion of the services; or

(c) a local council.

20—Minister may establish programs for children and young people and their families

The Minister may, in accordance with any requirements set out in the regulations, establish—

(a) such programs as the Minister thinks necessary or desirable for children and young people who are in need of care and protection, and their families; and

(b) such other programs for the care, support, assistance or wellbeing of children and young people and their families as the Minister thinks fit.

21—Powers of delegation

(1) The Minister may delegate a function (other than a prescribed function) under this or any other Act to a specified person or body (including a person for the time being holding or acting in a specified office or position, or a person or body located in another State or Territory of the Commonwealth).

(2) A delegation under this section—

(a) must be by instrument in writing; and

(b) may be absolute or conditional; and

(c) does not derogate from the ability of the Minister to act in any matter; and

(d) is revocable at will.

(3) A function delegated under this section may, if the instrument of delegation so provides, be further delegated.

22—Minister's annual report

(1) In addition to any other reporting obligations of the Minister under this Act or any other Act, the Minister must, not later than 30 September in each year, prepare a report in respect of the financial year ending on the preceding 30 June (the ***reporting year***) including the following parts:

(a) a part setting out the role of the Minister, and the extent to which the Minister has performed the Minister's functions, in respect of the operation of this Act during the reporting year;

(b) a part setting out the number of directions given by the Minister during the reporting year under section 18;

(c) a part setting out the operation of Part 4 during the reporting year, which—

(i) must, in accordance with any requirements set out in the regulations, be prepared in consultation with Aboriginal and Torres Strait Islander persons or bodies;

(ii) must include the information required by the regulations; and

(d) any other part required by the regulations.

(2) The Minister must, as soon as is reasonably practicable after preparing 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 preparing a report under this section, cause a copy of the report to be laid before both Houses of Parliament.

Division 2—Chief Executive

23—Functions of Chief Executive

(1) The functions of the Chief Executive under this Act include—

(a) developing codes of conduct and principles for caring for, or working with, children and young people; and

(b) providing guidance on matters relating to keeping children and young people safe and protected from harm, including—

(i) appropriate standards of conduct for adults in dealing with children and young people; and

(ii) how to deal with cases involving children and young people who are suspected of being harmed; and

(c) defining appropriate standards of care for ensuring the safety and wellbeing of children and young people in care; and

(d) disseminating information about ways in which children and young people may be at risk of harm so that such cases are more readily recognised and more promptly dealt with; and

(e) ensuring, as far as practicable, that procedures for making complaints relating to children and young people in care are accessible and responsive to the needs of such children and young people; and

(f) developing channels of communication and information sharing between the Department, State authorities, children and young people and their families; and

(g) contributing to public discourse on issues relating to the protection of children and young people as part of a wider engagement to promote the message that the protection of children and young people is everyone's responsibility; and

(h) providing and overseeing the training and ongoing education of child protection officers; and

(i) developing policies and procedures governing the exercise of powers under this Act; and

(j) developing policies, procedures and strategies that give effect to the State Strategy; and

(k) monitoring the operation of this Act as it relates to the provision of safe environments for children and young people (including by monitoring progress in the government and non-government sectors towards achieving that goal) and reporting regularly to the Minister on that subject; and

(l) promoting partnership between the Government, local councils, non-government agencies, communities and families to holistically address the problem of harm being caused to children and young people; and

(m) promoting partnership between the Government and people who care for children or young people under this Act in recognition of the integral part played by such people in caring for children and young people; and

(n) encouraging cooperation between State authorities with functions relating to the protection of children and young people or the provision of services to children and young people and their families to ensure that children and young people at risk of harm receive as much support as possible; and

(o) any other function conferred on the Chief Executive under this Act or any other Act or by the Minister.

(2) Without limiting subsection (1), the Chief Executive has the following additional functions in relation to Aboriginal and Torres Strait Islander children and young people and the operation of Part 4:

(a) working in partnership with recognised Aboriginal and Torres Strait Islander entities to build capacity to facilitate delegated decision making and family-led decision making in relation to Aboriginal and Torres Strait Islander children and young people;

(b) such other functions as may be prescribed by the regulations.

24—Powers of delegation

(1) The Chief Executive may delegate a function (other than a prescribed function) under this or any other Act to a specified person or body (including a person for the time being holding or acting in a specified office or position, or a person or body located in another State or Territory).

(2) A delegation under this section—

(a) must be by instrument in writing; and

(b) may be absolute or conditional; and

(c) does not derogate from the ability of the Chief Executive to act in any matter; and

(d) is revocable at will.

(3) Subject to this Act, a function delegated under this section may, if the instrument of delegation so provides, be further delegated.

(4) Nothing in this section limits any other power of delegation the Chief Executive may have under this Act or any other Act.

25—Chief Executive's annual report

(1) The Chief Executive must, not later than 30 September in each year, submit to the Minister a report in respect of the financial year ending on the preceding 30 June (the ***reporting year***) setting out—

(a) the following information relating to case workers and children and young people in care:

(i) whether a case worker has been allocated to each child and young person in care during the reporting year;

(ii) whether each child and young person in care has had face to face contact with their allocated case worker at least once in each month during the reporting year,

and, if not, the extent to which those targets have been achieved; and

(b) whether each child or young person under the guardianship of the Chief Executive until they attain 18 years of age had, during the reporting year, a documented case plan and, if not, the extent to which that target has been achieved; and

(c) the emergence of any recurring themes in the matters referred to in a preceding paragraph; and

(d) the number, and general nature, of placements of children and young people under section 131 during the reporting year; and

(e) any other matter prescribed by the regulations.

(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 both Houses 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*).

Division 3—Quality of Care Report Guidelines

26—Quality of Care Report Guidelines

(1) The Chief Executive must publish guidelines (the ***Quality of Care Report Guidelines***) relating to reporting harm caused to children and young people in care by their carers, or suspicions or risks of such harm.

(2) The Quality of Care Report Guidelines must set out—

(a) the process by which a quality of care report is to be assessed; and

(b) the actions which must be taken in response to a quality of care report; and

(c) the ways in which procedural fairness is to be afforded in relation to a quality of care report; and

(d) the process by which decisions relating to quality of care reports can be reviewed (including the persons who may seek such a review); and

(e) any other information required by the regulations,

and may contain any other provisions the Chief Executive thinks fit.

(3) Subject to the regulations, the Chief Executive must ensure that procedural fairness is provided in the course of any action taken in response to a quality of care report.

(4) Before publishing the Quality of Care Report Guidelines, the Chief Executive must—

(a) invite submissions from, and have regard to any submissions made by—

(i) persons who care for children or young people under this Act or a repealed Act; and

(ii) persons or bodies who, in the opinion of the Chief Executive, represent the interests and views of persons who care for children and young people under this Act or a repealed Act; and

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

(5) The Chief Executive must cause the Quality of Care Report Guidelines to be published on a website determined by the Chief Executive.

(6) Each person or body involved in addressing a quality of care report must comply with the Quality of Care Report Guidelines.

(7) However—

(a) the Quality of Care Report Guidelines do not create legally enforceable rights or entitlements; and

(b) in the event of an inconsistency between a provision of the Quality of Care Report Guidelines and a provision of this Act, the provision of the Quality of Care Report Guidelines is, to the extent of the inconsistency, void and of no effect.

Division 4—Child protection officers

27—Child protection officers

(1) The following persons are ***child protection officers*** for the purposes of this Act:

(a) the Chief Executive;

(b) a police officer;

(c) an employee of the Department authorised by the Chief Executive by instrument in writing as a child protection officer;

(d) an Aboriginal or Torres Strait Islander person authorised by the Chief Executive by instrument in writing as a child protection officer;

(e) any other person authorised by the Chief Executive by instrument in writing as a child protection officer in accordance with any requirements set out in the regulations.

(2) An authorisation under subsection (1)(c), (d) or (e) may be made subject to conditions or limitations specified in the instrument of authorisation.

(3) The Chief Executive may, by notice in writing to a child protection officer authorised under subsection (1)(c), (d) or (e) vary or revoke the authorisation, or a condition or limitation of the authorisation, on any grounds the Chief Executive thinks fit.

(4) A child protection officer authorised under subsection (1)(c), (d) or (e) must be issued with an identity card—

(a) containing the person's name and a photograph of the person; and

(b) stating that the person is a child protection officer under this Act; and

(c) if the authorisation of the person to be a child protection officer is subject to conditions or limitations—stating those conditions or limitations.

(5) A child protection officer (other than a police officer in uniform) must, at the request of a person in relation to whom the officer intends to exercise powers under this Act, produce for inspection their identity card or other evidence of their authority.

28—Powers of child protection officers

(1) Subject to this Act, a child protection officer may, as may reasonably be required in the administration, operation or enforcement of this Act, do 1 or more of the following:

(a) enter and remain on any premises, place, vehicle or vessel (and for that purpose require a vehicle or vessel to stop);

(b) inspect any premises, place, vehicle or vessel;

(c) use reasonable force to break into or open any part of, or anything in or on, any premises, place, vehicle or vessel;

(d) if the officer believes on reasonable grounds that a child or young person is at risk of removal from the State for a purpose set out in section 5(2)(c)(i) or (ii)—seize and retain any passport issued in the name of the child or young person;

(e) take photographs, films, audio, video or other recordings;

(f) seize and retain anything that the officer reasonably suspects has been used in, or may constitute evidence of, a contravention of this Act;

(g) require a person who the officer reasonably suspects has committed, is committing or is about to commit a contravention of this Act to state their full name and usual place of residence and to produce evidence of their identity;

(h) give such directions as may be reasonably required in connection with the exercise of a power conferred by a preceding paragraph or otherwise for a purpose related to the administration, operation or enforcement of this Act.

(2) Subject to any order of the Court, a passport seized under subsection (1)—

(a) may be held by the Chief Executive for the period prescribed by the regulations; and

(b) must, at the end of the period, be dealt with in accordance with the regulations.

(3) Without limiting subsection (1), a child protection officer may, for the purposes of enforcing any order of the Court, without warrant, remove from any premises, place, vehicle or vessel a child or young person using such force (including breaking into the premises, place, vehicle or vessel) as is reasonably necessary for that purpose.

(4) Except as is provided for in subsection (3), a child protection officer may only use force to enter any premises, place, vehicle or vessel—

(a) on the authority of a warrant issued by a magistrate; or

(b) if—

(i) entry to the premises, place, vehicle or vessel has been refused or cannot be gained; and

(ii) the child protection officer believes on reasonable grounds that—

(A) the delay that would ensue as a result of applying for a warrant would significantly increase the risk of harm, or further harm, being caused to a child or young person; or

(B) a child or young person who is absent from a State care placement is located within the premises, place, vehicle or vessel.

(5) A magistrate must not issue a warrant under this section unless satisfied on information given on oath, personally or by affidavit, that there are reasonable grounds for the issue of a warrant.

(6) An application for the issue of a warrant under this section—

(a) may be made either personally or by telephone; and

(b) must be made in accordance with any procedures prescribed by the regulations.

(7) A magistrate by whom a warrant is issued under this section must file the warrant, or a copy of it, and any supporting affidavit in the Court.

(8) Without limiting subsection (1), a child protection officer may exercise a power under this section for the purpose of determining whether an order of the Court, or a direction or requirement of the Chief Executive, is being, or has been, complied with in respect of a child or young person who is in the custody, or under the guardianship, of the Chief Executive.

(9) A child protection officer may, in exercising powers under this Act, be accompanied by such assistants as are reasonably required in the circumstances.

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

Maximum penalty: Imprisonment for 1 year.

(11) To avoid doubt, this section does not limit any other powers conferred by any other provision of this Act.

29—Child protection officer may require information etc

(1) A child protection officer may, by notice in writing, require a specified person or body (whether or not the person or body is a State authority, or an officer or employee of a State authority) to provide to them such information, or such documents, as may be specified in the notice (being information or a document in the possession of the person or body that is reasonably required in the administration, operation or enforcement of this Act).

(2) To avoid doubt, a requirement under subsection (1) may include a requirement to provide copies of medical, financial or other records in respect of a person.

(3) A child protection officer may, by notice in writing, require a specified person to—

(a) answer, to the best of the person's knowledge or belief, questions put by the child protection officer or an employee of the Department authorised by the Chief Executive for the purposes of this subsection; and

(b) in the case of a person who has examined, assessed or treated a person under this Act—provide to the child protection officer or the Chief Executive a written report of that examination, assessment or treatment.

(4) A person or body of whom a requirement is made under this section must provide the specified information, document, answer or report in the manner and form, and within the period, specified in the notice.

(5) A person or body who refuses or fails to comply with a notice under this section is guilty of an offence.

Maximum penalty:

(a) in the case of a body corporate—$50 000;

(b) in the case of an individual—imprisonment for 1 year.

(6) If a State authority refuses or fails to comply with a notice under subsection (1), the Chief Executive may, after consultation with the State authority—

(a) report the refusal or failure to the Minister and to the Minister responsible for the State authority; and

(b) include details of the refusal or failure in the annual report of the Department.

Division 5—Child and Young Person's Visitor scheme

30—Interpretation

In this Division—

prescribed facility means—

(a) a licensed children's residential facility; or

(b) a State residential care facility; or

(c) any other facility, or facility of a class, prescribed by the regulations.

31—Child and Young Person's Visitor

(1) The Minister may establish a Child and Young Person's Visitor.

(2) The Child and Young Person's Visitor is to be independent of direction or control by the Crown or any Minister or officer of the Crown.

(3) The regulations may make further provision in relation to the appointment of the Child and Young Person's Visitor.

32—Functions of Child and Young Person's Visitor

(1) The functions of the Child and Young Person's Visitor are—

(a) to conduct visits to, and inspections of, prescribed facilities as required or authorised under this Division; and

(b) to communicate with children and young people resident in prescribed facilities; and

(c) to promote the best interests of children and young people resident in prescribed facilities; and

(d) to act as an advocate for children and young people resident in prescribed facilities and to promote the proper resolution of issues relating to their care; and

(e) to inquire into, and provide advice to the Minister relating to, any systemic reform necessary to improve—

(i) the quality of care, treatment or control of children and young people resident in prescribed facilities; and

(ii) the management of prescribed facilities; and

(f) any other functions assigned to the Child and Young Person's Visitor under this Act or any other Act.

(2) In performing functions under this Act, the Child and Young Person's Visitor—

(a) must encourage children and young people resident in prescribed facilities to express their own views and must give proper weight to those views; and

(b) must pay particular attention to the needs and circumstances of—

(i) Aboriginal and Torres Strait Islander children and young people; and

(ii) children and young people who have a physical, psychological or intellectual disability; and

(c) may receive and consider any information, reports or materials that may be relevant to performing the functions of the Child and Young Person's Visitor.

(3) On a visit to a prescribed facility under this Division, the Child and Young Person's Visitor may—

(a) inspect any part of the prescribed facility; and

(b) make inquiries about the care, treatment or control of each child or young person resident in the prescribed facility; and

(c) take such other action as may be reasonably required to perform the functions of the Child and Young Person's Visitor under this Act.

(4) Subject to subsection (5), a visit to a prescribed facility may be—

(a) made by the Child and Young Person's Visitor on their own initiative or at the request of a child or young person who is or was resident in the prescribed facility; and

(b) made at any reasonable time; and

(c) of such duration as the Child and Young Person's Visitor thinks appropriate.

(5) The Child and Young Person's Visitor must—

(a) except in exceptional circumstances, give the person in charge of a prescribed facility reasonable notice of a visit; and

(b) take steps to ensure that the safe administration of the prescribed facility is not compromised by a visit; and

(c) obey the reasonable directions of the person in charge of the prescribed facility in relation to any genuine concerns the person may have in connection with the safe management of the prescribed facility.

(6) If the person in charge of a prescribed facility refuses to allow the Child and Young Person's Visitor to visit the prescribed facility because of genuine concerns the person may have in connection with the safety of the Child and Young Person's Visitor (whether related to a security risk, a health-related risk or some other reason), the person must, as soon as reasonably practicable, provide the Child and Young Person's Visitor with written advice as to why entry to the prescribed facility was refused.

(7) The Child and Young Person's Visitor has such other powers as may be necessary or expedient for, or incidental to, the performance of the functions of the Child and Young Person's Visitor.

33—Reporting obligations

(1) The Child and Young Person's Visitor must, on or before 30 September in every year, prepare and provide to the Minister a report on the work of the Child and Young Person's Visitor during the financial year ending on the preceding 30 June.

(2) The Minister must, within 6 sitting days after receiving a report under subsection (1), cause a copy of the report to be laid before both Houses of Parliament.

(3) The Child and Young Person's Visitor may, at any time, prepare a special report to the Minister on any matter arising out of the performance of the Child and Young Person's Visitor functions.

(4) The Minister must, within 6 sitting days after receiving a special report, cause a copy of the report to be laid before both Houses of Parliament.

Division 6—Networks and services for children and young people and their families

34—Networks and services for children and young people and their families

(1) The Minister may, in the Minister's absolute discretion, establish such networks or services for the multi-agency assessment and referral of, and service response for, children and young people and their families as the Minister thinks fit.

(2) A network or service established by the Minister under this section—

(a) consists of such persons or bodies (whether State authorities or otherwise) as may be specified by the Minister; and

(b) has the functions assigned to it under this Act or by the Minister.

(3) The members of a network or service established by the Minister under this section may, despite any other Act or law, collaborate with each other without restriction.

Division 7—Information gathering and sharing

35—Chief Executive may require State authority to provide report

(1) The Chief Executive may, if of the opinion that it is necessary or would otherwise assist in the performance of functions under this Act, require a State authority to prepare and provide a report to the Chief Executive in relation to the matters, and in accordance with any requirements, specified by the Chief Executive.

(2) If a State authority refuses or fails to comply with a requirement under subsection (1), the Chief Executive may require the State authority to provide to the Chief Executive within a specified period a report setting out the reasons for noncompliance.

(3) The Chief Executive may, on receiving a report under subsection (2), submit a copy of the report to the Minister setting out the views of the Chief Executive in respect of the State authority's noncompliance.

(4) The Minister must, on receiving a report under subsection (3), prepare a report to Parliament setting out—

(a) the Minister's response to the Chief Executive's report; and

(b) any other information required by the regulations.

(5) The Minister must, within 6 sitting days after completing a report under subsection (4), cause a copy of both that report and the Chief Executive's report under subsection (3) to be laid before both Houses of Parliament.

36—Sharing of information between certain persons and bodies

(1) This section applies to the following persons and bodies:

(a) the Department;

(b) the Commissioner for Children and Young People;

(c) the Commissioner for Aboriginal Children and Young People;

(d) the Guardian for Children and Young People;

(e) the Child Death and Serious Injury Review Committee;

(f) the Child and Young Person's Visitor;

(g) a State authority;

(h) a child and family assessment and referral network or service and its constituent members;

(i) the Contact Arrangements Review Panel;

(j) an interagency practice review panel;

(k) a person or body that provides services to children and young people or their families;

(l) government and non-government schools;

(m) SACAT;

(n) any other person or body, or person or body of a class, prescribed by the regulations.

(2) Despite any other Act or law, a person or body to whom this section applies (the ***provider***) may, in accordance with any requirements set out in the regulations, provide prescribed information and documents to another person or body to whom this section applies (the ***recipient***) if the provider reasonably believes that the provision of the information or documents would assist the recipient—

(a) to perform functions relating to children and young people; or

(b) to manage any risk of harm to a child or young person, or children or young people of a class, (including, to avoid doubt, an unborn child or children) that might arise in the recipient's capacity as an employer or provider of services.

(3) Subject to this section, but despite any other Act or law, information or documents that do not directly or indirectly disclose the identity of any person may be provided by one person or body to whom this section applies to another without restriction.

(4) Subsection (3) applies whether or not the information or documents—

(a) consist of or include prescribed information and documents; and

(b) ever disclosed the identity of a person, or has been redacted so as to de-identify it.

(5) Information or documents may be provided under this section whether or not the provider has been requested to provide the information or documents.

(6) Despite section 213, the recipient of information or documents under this section must not disclose information or documents received under this section except—

(a) to another person or body to whom this section applies; or

(b) as may be authorised by the regulations.

(7) In this section—

prescribed information and documents means—

(a) information or documents relating to the health, safety, welfare or wellbeing of a particular child or young person, or children or young people of a class; or

(b) any other information or document of a kind prescribed by the regulations.

37—Interaction with *Public Sector (Data Sharing) Act 2016*

Nothing in this Division affects the operation of the *Public Sector (Data Sharing) Act 2016*.

Part 4—Additional provisions relating to Aboriginal and Torres Strait Islander children and young people

Division 1—Preliminary

38—Primary purpose of Part

The primary purpose of this Part is to ensure that the Aboriginal and Torres Strait Islander Child Placement Principle is implemented throughout all stages of the administration, operation and enforcement of this Act to the standard of active efforts.

39—Objects of Act relating to Aboriginal and Torres Strait Islander children and young people

The Act has the following objects in respect of Aboriginal and Torres Strait Islander children and young people:

(a) recognising that nurturing strong connections to family, community, culture and Country is foundational in ensuring that Aboriginal and Torres Strait Islander children and young people thrive and are protected from harm;

(b) recognising, respecting and supporting the self-determination of Aboriginal and Torres Strait Islander children and young people and their families;

(c) recognising, respecting and supporting the primary role of Aboriginal and Torres Strait Islander families and communities in protecting and caring for their children and young people;

(d) upholding the cultural rights of Aboriginal and Torres Strait Islander children and young people in decision making under this Act;

(e) ensuring that decision makers under this Act understand, respect and support Aboriginal and Torres Strait Islander culture, cultural diversity, lore, knowledge, perspective and expertise;

(f) recognising the unique role of Aboriginal and Torres Strait Islander organisations in responding to and supporting Aboriginal and Torres Strait Islander families;

(g) recognising and overcoming biases and racism that create barriers to the best interests of Aboriginal and Torres Strait Islander children and young people being realised;

(h) reducing the over-representation and incidence of removal of Aboriginal and Torres Strait Islander children and young people from their families by—

(i) supporting Aboriginal and Torres Strait Islander people to access services provided by Aboriginal and Torres Strait Islander organisations; and

(ii) facilitating delegated decision making by recognised Aboriginal and Torres Strait Islander entities in relation to Aboriginal and Torres Strait Islander children and young people; and

(iii) encouraging State authorities to act in partnership with Aboriginal and Torres Strait Islander people and organisations when performing functions under this Act that affect Aboriginal and Torres Strait Islander children and young people.

40—Application of Part

(1) Except where the contrary intention appears, this Part is in addition to, and does not derogate from, any other provisions of this Act (and, in particular, nothing in this Part can be taken to displace section 10).

(2) Despite subsection (1), the following provisions apply in relation to the operation of Part 2:

(a) except where to do so would be inconsistent with section 10, the Aboriginal and Torres Strait Islander Child Placement Principle will, in the event of an inconsistency with the guiding principles and related matters set out in Part 2, prevail;

(b) except as is contemplated by paragraph (a), the additional guiding principles set out in Division 3 of this Part are to be read in conjunction with the guiding principles and related matters set out in Part 2.

Division 2—Identifying Aboriginal and Torres Strait Islander children and young people

41—Identifying Aboriginal and Torres Strait Islander children and young people

Each person or body performing functions under this Act, must, as soon as is reasonably practicable after a child or young person comes into contact with the child protection and family support system, make active efforts to ascertain whether the child or young person is an Aboriginal or Torres Strait Islander child or young person.

42—Presumption as to acceptance by Aboriginal or Torres Strait Islander community

For the purposes of this Act, if a child or young person—

(a) is of Aboriginal or Torres Strait Islander descent; and

(b) regards themselves as Aboriginal or Torres Strait Islander, or is regarded as Aboriginal or Torres Strait Islander by a member of their family,

then the child or young person will, in the absence of evidence to the contrary, be taken to be accepted as Aboriginal or Torres Strait Islander (as the case requires) by the Aboriginal or Torres Strait Islander community to which the child or young person or the member of their family claims to belong.

Division 3—Additional guiding principles in respect of Aboriginal and Torres Strait Islander children and young people

43—Aboriginal and Torres Strait Islander Child Placement Principle

(1) The Parliament of South Australia recognises that the implementation of the Aboriginal and Torres Strait Islander Child Placement Principle to the standard of active efforts is the key mechanism by which the best interests of Aboriginal and Torres Strait Islander children and young people, and their families, can be realised.

(2) The following elements collectively constitute the ***Aboriginal and Torres Strait Islander Child Placement Principle***:

(a) the ***prevention element***—Aboriginal and Torres Strait Islander children and young people have the right to be brought up within their own family and community, and should, to ensure that families can stay together safely, be provided access to culturally safe services that support families and communities to care for Aboriginal and Torres Strait Islander children and young people;

(b) the ***partnership element***—Aboriginal and Torres Strait Islander people should be supported to participate in—

(i) decisions under this Act affecting Aboriginal and 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;

(c) the ***placement element***—if an Aboriginal or Torres Strait Islander child or young person is to be placed with a person under this Act, the child or young person should, as a priority and so far as it is reasonably practicable to do so, be placed with 1 of the following persons (in order of priority):

(i) an Aboriginal or Torres Strait Islander member of the child or young person's family, or other member of the child or young person's family;

(ii) an Aboriginal or Torres Strait Islander member of the child or young person's community who has a relationship of responsibility for the child or young person;

(iii) an Aboriginal or Torres Strait Islander member of the child or young person's community;

(iv) an Aboriginal or Torres Strait Islander person;

(d) the ***participation element***—if a decision is to be made under this Act which affects an Aboriginal or Torres Strait Islander child or young person, family-led decision making should be engaged in at the earliest opportunity to ensure that the child or young person, their parents and other family members are enabled to participate in the making of the decision and that their views are considered by the decision maker;

(e) the ***connection element***—Aboriginal and Torres Strait Islander children and young people placed with a person under this Act should be supported to develop and maintain their connection with their family, community, culture, Country and language, particularly when the child or young person is placed with a person who is not an Aboriginal or Torres Strait Islander person.

(3) Without limiting any other provision of this Act, each person or body engaged in the administration, operation or enforcement of this Act must, in making a decision under this Act relating to an Aboriginal or Torres Strait Islander child or young person, implement each of the elements of the Aboriginal and Torres Strait Islander Child Placement Principle that are relevant to the decision to the standard of active efforts.

(4) Without limiting the ways in which an element or elements of the Aboriginal and Torres Strait Islander Child Placement Principle can be implemented to the standard of active efforts, examples of the ways in which a decision-maker might do so include, where relevant—

(a) considering how the Aboriginal or Torres Strait Islander child or young person can be prevented from needing to be removed from their families under this Act (including by actively considering alternative courses of action that may be available, such as assistance in accessing relevant support and services); or

(b) actively promoting the self-determination of the Aboriginal and Torres Strait Islander child or young person and their family and community in relation to a decision; or

(c) engaging with the Aboriginal or Torres Strait Islander child or young person and their family and community by means of family-led decision making; or

(d) thorough scoping of the Aboriginal or Torres Strait Islander child or young person's family to identify culturally connected placements; or

(e) supporting and maintaining the Aboriginal or Torres Strait Islander child or young person's connection to family, community, culture, and Country throughout every stage of their involvement in the child protection and family support system; or

(f) having regard to the possible long-term effects of the decision on the Aboriginal or Torres Strait Islander child or young person's identity and connection with their family, community, culture and Country.

(5) For the purposes of subsection (2)(c)—

(a) if an Aboriginal or Torres Strait Islander child or young person has parents from different Aboriginal or Torres Strait Islander communities—consideration should be given to the child or young person's own sense of belonging; and

(b) if an Aboriginal or Torres Strait Islander child or young person has parents from different Aboriginal or Torres Strait Islander communities, and the child or young person is placed with 1 parent's family or community—arrangements should be made to ensure that the child or young person has the opportunity for continuing contact and connection with their other parent's family, community and culture; and

(c) if an Aboriginal or Torres Strait Islander child or young person has 1 Aboriginal or Torres Strait Islander parent and 1 non-Aboriginal or Torres Strait Islander parent—the order of priority for familial placement should be determined by considering the best interests of the child or young person; and

(d) if an Aboriginal or Torres Strait Islander child or young person is to be placed under the guardianship of a non-Aboriginal or Torres Strait Islander person—the Court should, following advice of a Respected Person on the matter, be satisfied that the person has demonstrated a strong commitment, and has the capability, to ensure the maintenance of the child or young person's Aboriginal or Torres Strait Islander culture and identity, including through contact and connection with family, community, culture and Country; and

(e) if an Aboriginal or Torres Strait Islander child or young person is to be placed with a non-Aboriginal or Torres Strait Islander person under Part 12—the Chief Executive should be satisfied that the person has demonstrated a strong commitment, and has the capability, to ensure the maintenance of the child or young person's Aboriginal or Torres Strait Islander culture and identity, including through contact and connection with family, community, culture and Country.

(6) A failure to comply with the Aboriginal and Torres Strait Islander Child Placement Principle does not, of itself, affect the validity of a decision under this Act.

44—Standard of active efforts

(1) For the purposes of this Part, the standard set out in this section constitutes the ***standard of active efforts*** (and a reference to a person or body making active efforts will be taken to be a reference to the person or body acting to that standard).

(2) To meet the standard of active efforts, steps taken under this Act must—

(a) be timely; and

(b) be practicable, thorough and purposeful; and

(c) address the grounds on which the child or young person is considered to be in need of care and protection; and

(d) comply with any other requirements prescribed by the regulations.

(3) However, a failure to meet the standard of active efforts does not, of itself, affect the validity of a decision under this Act.

(4) The requirements under this section do not limit any other ways in which active efforts can be made when making a decision under this Act.

45—Additional considerations relating to reunification of certain Aboriginal and Torres Strait Islander children and young people and their parents

Without limiting any other provision of this Act, the Chief Executive must, if an Aboriginal and Torres Strait Islander child or young person is removed from their parents under this Act—

(a) make active efforts to explore ways in which the child or young person and their parents can be reunified; and

(b) if, in the opinion of the Chief Executive, it is unlikely that the child or young person and their parents will be able to be reunified—make active efforts to identify or locate members of the child or young person's family or community with whom the child or young person can be placed.

46—Principle of family-led decision making

(1) For the purposes of this Act, the principles set out in this section constitute the ***principle of family-led decision making*** (and a reference to a person or body engaging in family-led decision making will be taken to be a reference to the person or body acting in accordance with those principles).

(2) Each person or body performing functions under this Act must, when making a decision in respect of an Aboriginal or Torres Strait Islander child or young person—

(a) make decisions in a culturally safe and respectful way that draws on traditional Aboriginal or Torres Strait Islander methods of enabling culturally-based family-driven decisions; and

(b) promote self-determination, participation and shared decision making at each stage of making the decision; and

(c) support the family of the child or young person to make informed choices in respect of the best interests of the child or young person; and

(d) assist the family of the child or young person, and their support networks, to think and plan creatively in relation to, and to utilise their strengths and resources to resolve, concerns raised in respect of the child or young person; and

(e) provide accessible and culturally safe forums to the family of the child or young person so they can feel comfortable in actively participating, and working in partnership, with persons or bodies responsible for decision making in relation to the child or young person; and

(f) provide opportunities to the family of the child or young person for ongoing participation in all significant decisions relating to the child or young person; and

(g) take into account the views of the family of the child or young person; and

(h) where it is reasonably practicable to do so, support the family of the child or young person to engage with an Aboriginal or Torres Strait Islander organisation.

(3) However, a failure to comply with the principle of family-led decision making does not, of itself, affect the validity of a decision under this Act.

(4) The requirements under this section do not limit any other ways in which Aboriginal or Torres Strait Islander people can be involved in a decision under this Act.

47—Additional considerations relating to best interests of Aboriginal and Torres Strait Islander children and young people

Without limiting section 11, in considering what is in the best interests of a particular Aboriginal or Torres Strait Islander child or young person, regard should be given to such of the following as may be relevant in the circumstances:

(a) the need to comply with the Aboriginal and Torres Strait Islander Child Placement Principle;

(b) the child rearing practices of Aboriginal or Torres Strait Islander people;

(c) the need to provide the child or young person with the opportunity to maintain and build their identity, as well as their connections to their Aboriginal or Torres Strait Islander family, community, culture and Country;

(d) the child or young person's need to have an environment in which they—

(i) feel safe and supported to express their culture and spiritual and other belief systems; and

(ii) are supported by a carer who respects their identity as an Aboriginal or Torres Strait Islander child or young person and who nurtures and encourages their sense of self and identity in respect to their family, community, culture and Country;

(e) any other matter prescribed by the regulations.

Division 4—Recognised Aboriginal or Torres Strait Islander entities

48—Minister may recognise certain Aboriginal or Torres Strait Islander entities for purposes of Act

(1) The Minister may—

(a) on an application by an eligible entity or on the Minister's own motion; and

(b) after consulting with the Aboriginal or Torres Strait Islander community or a section of the Aboriginal or Torres Strait Islander community,

by notice in writing, recognise an eligible entity as a ***recognised Aboriginal or Torres Strait Islander entity*** for the purposes of this Act if satisfied that—

(c) the entity is an eligible entity; and

(d) the eligible entity agrees to being a recognised Aboriginal or Torres Strait Islander entity.

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

(a) be made in a manner and form determined by the Minister; and

(b) be accompanied by such information and documents as may be required by the Minister.

(3) The recognition of a recognised Aboriginal or Torres Strait Islander entity—

(a) may be conditional or unconditional; and

(b) has effect for the period specified in the notice; and

(c) must comply with any requirements prescribed by the regulations.

(4) The Minister may, by notice in writing, vary or revoke a condition of the recognition of a recognised Aboriginal or Torres Strait Islander entity for any reason the Minister thinks fit.

(5) The Minister may, by notice in writing and in accordance with any requirements set out in the regulations, vary or revoke the recognition of a recognised Aboriginal or Torres Strait Islander entity.

(6) In this section—

eligible entity means—

(a) a person—

(i) who is an Aboriginal or Torres Strait Islander person; and

(ii) who has relevant knowledge of, or expertise in, child protection; and

(iii) who is not a prohibited person under the *Child Safety (Prohibited Persons) Act 2016*; and

(iv) in relation to whom a working with children check has been conducted within the preceding 5 years; and

(v) who complies with any other requirements set out in the regulations; or

(b) an entity that provides services to Aboriginal or Torres Strait Islander people in this State—

(i) the chief executive of which (however described) is a person with the attributes set out in paragraph (a); and

(ii) that complies with any other requirements set out in the regulations; or

(c) an entity that provides services to Aboriginal or Torres Strait Islander people in this State—

(i) the governing body of which consists of a majority of—

(A) Aboriginal or Torres Strait Islander people; and

(B) people who have relevant knowledge of, or expertise in, child protection; and

(ii) each director of which (however described) is a person—

(A) who is not a prohibited person under the *Child Safety (Prohibited Persons) Act 2016*; and

(B) in relation to whom a working with children check has been conducted within the preceding 5 years; and

(iii) that complies with any other requirements set out in the regulations; or

(d) any other entity, or entity of a class, prescribed by the regulations.

Division 5—Delegation of functions in respect of Aboriginal and Torres Strait Islander children and young people

49—Delegation of certain functions to recognised Aboriginal or Torres Strait Islander entities

(1) Without limiting any other power of delegation the Chief Executive may have under this Act or any other Act, the Chief Executive may delegate a specified function, or functions of a specified class, under this Act (other than a prescribed function) to—

(a) a specified recognised Aboriginal or Torres Strait Islander entity; or

(b) a specified member of a recognised Aboriginal or Torres Strait Islander entity.

(2) To avoid doubt, the Chief Executive may delegate a function of a child protection officer under this section.

(3) Without limiting subsection (1), a delegation may relate to a specified Aboriginal or Torres Strait Islander child or young person, or Aboriginal or Torres Strait Islander children or young people of a specified class.

(4) A delegation under subsection (1)—

(a) must be by instrument in writing; and

(b) may be absolute or conditional; and

(c) does not derogate from the ability of the Chief Executive to act in any matter; and

(d) may, if the instrument of delegation so provides, be further delegated; and

(e) is revocable at will.

(5) Before delegating a function to a recognised Aboriginal or Torres Strait Islander entity, or a member of a recognised Aboriginal or Torres Strait Islander entity, under this section, the Chief Executive must—

(a) unless a memorandum of understanding between the Chief Executive and the recognised Aboriginal or Torres Strait Islander entity is in force in relation to such delegations, consult with the recognised Aboriginal or Torres Strait Islander entity in relation to the delegation; and

(b) undertake such consultation as may be required by the regulations to ascertain the views of the Aboriginal or Torres Strait Islander child or young person, or children or young people, to whom the delegation relates, and their family and community; and

(c) be satisfied that it is, in all the circumstances, appropriate that the recognised Aboriginal or Torres Strait Islander entity, or the member (as the case requires), perform the functions to which the delegation relates; and

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

(6) However, the Chief Executive need not comply with subsection (5)(b) if to do so would, in the opinion of the Chief Executive, result in an unacceptable risk to the safety or wellbeing of a child or young person.

(7) Despite any other Act or law, the Chief Executive may provide such information and documents to a delegated decision maker in respect of an Aboriginal or Torres Strait Islander child or young person as the Chief Executive considers reasonably necessary to allow the delegated decision maker to perform their delegated functions.

(8) Without limiting any other provision of this Act, the Chief Executive may require a delegated decision maker in respect of an Aboriginal or Torres Strait Islander child or young person to provide to the Chief Executive such information or documents relating to the child or young person as may be specified by the Chief Executive.

(9) A delegation under this section has effect until—

(a) the Chief Executive revokes the delegation; or

(b) the recognised Aboriginal or Torres Strait Islander entity informs the Chief Executive, by notice in writing, that the entity will no longer act under the delegation; or

(c) the recognition of the Aboriginal or Torres Strait Islander entity is revoked, or the entity otherwise ceases to be a recognised Aboriginal or Torres Strait Islander entity,

whichever occurs first.

(10) The regulations may make further provisions relating to delegations under this section, including, but not limited to—

(a) the records that must be made and kept by a delegated decision maker, and the period for which such records must be kept; and

(b) the reporting requirements that apply to a delegated decision maker.

50—Costs of recognised Aboriginal or Torres Strait Islander entity performing delegated functions to be borne by Crown

Such costs and expenses as may reasonably be incurred by a recognised Aboriginal or Torres Strait Islander entity performing delegated functions under this Act (including costs related to staffing the entity) are to be borne by the Crown.

Division 6—Family group conferencing for Aboriginal and Torres Strait Islander children and young people

51—Additional purposes of family group conferences for Aboriginal and Torres Strait Islander children and young people

(1) Without limiting section 91 or 109, the purposes of a family group conference convened in respect of an Aboriginal or Torres Strait Islander child or young person include giving effect to—

(a) the Aboriginal and Torres Strait Islander Child Placement Principle; and

(b) the need for self-determination; and

(c) the principle of family-led decision making.

(2) Without limiting section 94, the coordinator of a family group conference convened in respect of an Aboriginal and Torres Strait Islander child or young person must determine such procedures of the conference as the coordinator considers necessary or appropriate to further the purposes set out in subsection (1).

52—Chief Executive to offer and convene family group conference in certain circumstances

(1) Despite section 93, but subject to this section, if—

(a) the Chief Executive causes an assessment of an Aboriginal or Torres Strait Islander child or young person to be carried out in accordance with section 74; or

(b) the Chief Executive becomes aware that a child or young person in care is an Aboriginal or Torres Strait Islander child or young person; or

(c) a family member of an Aboriginal or Torres Strait Islander child or young person in care requests that a family group conference (however described) be convened,

the Chief Executive must, in accordance with any requirements set out in the regulations, offer to convene a family group conference under section 93 in respect of the child or young person.

(2) The Chief Executive must, as soon as is reasonably practicable after an offer to convene a family group conference is accepted under subsection (1), take reasonable steps to convene a family group conference in respect of the Aboriginal or Torres Strait Islander child or young person.

(3) However, the Chief Executive need not comply with this section—

(a) if a particular person refuses to participate in the family group conference and the Chief Executive is satisfied that the person's participation is required for a decision at the conference to be valid; or

(b) if a family group conference in respect of the Aboriginal or Torres Strait Islander child or young person has been convened within the preceding 6 months; or

(c) if the Chief Executive is of the opinion that convening a family group conference is not, in all the circumstances, in the best interests of the Aboriginal or Torres Strait Islander child or young person; or

(d) in any other circumstances prescribed by the regulations.

(4) A failure to hold a family group conference in accordance with this section does not, of itself, affect the validity of an application for an order of the Court under this Act, nor any such order.

53—Coordinator of family group conference to be Aboriginal or Torres Strait Islander person

Without otherwise limiting section 93 or 109, the coordinator of a family group conference convened in respect of an Aboriginal or Torres Strait Islander child or young person must, unless it is not reasonably practicable or prescribed circumstances apply, be an Aboriginal or Torres Strait Islander person (as the case requires, and not being a person who is an employee of the Department).

Division 7—Court proceedings under Act involving Aboriginal and Torres Strait Islander children and young people

54—Regulations etc to establish scheme for Respected Persons to participate in Court proceedings involving Aboriginal and Torres Strait Islander children and young people

(1) The Governor may, by regulation, establish a scheme providing for the use of Respected Persons in Court proceedings—

(a) to support Aboriginal and Torres Strait Islander children and young people to whom the proceedings relate; and

(b) to assist and advise the Court in relation to the practices and culture of Aboriginal and Torres Strait Islander people and communities.

(2) Without otherwise limiting the regulations that may be made under subsection (1), the regulations must provide for—

(a) the appointment and selection of Respected Persons; and

(b) the kinds of proceedings before the Court in which a Respected Person may, or may not, be used; and

(c) the role of Respected Persons as support persons for Aboriginal or Torres Strait Islander children and young people in proceedings before the Court; and

(d) the role of Respected Persons in providing advice to the Court in relation to the practices and culture of Aboriginal and Torres Strait Islander people and communities (whether on behalf of an Aboriginal or Torres Strait Islander child or young person to whom the proceedings relate or otherwise); and

(e) the ways in which a Respected Person may provide evidence or information to the Court.

(3) Regulations establishing a scheme under this section may, to the extent required for the purposes of the scheme, modify a provision of this Act, or modify the operation of the *Youth Court Act 1993* or a provision of that Act.

(4) Without limiting section 32 of the *Youth Court Act 1993* or any other provision of this Act, the Court must, in accordance with that section, make such rules as may be necessary to ensure the scheme for the use of Respected Persons is given effect.

(5) An order of the Court will not be invalid by reason of a failure to comply with the scheme established under this section.

55—Court to be satisfied that Aboriginal and Torres Strait Islander Child Placement Principle implemented before making certain orders

(1) Without limiting any other provision of this Act, or any other power the Court may have, the Court must, before making an order, be satisfied that the Aboriginal and Torres Strait Islander Child Placement Principle has, so far as is practicable in the circumstances, been implemented to the standard of active efforts in relation to the Aboriginal or Torres Strait Islander child or young person who is the subject of the order.

(2) For the purposes of subsection (1), the Court may have regard to—

(a) any report filed by a recognised Aboriginal or Torres Strait Islander entity or the Chief Executive (or both); and

(b) any other information the Court considers relevant.

(3) However, this section does not apply in relation to—

(a) an assessment order; or

(b) an interim order under Part 10; or

(c) any other order or decision, or order or decision of a class, prescribed by the regulations.

(4) A failure to comply with this section does not, of itself, affect the validity of a proceeding, decision or order of the Court.

56—Court not to make certain orders in relation to Aboriginal and Torres Strait Islander children and young people unless family group conference offered

(1) Subject to subsection (2), a prescribed order must not be made by the Court in relation to an Aboriginal or Torres Strait Islander child or young person unless at least 1 family group conference (whether convened by the Chief Executive or the Court) has been offered in relation to the child or young person and either—

(a) the offer to convene a family group conference was not accepted; or

(b) a family group conference is convened in relation to the child or young person.

(2) Subsection (1) does not apply—

(a) if the Chief Executive has not complied with section 52 in the circumstances referred to in section 52(3); or

(b) in any other circumstances prescribed by the regulations.

(3) In this section—

prescribed order means an order made by the Court under section 111(1)(e), (f), (g), (h), (i) or (j).

Note—

A prescribed order does not include an assessment order or an interim order.

Division 8—Case planning for Aboriginal and Torres Strait Islander children and young people

57—Additional requirements relating to case planning for Aboriginal and Torres Strait Islander children and young people

Without limiting section 128, a case plan for an Aboriginal or Torres Strait Islander child or young person must—

(a) set out how the Aboriginal and Torres Strait Islander Child Placement Principle has been, and will be, implemented in the course of case planning (including the extent to which the standard of active efforts has been met in doing so); and

(b) set out a cultural maintenance plan that is developed with input from—

(i) the child or young person and their family and community; and

(ii) where practicable, an Aboriginal or Torres Strait Islander organisation; and

(c) set out how the cultural needs and identity of the child or young person are being, or will be, met (including, but not limited to, receiving respect for, and having access to, cultural beliefs and cultural foods, receiving support to travel to attend cultural events, obligations and ceremonies and to connect with Country); and

(d) include arrangements for connection with the child or young person's Aboriginal or Torres Strait Islander family, community, culture and Country (including, but not limited to, cultural mentors or Elders from the same Aboriginal or Torres Strait Islander community as the child or young person).

Division 9—Placement of Aboriginal and Torres Strait Islander children and young people by Chief Executive

58—Chief Executive must consult with recognised Aboriginal or Torres Strait Islander entity before placing Aboriginal or Torres Strait Islander child or young person

(1) Without limiting any other provision of this Act, the Chief Executive must, if it is reasonably practicable to do so, consult with, and have regard to any submissions of, a recognised Aboriginal or Torres Strait Islander entity before placing an Aboriginal or Torres Strait Islander child or young person under Part 12 Division 1.

(2) However, subsection (1) does not apply to a delegated decision maker to whom functions relating to the placement of the child or young person have been delegated under this Act.

Division 10—Reviews of contact arrangements and reviews of circumstances for Aboriginal and Torres Strait Islander children and young people in care

59—Additional requirements relating to reviews by the Contact Arrangements Review Panel in respect of Aboriginal and Torres Strait Islander children and young people

Despite section 140, the following provisions apply to a panel convened by the Contact Arrangements Review Panel under that section to review a determination of the contact arrangements in respect of an Aboriginal or Torres Strait Islander child or young person:

(a) the panel must be constituted of a majority of Aboriginal or Torres Strait Islander people;

(b) the presiding member of the panel must be an Aboriginal or Torres Strait Islander person;

(c) the panel must, in accordance with any requirements set out in the regulations, consult with—

(i) if, at the time of the review, there is a delegated decision maker in relation to the child or young person—the delegated decision maker; or

(ii) in any other case—an Aboriginal or Torres Strait Islander organisation, or Aboriginal or Torres Strait Islander organisation of a class, prescribed by the regulations;

(d) the panel must comply with any other requirements prescribed by the regulations.

60—Ongoing review of circumstances of certain Aboriginal and Torres Strait Islander children or young people

Without otherwise limiting section 141, the following additional provisions apply to a review of the circumstances of an Aboriginal or Torres Strait Islander child or young person under that section:

(a) the panel appointed to conduct the review must be constituted of at least 1 Aboriginal or Torres Strait Islander person;

(b) the panel may, but need not, consist of or include of a recognised Aboriginal or Torres Strait Islander entity;

(c) in conducting the review, the panel must undertake such consultation as may be required by the regulations (being consultation with a recognised Aboriginal or Torres Strait Islander entity, or other entity, prescribed by the regulations).

Part 5—State Strategy for the Safety and Support of Children and Young People

Division 1—State Strategy for the Safety and Support of Children and Young People

61—State Strategy for the Safety and Support of Children and Young People

(1) There is to be a *State Strategy for the Safety and Support of Children and Young People*.

(2) The State Strategy include the following parts:

(a) a part setting out the manner in which the State Strategy will be implemented; and

(b) a part setting out the intended outcomes in relation to the State Strategy and the measures to be used in relation to those outcomes; and

(c) a part setting out the roles and responsibilities of prescribed persons or bodies in respect of the following objectives:

(i) the reduction of risk factors that lead to child abuse and neglect;

(ii) the provision of targeted assistance to children and young people and their families to prevent children and young people from being in care;

(iii) the provision of priority support and services to children and young people in care, leaving care or who have left care; and

(d) a part setting out the manner in which, subject to this Act, government, local councils and non-government organisations should collaborate in the provision of support and services to children and young people, and their families;

(e) any other part prescribed by the regulations,

and each part must specifically address Aboriginal and Torres Strait Islander children and young people.

(3) The State Strategy may incorporate or refer to such codes, standards, documents, policy statements, proposals or other matters as the Minister thinks fit.

(4) Each prescribed person or body must, in performing its functions, have regard to, and seek to give effect to, the State Strategy (however, a prescribed person or body will be taken not to be in breach of this subsection if the person or body is acting in accordance with a requirement under this Act or any other Act or law).

(5) In this section—

prescribed person or body means—

(a) a State authority; and

(b) any other person or body, or person or body of a class, prescribed by the regulations.

62—Preparation of State Strategy

(1) The State Strategy is to be prepared by the Minister in accordance with this section.

(2) In preparing the State Strategy, the Minister—

(a) must, in accordance with any requirements set out in the regulations, consult with—

(i) State authorities; and

(ii) the Commissioner for Children and Young People; and

(iii) the Commissioner for Aboriginal Children and Young People; and

(iv) the Guardian for Children and Young People; and

(v) Aboriginal and Torres Strait Islander persons and organisations; and

(vi) people, including children and young people, who have experiences of being in care under this Act or a repealed Act; and

(vii) any other person or body prescribed by the regulations; and

(b) may consult with any other person or body the Minister thinks fit.

(3) The Minister must cause the State Strategy to be published—

(a) by notice in the Gazette; and

(b) on a website determined by the Minister.

(4) The State Strategy has effect from the day on which it is published by notice in the Gazette.

(5) The Minister must, within 6 sitting days after the State Strategy is published in the Gazette, cause a copy of the State Strategy to be laid before both Houses of Parliament.

(6) A failure of the Minister to comply with a requirement of this section does not, of itself, affect the validity of the State Strategy.

63—Annual report on State Strategy

(1) The Chief Executive must, on or before 31 December in each year, report to the Minister on the operation of the State Strategy and this Part during the preceding financial year.

(2) The Minister must, within 6 sitting days after receiving a report from the Chief Executive, cause a copy of the report to be laid before both Houses of Parliament.

64—Review of State Strategy

(1) The Minister must, at least once in each 5 year period, cause the State Strategy to be reviewed in accordance with any requirements set out in the regulations, and a report on the review to be prepared and submitted to the Minister.

(2) The Minister must, within 6 sitting days after receiving a report under subsection (1), cause a copy of the report to be laid before both Houses of Parliament.

Division 2—Children and Young People Safety and Support Plans

65—Application of Division

(1) This Division applies to the following persons and bodies:

(a) a prescribed State authority;

(b) any other person or body prescribed by the regulations.

(2) In this section—

prescribed State authority means—

(a) the administrative unit of the Public Service that is responsible for assisting a Minister in the administration of this Act; and

(b) the administrative unit of the Public Service that is responsible for assisting a Minister in the administration of the *Education and Children's Services Act 2019*; and

(c) the administrative unit of the Public Service that is responsible for assisting a Minister for the administration of the *Health Care Act 2008*; and

(d) the administrative unit of the Public Service that is responsible for assisting a Minister for the administration of the *Youth Justice Administration Act 2016*; and

(e) any other State authority prescribed by the regulations for the purposes of this paragraph.

66—Children and Young People Safety and Support Plans

(1) There is to be a *Children and Young People Safety and Support Plan* for each person or body to whom this Division applies.

(2) A Children and Young People Safety and Support Plan is to be prepared by the relevant person or body in accordance with this section.

(3) A Children and Young People Safety and Support Plan must set out—

(a) the manner in which the person or body proposes to give effect to the State Strategy; and

(b) the manner in which the person or body proposes to implement the objectives set out in section 61(2)(c); and

(c) the intended outcomes in relation to such implementation and the measures to be used in relation to those outcomes; and

(d) any other matter required by the regulations.

(4) In preparing a Children and Young People Safety and Support Plan, a prescribed State authority must consult with such persons or bodies as may be prescribed by the regulations.

(5) A prescribed State authority must publish its Children and Young People Safety and Support Plan on a website determined by the prescribed State authority.

67—Annual report on operation of Children and Young People Safety and Support Plans

(1) Each prescribed State authority must, on or before 31 October in each year, report to the Chief Executive on the operation of its Children and Young People Safety and Support Plan during the preceding financial year (including a summary of the extent to which the Plan has been implemented by the prescribed State authority).

(2) A person or body to whom this Division applies (other than a prescribed State authority) may report to the Chief Executive in accordance with subsection (1).

(3) The Chief Executive must, on or before 31 December in each year, provide to the Minister a report summarising the reports received under this section in respect of the preceding financial year.

(4) A report under subsection (3) may be combined with a report under section 63(1).

(5) The Minister must, within 6 sitting days after receiving a report from the Chief Executive under subsection (3), cause a copy of the report to be laid before both Houses of Parliament (and, if the report is combined with a report under section 63(1), then the requirement of this subsection will be satisfied on the report being laid before both Houses of Parliament in accordance with that section).

68—Review of Children and Young People Safety and Support Plans

(1) A prescribed State authority must cause a review of its Children and Young People Safety and Support Plan to be undertaken at least once in each 5 year period, and a report on the review to be prepared and submitted to the prescribed State authority.

(2) The prescribed State authority must cause a copy of the report submitted under subsection (1) to be provided to the Minister as soon as is reasonably practicable after receiving the report.

Part 6—Providing safe environments for children and young people

69—Certain organisations must have policies and procedures to ensure safe environments provided

(1) A prescribed organisation must, in accordance with any requirements set out in the regulations, prepare or adopt policies and procedures of the following kinds:

(a) policies and procedures that ensure that the requirements under Part 7 Division 1 are satisfied;

(b) policies and procedures designed to ensure that safe environments for children and young people are established and maintained in respect of the services or activities provided or undertaken by the prescribed organisation;

(c) policies and procedures designed to ensure that culturally safe environments for Aboriginal or Torres Strait Islander children and young people are established and maintained in respect of the services or activities provided or undertaken by the prescribed organisation;

(d) such other policies and procedures as may be required by the regulations.

(2) A prescribed organisation may, in accordance with any requirements set out in the regulations, from time to time vary or substitute a policy or procedure required under subsection (1).

(3) A prescribed organisation must, as soon as is reasonably practicable after preparing or adopting, or varying or substituting, the policies and procedures required under subsection (1), provide to the Chief Executive a statement—

(a) certifying that the prescribed organisation has in place policies and procedures as required under that subsection; and

(b) setting out any information required by the regulations.

(4) A statement required under subsection (3) must—

(a) be provided in a manner and form determined by the Chief Executive; and

(b) if the Chief Executive so requires, be accompanied by a copy of each policy and procedure prepared or adopted under subsection (1) as varied or substituted from time to time; and

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

(5) A prescribed organisation must, at the request of a person in relation to whom the prescribed organisation provides, or is to provide, a service, or undertakes, or is to undertake, an activity, produce for inspection a copy of the policies and procedures prepared or adopted under subsection (1), as in force at the relevant time.

(6) A prescribed organisation must, in accordance with any requirements set out in the regulations, review the policies and procedures prepared or adopted under subsection (1) at least once in every 5 year period.

(7) A prescribed organisation must not refuse or fail to comply with a requirement under this section.

Maximum penalty: $10 000.

(8) In this section—

prescribed organisation means—

(a) a State authority; or

(b) a person or body who provides a service or undertakes an activity that constitutes child-related work within the meaning of the *Child Safety (Prohibited Persons) Act 2016*; or

(c) any other person or body, or person or body of a class, prescribed by the regulations,

but does not include a person or body, or person or body of a class, prescribed by the regulations to be excluded from this definition.

Part 7—Protecting children and young people at risk of harm or significant harm

Division 1—Reporting suspicion that child or young person at risk of significant harm

70—Application of Division

The requirements under this Division are in addition to—

(a) the duty of every person to safeguard and promote the outcomes set out in section 9(2), and in particular the outcome that children and young people be kept safe from harm; and

(b) any duty a person may have to promote and ensure the safety and wellbeing of children and young people.

71—Certain persons must report suspicion that child or young person may be at risk of significant harm

(1) A prescribed person must, if—

(a) the person suspects on reasonable grounds that a child or young person is, or may be, at risk of significant harm; and

(b) that suspicion was formed in the course of the person's employment,

report that suspicion, in accordance with subsection (4), as soon as is reasonably practicable after forming the suspicion.

Maximum penalty: $10 000.

(2) However, a prescribed person need not report a suspicion under subsection (1)—

(a) if they have previously reported their suspicion in accordance with that subsection or a repealed Act and the circumstances to which the suspicion relates have not changed to a substantial extent; or

(b) if they believe on reasonable grounds that another person has reported the matter in accordance with that subsection or a repealed Act; or

(c) if their suspicion was due solely to having been informed of the circumstances that gave rise to the suspicion by a police officer or child protection officer acting in the course of their official duties; or

(d) if they believe on reasonable grounds that the Department is already aware of the information that forms the basis of the person's suspicion; or

(e) in any other circumstances prescribed by the regulations.

(3) A prescribed person may (but need not), if—

(a) the person suspects on reasonable grounds that an unborn child is at risk of harm in respect of their physical or psychological development (whether due to an act or omission of a parent or otherwise); and

(b) that suspicion was formed in the course of the person's employment,

report that suspicion in accordance with subsection (4).

(4) A person reports a suspicion under this section by doing 1 or more of the following:

(a) making a telephone notification to a telephone number determined by the Minister for the purposes of this subsection;

Note—

This telephone line is currently known as the ***Child Abuse Report Line*** or ***CARL***.

(b) making an electronic notification on an electronic reporting system determined by the Minister for the purposes of this subsection;

(c) reporting their suspicion to a person of a class, or a person occupying a position of a class, specified by the Minister by notice in the Gazette;

(d) reporting their suspicion in any other manner prescribed by the regulations,

and, in each case, providing—

(e) —

(i) in the case of an unborn child—the name and address (if known) of a parent of the unborn child; or

(ii) in any other case—the name and address (if known) of the child or young person; and

(f) information setting out the grounds for the person's suspicion; and

(g) such other information as the person may wish to provide in relation to their suspicion.

(5) Nothing in this section prevents a person from—

(a) making a report in accordance with subsection (4) if the person is concerned about the safety or wellbeing of a child or young person; or

(b) reporting or referring a matter to any other appropriate person or body under any other Act (in addition to making a report under this section).

(6) To avoid doubt, compliance with the requirements of this section does not necessarily exhaust a duty of care that may be owed to a child or young person by a prescribed person.

(7) A person who makes a report under this section will not be liable for any civil or criminal action by reason of the making of the report (including, to avoid doubt, an action for defamation).

(8) This section does not limit or derogate from any other provision of this Act or any other Act.

(9) For the purposes of this section, a reference to a person being ***employed*** will be taken to include a reference to a person who—

(a) is a self-employed person; or

(b) carries out work under a contract for services; or

(c) carries out work as a minister of religion or as part of the duties of a religious or spiritual vocation; or

(d) undertakes practical training as part of an educational or vocational course; or

(e) carries out work as a volunteer,

and a reference to something occurring in the course of the person's employment is to be construed accordingly.

(10) In this section—

allied health professional means—

(a) an art or creative therapist; or

(b) an audiologist; or

(c) a Bowen therapist; or

(d) a counsellor; or

(e) a dietitian; or

(f) an exercise physiologist; or

(g) a genetic counsellor; or

(h) a music therapist; or

(i) an orthoptist; or

(j) a prosthetist/orthotist; or

(k) a rehabilitation counsellor; or

(l) a social worker; or

(m) a sonographer; or

(n) a speech pathologist;

prescribed person means—

(a) a registered health practitioner (within the meaning of the *Health Practitioner Regulation National Law*); or

(b) an allied health professional; or

(c) a police officer; or

(d) a community corrections officer under the *Correctional Services Act 1982*; or

(e) a minister of religion; or

(f) an employee of, or a volunteer in, an organisation formed for religious or spiritual purposes; or

(g) a teacher employed as such in a school (within the meaning of the *Education and Early Childhood Services (Registration and Standards) Act 2011*) or a preschool or kindergarten; or

(h) an employee of, or a volunteer in, an organisation that provides health, welfare, education, sporting, recreational, child care or residential services wholly or partly for children or young people, being a person who—

(i) provides such services directly to children or young people; or

(ii) holds a management position in the organisation the duties of which include direct responsibility for, or direct supervision of, the provision of those services to children or young people; or

(i) any other person, or person of a class, prescribed by the regulations.

Division 2—Responding to reports indicating children and young people at risk of harm

72—Assessment of reports indicating child or young person at risk of harm

(1) Subject to subsection (2), the Chief Executive must cause—

(a) each report made under section 71; and

(b) any other report (including, to avoid doubt, a quality of care report) made to the Department that a child or young person may be at risk of harm (however described and whether or not received under this Act),

to be assessed in accordance with any requirements set out in the regulations.

(2) If more than 1 report is made (whether under section 71 or otherwise, and whether or not by same person) in relation to the same circumstances, the Chief Executive may treat the reports as a single report (and, for the purposes of this Act, a reference to a report will be taken to include a reference to all such reports).

(3) The Chief Executive may, in the course of an assessment under this section, make use of or rely on such systems of information gathering, collating or reporting as the Chief Executive thinks fit (whether or not the system is operated or provided by a State authority).

73—Chief Executive must take certain actions following assessment if child or young person at risk of harm

(1) Without limiting any other action that may be taken by the Chief Executive, if on completion of an assessment under section 72 the Chief Executive suspects that a child or young person is at risk of harm, the Chief Executive—

(a) if the report is a quality of care report—must cause an action to be taken in accordance with the Quality of Care Report Guidelines; or

(b) in any other case—must cause 1 or more of the following actions to be taken:

(i) an assessment of the circumstances of the child or young person under section 74;

(ii) if the Chief Executive is satisfied that an assessment under section 74 is unnecessary, having regard to such of the circumstances of the child or young person as may already be known to the Chief Executive—a response that, in the opinion of the Chief Executive, more appropriately addresses the risk to the child or young person;

(iii) a referral of the matter to an appropriate State authority under section 75;

(iv) an application to the Minister to give a direction under section 18 in relation to the matter;

(v) if the Chief Executive is satisfied that—

(A) the matter has previously been dealt with under this Act or a repealed Act and there is no reason to reexamine the matter; or

(B) the nature of the harm or potential harm to which the matter relates is such that it would not be expected to have a significant adverse impact on the child or young person's safety or wellbeing; or

(C) it is not reasonably practicable for further action to be taken in respect of the matter; or

(D) the matter is trivial, vexatious or frivolous,

the Chief Executive may decline to take further action.

(2) The Chief Executive must, in accordance with any requirements set out in the regulations—

(a) cause a record of each action taken under this section and the reasons for the action to be kept in relation to each report made to the Department; and

(b) cause statistical information relating to action taken under this section to be included in the annual report under section 25.

74—Chief Executive may assess circumstances of child or young person

(1) Subject to this Act, the Chief Executive may cause an assessment of the circumstances of a child or young person to be carried out—

(a) if a report is made under section 71 and the Chief Executive suspects on reasonable grounds that the child or young person may be at risk of harm; or

(b) if the Court makes an order under section 110; or

(c) in any other circumstances that the Chief Executive thinks appropriate.

(2) The Chief Executive must cause an assessment of the circumstances of a child or young person to be carried out if the Chief Executive issues an instrument of guardianship or a restraining notice in relation to the child or young person.

(3) Without limiting any other provision of this Act, the Chief Executive or a child protection officer, may in relation to an assessment referred to in subsection (1)(b), direct any person who has examined, assessed or treated a person who is a party to the application for the order under section 110 to provide to the Chief Executive a written report of that examination, assessment or treatment.

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

Maximum penalty: $10 000 or imprisonment for 6 months.

(5) Subsection (4) does not apply to a child or young person to whom a direction is given under this section.

(6) The regulations may make further provisions relating to an assessment under this section.

75—Referral of matter to other State authority

(1) If, following an assessment of a matter under section 72, the Chief Executive determines that it is more appropriate that a State authority other than the Department deal with the matter, or with a particular aspect of the matter, the Chief Executive must refer the matter to that State authority.

(2) To avoid doubt—

(a) a matter may be referred to more than 1 State authority; and

(b) a matter may be dealt with under this section even if it is referred to a State authority under another Act.

(3) The Chief Executive may, if of the opinion that it is appropriate, give directions or guidance in relation to a matter to a State authority to which the matter is referred.

(4) Without limiting this section or any other Act or law, a State authority to which a matter is referred must deal with the matter in a timely manner.

76—Direction that child or young person be examined, assessed or treated

(1) This section applies to the following children and young people:

(a) a child or young person who is, having been removed under section 82, in the custody of the Chief Executive;

(b) a child or young person in relation to whom an order of the Court under Part 10 authorising examination or assessment is in force;

(c) a child or young person in relation to whom an instrument of guardianship or a restraining notice is in force;

(d) if the Chief Executive determines that it is, having regard to the operation of Part 2 and Part 4 (if applicable), necessary or appropriate for a child or young person to be examined or assessed—that child or young person.

(2) If the Chief Executive is of the opinion that it is necessary or desirable that a child or young person to whom this section applies be professionally examined or assessed, the Chief Executive may, by notice in writing, direct that the child or young person undergo such examination or assessment as may be specified in the notice.

(3) If the Chief Executive gives a direction under subsection (2), an employee of the Department may take the child or young person to such persons or places (including admitting the child or young person to hospital) as may be specified in the notice for the purpose of having the child or young person professionally examined or assessed.

(4) Without otherwise limiting any Act or law regulating a particular health profession, a person to whom a child or young person is taken under this section may give such treatment to the child or young person as the person thinks necessary for alleviating any injury or suffering of the child or young person.

(5) Without otherwise limiting the *Consent to Medical Treatment and Palliative Care Act 1995*, if a person is to examine, assess or treat a child or young person in accordance with this section, the consent of the child or young person's parent or guardian is not required in order for the examination, assessment or treatment to take place.

(6) Nothing in this section limits the *Criminal Law (Forensic Procedures) Act 2007*.

(7) A person who examines, assesses or treats a child or young person in accordance with this section must, as soon as reasonably practicable after doing so, provide to the Chief Executive a written report on the examination, assessment or treatment.

Maximum penalty: $10 000.

77—Direction that person undergo certain assessments

(1) If the Chief Executive reasonably suspects that a child or young person (not being an unborn child) is at risk of harm as a result of the use of alcohol or other drug (or both) by a parent, guardian or other person, the Chief Executive may, by notice in writing, direct the person to undergo an approved drug and alcohol assessment.

(2) If the Chief Executive reasonably suspects that a child or young person (not being an unborn child) is at risk of harm as a result of a lack of parenting capacity 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 person to undergo an approved parenting capacity assessment.

(3) If the Chief Executive reasonably suspects that a child or young person (not being an unborn child) is at risk of harm 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 person to undergo an approved mental health assessment.

(4) A person must not refuse or fail to comply with a direction under this section.

Maximum penalty: $1 250.

(5) A notice under this section must set out the information (if any) required by the regulations.

(6) For the purposes of this section—

(a) a reference to an ***approved drug and alcohol assessment*** will be taken to be a reference to a drug and alcohol assessment of a kind approved by the Chief Executive by notice in the Gazette; and

(b) 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 the Gazette; and

(c) a reference to an ***approved parenting capacity assessment*** will be taken to be a reference to a parenting capacity assessment of a kind approved by the Chief Executive by notice in the Gazette.

78—Random drug and alcohol testing

(1) This section applies to—

(a) a person who the Chief Executive reasonably suspects is putting a child or young person (not being an unborn child) at risk of harm as a result of the person's use of alcohol or other drug (or both); or

(b) any other person, or person of a class, prescribed by the regulations.

(2) The Chief Executive may, by notice in writing and in accordance with the scheme set out in the regulations, require a person to whom this section applies to take part in random drug and alcohol testing and, for that purpose, to take the action, and within the period, specified in the notice.

(3) Without limiting any other regulations that may be made in relation to the scheme for random drug and alcohol testing, the regulations must include provisions—

(a) authorising the taking of specified forensic material for the purposes of this Act; and

(b) requiring forensic material to be tested to identify any drug or alcohol that may be present in the material; and

(c) requiring or authorising the results of such testing to be provided to the Chief Executive or other specified person or body.

(4) A person to whom this section applies must not, without reasonable excuse, refuse or fail to comply with a requirement under this section.

Maximum penalty: $1 250.

(5) A person is not entitled to refuse or fail to comply with a requirement under this section on the ground that the person would, or might, by complying with that requirement, provide evidence that could be used against the person.

(6) To avoid doubt, for the purposes of the *Criminal Law (Forensic Procedures) Act 2007*, the taking of forensic material in the course of a random drug and alcohol test is authorised under this Act.

79—Direction that person undertake rehabilitation program

(1) The Chief Executive may, by notice in writing, direct a person to whom section 78 applies to undertake a specified approved drug and alcohol rehabilitation program.

(2) A person must not, without reasonable excuse, refuse or fail to comply with a direction under subsection (1).

Maximum penalty: $1 250.

(3) A notice under subsection (1) must set out the information required by the regulations.

(4) For the purposes of this section, a reference to an ***approved drug and alcohol rehabilitation program*** will be taken to be a reference to a drug and alcohol rehabilitation program of a kind approved by the Chief Executive by notice in the Gazette.

80—Forensic material not to be used for other purposes and test results not admissible in other proceedings

(1) Forensic material obtained in the course of an approved drug and alcohol assessment, a random drug and alcohol test or an approved drug and alcohol rehabilitation program must not be used for a purpose other than a purpose contemplated by this Act.

(2) The results of an approved drug and alcohol assessment, a random drug and alcohol test or an approved drug and alcohol rehabilitation program—

(a) will not be admissible in evidence against the person to whom the results relate, other than in proceedings for an order of the Court under this Act; and

(b) may not be relied on as grounds for the exercise of any search power or the obtaining of any search warrant.

81—Destruction of forensic material

Any person or body who is in possession of forensic material obtained in the course of an approved drug and alcohol assessment, a random drug and alcohol test or an approved drug and alcohol rehabilitation program must ensure that such forensic material is destroyed in accordance with any requirements set out in the regulations.

Division 3—Removal of children and young people

82—Removal of child or young person

(1) Subject to this section, if a child protection officer believes on reasonable grounds that—

(a) a child or young person is at risk of significant harm; and

(b) it is necessary to remove the child or young person in order to protect them from significant harm or further significant harm; and

(c) there is no reasonably practicable alternative to removing the child or young person in the circumstances,

the child protection officer may remove the child or young person from any premises, place, vehicle or vessel using such force (including breaking into the premises, place, vehicle or vessel) as is reasonably necessary for the purpose.

(2) If a child protection officer believes on reasonable grounds—

(a) that a child or young person would, if the child or young person were residing with a specified person with whom the child or young person ordinarily resides, or with whom the child or young person is likely to reside, be at risk of significant harm; and

(b) the child or young person is residing with a person other than the specified person; and

(c) the child protection officer does not consider it to be in the best interests of the child or young person to be removed from that location,

the child protection officer may, instead of removing the child or young person in accordance with subsection (1) but acting in accordance with any requirements set out in the regulations, issue a notice (a ***custody notice***) placing the child or young person in the custody of the Chief Executive.

(3) Without limiting the generality of a preceding subsection, the regulations may set out circumstances in which 1 or more of the requirements under those subsections will be taken to have been satisfied.

(4) If a child or young person contemplated by subsection (1)—

(a) is admitted to a hospital for medical treatment; or

(b) is residing at any other prescribed premises, or is residing at premises for treatment of a prescribed kind,

and the child protection officer does not consider it to be in the best interests of the child or young person to be removed from that location, the child protection officer may, instead of removing the child or young person in accordance with subsection (1) but acting in accordance with any requirements set out in the regulations, issue a notice (a ***custody notice***) placing the child or young person in the custody of the Chief Executive.

(5) A custody notice issued under this section must be served on—

(a) if the child or young person is of or above 10 years of age—the child or young person; and

(b) in the case of a custody notice issued under subsection (2)—the person with whom the child or young person is residing; and

(c) in the case of a custody notice issued under subsection (4)—the person in charge of the hospital or other premises.

(6) The Chief Executive has custody of a child or young person—

(a) in the case of a child or young person removed in accordance with subsection (1)—from the time at which the child or young person is removed under that subsection; or

(b) in the case of a child or young person in relation to whom a custody notice is issued under subsection (2) or (4)—from the time at which the custody notice is issued.

(7) A child protection officer who is a police officer below the rank of inspector may only remove a child or young person or issue a custody notice in relation to a child or young person under this section with the prior approval of a police officer of or above the rank of inspector.

(8) A child protection officer who is an employee of the Department may only remove a child or young person or issue a custody notice in relation to a child or young person with the Chief Executive's prior approval.

(9) Subsections (7) and (8) do not apply if the police officer or child protection officer (as the case may be) believes on reasonable grounds that the delay involved in seeking prior approval would significantly increase the risk of significant harm, or further significant harm, being caused to the child or young person.

83—Action following removal etc of child or young person

(1) A child or young person removed under section 82, or in relation to whom a custody notice is issued under that section, is, by force of this subsection, in the custody of the Chief Executive until—

(a) the child or young person is returned to the custody of a parent or guardian; or

(b) an order of the Court is made in relation to the custody or guardianship of the child or young person; or

(c) the end of the fifth business day following the day on which the child or young person was removed or the custody notice issued,

whichever occurs first.

(2) However, a child or young person must not be returned to the custody of a parent or guardian if the Chief Executive or a child protection officer (as the case may be) reasonably suspects that, if the child or young person were to be so returned, the child or young person would be at risk of harm.

Division 4—Intervention if parent of child or young person found guilty of certain offences

84—Interpretation

In this Division—

instrument period means the period commencing at the time an instrument of guardianship—

(a) is served on the offender in accordance with section 86(4)(a); or

(b) is lodged with the Court in accordance with section 86(4)(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 88);

parent, of a child or young person, does not include—

(a) a step-parent of the child or young person; or

(b) a person who stands *in loco parentis* to the child or young person;

qualifying offence means any of the following offences (whether committed before or after the commencement of this Division) where the victim was a child or young person and the offender was a parent of the child or young person:

(a) murder;

(b) manslaughter;

(c) an offence against any of the following sections of the *Criminal Law Consolidation Act 1935*:

(i) section 14 (criminal neglect);

(ii) section 20A (choking, suffocation or strangulation in a domestic setting);

(iii) section 23 (causing serious harm);

(iv) section 29(1) or (2) (acts endangering life or creating risk of serious harm);

(v) section 48 (rape);

(vi) section 48A (compelled sexual manipulation);

(vii) section 49 (unlawful sexual intercourse);

(viii) section 50 (sexual abuse of a child);

(ix) section 51 (sexual exploitation of person with a cognitive impairment);

(x) section 56 (indecent assault);

(xi) section 58 (acts of gross indecency);

(xii) section 59 (abduction of male or female person);

(xiii) section 60 (procuring sexual intercourse);

(xiv) section 63 (production or dissemination of child exploitation material);

(xv) section 63B (procuring child to commit indecent act etc);

(xvi) section 66 (sexual servitude and related offences);

(xvii) section 67 (deceptive recruiting for commercial sexual services);

(xviii) section 68 (use of children in commercial sexual services);

(xix) section 72 (incest);

(d) an offence under a previous enactment that corresponds to an offence referred to in a preceding paragraph;

(e) an offence constituted of an attempt to commit an offence referred to in a preceding paragraph;

(f) any other offence prescribed by the regulations;

(g) an offence under the law of another jurisdiction that corresponds to an offence referred to in a preceding paragraph;

restraining notice period means the period commencing at the time at which the restraining notice is served on the offender in accordance with section 87(4)(a) and ending 60 days later (or such longer period as may be allowed by the Court on an application under section 88).

85—Chief Executive to be notified if person found guilty of qualifying offence

If a person is found guilty of a qualifying offence, the Courts Administration Authority must notify the Chief Executive of that fact as soon as reasonably practicable after the finding of guilt.

86—Temporary instruments of guardianship

(1) The Chief Executive must, if the Chief Executive becomes aware that a child or young person born after 22 October 2018 is residing with a parent of the child or young person 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 or young person.

(2) If the Chief Executive issues an instrument of guardianship, the child or young person specified in the instrument will, for all purposes, be under the guardianship of the Chief Executive during the instrument period.

(3) Subsection (2) applies subject to an order of the Court under this Act to the contrary.

(4) An instrument of guardianship issued under this section must—

(a) be served on the offender as soon as practicable after it has been issued; and

(b) be lodged with the Court in accordance with the rules of the Court (and may be so lodged whether or not it has been served in accordance with paragraph (a)).

(5) Subject to subsection (6), this Act applies to an instrument of guardianship, while it remains in force, as if it were an order of the Court under this Act and as if the parties to that order were—

(a) the parents of the child or young person to whom the instrument relates; and

(b) the child or young person to whom the instrument relates; and

(c) a person who would, but for the instrument, have had custody of or guardianship for the child or young person to whom the instrument relates; and

(d) the Chief Executive.

(6) Until the application required under section 89 in relation to an instrument of guardianship is made to the Court, any application to the Court required under section 117 in relation to the instrument may only seek to vary arrangements for the care of the child or young person.

(7) 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.

87—Restraining notices

(1) The Chief Executive must, if the Chief Executive becomes aware that a child or young person is residing, or is about to reside, with a person (not being a parent of the child or young person) 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.

(2) A restraining notice may prohibit the offender from doing 1 or more of the following:

(a) residing in the same premises as the child or young person;

(b) coming within a specified distance of the residence of the child or young person;

(c) having any contact with the child or young person (except in the presence of a specified person or person of a specified class);

(d) having any contact at all with the child or young person,

during the restraining notice period.

(3) Subsection (2) applies subject to an order of the Court under this Act to the contrary.

(4) A restraining notice issued in relation to an offender must—

(a) be served on the offender as soon as practicable after it has been issued; and

(b) be lodged with the Court in accordance with the rules of the Court (and may be so lodged whether or not it has been served in accordance with paragraph (a)).

(5) A person who contravenes a restraining notice is guilty of an offence.

Maximum penalty: Imprisonment for 2 years.

(6) A person does not commit an offence against subsection (5) in respect of an act or omission unless the person knew that the act or omission constituted a contravention of the notice or was reckless as to that fact.

(7) 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.

88—Extension of periods for instruments and notices

The Court may, on application by the Chief Executive, extend an instrument period or a restraining notice period if satisfied that it is appropriate to do so.

89—Application for Court orders to be made if instrument of guardianship or restraining notice issued

The Chief Executive must, as soon as is reasonably practicable (and, in any case, within the applicable instrument period or restraining notice period) after an instrument of guardianship or a restraining notice in relation to a child or young person has been issued, apply for an order or orders of an appropriate kind under Part 10 in relation to the child or young person.

Note—

Orders revoking or varying instruments of guardianship or restraining notices may also be made by the Court under Part 10.

Part 8—Family group conferences

90—Application of Part

This Part applies in relation to a child or young person whether or not they are, or are to be, in care.

91—Purpose of family group conferences

(1) The purpose of a family group conference is to provide an opportunity for a child or young person and their family, in accordance with this Part—

(a) to make informed decisions as to the arrangements for the care of the child or young person; and

(b) to make voluntary arrangements for the care of the child or young person (being arrangements that are consistent with the requirements of this Act); and

(c) to review those arrangements from time to time.

(2) Subject to this Act, a failure to hold a family group conference does not, of itself, affect the validity of an application for an order of the Court under this Act, nor any such order.

92—Family Group Conference Guidelines

(1) The Chief Executive must publish guidelines (the ***Family Group Conference Guidelines***) relating to the conduct of family group conferences under this Act.

(2) Without limiting the matters that may be included in the Family Group Conference Guidelines, the guidelines must—

(a) set out the people who are entitled to attend family group conferences; and

(b) set out how valid decisions are made at family group conferences; and

(c) provide for the keeping of records of decisions made at family group conferences; and

(d) set out how and when reviews of arrangements made at family group conferences are to be conducted; and

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

(3) The Family Group Conference Guidelines may make different provision according to the children or young people, or matters or circumstances, to which they are expressed to apply.

93—Chief Executive may convene family group conference

(1) The Chief Executive may convene a family group conference in respect of a child or young person if—

(a) the Chief Executive suspects that the child or young person is at risk of harm; and—

(b) the Chief Executive is of the opinion that it would be appropriate in all of the circumstances to make arrangements in relation to the care of the child or young person by means of a family group conference.

(2) The Chief Executive may convene a family group conference in respect of an unborn child if—

(a) the Chief Executive suspects that there is a risk of harm to the physical or psychological development of the unborn child (whether due to an act or omission of a parent or otherwise); and

(b) the Chief Executive is of the opinion that it would be appropriate in all of the circumstances to make arrangements in relation to the care of the unborn child once born by means of a family group conference.

(3) A family group conference is to be conducted by a coordinator nominated by the Chief Executive.

94—Procedures and attendees at family group conferences

(1) A family group conference is to be conducted by the coordinator of the family group conference in accordance with the Family Group Conference Guidelines.

(2) Subject to this Act and the Family Group Conference Guidelines, the coordinator of a family group conference may determine the procedures of the conference.

(3) The coordinator of a family group conference may exclude a person entitled to attend a family group conference under the Family Group Conference Guidelines (including, to avoid doubt, the child or young person to whom the conference relates or the child or young person's parents or guardians) from attending a family group conference if the coordinator is satisfied that to do so would be in the best interests of the child or young person.

(4) The coordinator of a family group conference must, in respect of the attendees at (or persons to be excluded from attending) the conference, consult with the child or young person and other persons (if any) in accordance with the Family Group Conference Guidelines.

(5) The coordinator of a family group conference must, as far as is reasonably practicable, ensure that—

(a) the conference is held at a time and place that is suitable to the child or young person and the child or young person's parents or guardians; and

(b) a person who is entitled to attend the conference is given notice in accordance with the Family Group Conference Guidelines; and

(c) a suitable person (who, to avoid doubt, need not be a legal practitioner) is arranged to act as advocate for the child or young person at the conference.

(6) However, the coordinator of a family group conference need not comply with subsection (5)(c) if they are satisfied that the child or young person has made an informed and independent decision to waive their right to be so represented.

95—Chief Executive etc to give effect to decisions of family group conferences

(1) Subject to this Act, the Chief Executive and State authorities should, to the extent that it is consistent with section 10 to do so, perform their functions so as to give effect to valid decisions made at a family group conference.

(2) However, if a valid decision is made at a family group conference but is not implemented or complied with, the Chief Executive may apply for such an order of the Court under Part 10 as the Chief Executive considers appropriate.

(3) Nothing in this section—

(a) requires or authorises the Chief Executive or any other person to do something that is unlawful; or

(b) requires or authorises the Chief Executive or any other person to not do something that is required to be done under another Act or law; or

(c) creates legally enforceable rights or obligations on the part of the Crown, the Chief Executive, the child or young person or any other person.

96—Statements made at family group conferences not admissible

(1) Subject to subsection (2), evidence of any statement made at a family group conference is not admissible in any proceedings.

(2) The written record of the decisions made at a family group conference is admissible in proceedings for the purpose of establishing that those decisions were made.

Part 9—Voluntary custody agreements

97—Voluntary custody agreements

(1) Subject to this section, the parents or guardians of a child or young person and the Chief Executive may enter into an agreement (a ***voluntary custody agreement***) under which the Chief Executive will have custody of the child or young person while the agreement has effect.

(2) If—

(a) the whereabouts of a particular parent or guardian of a child or young person cannot, after reasonable enquiries, be ascertained; or

(b) a particular parent or guardian of a child or young person has failed to respond within a reasonable period of time to a request that they enter into a voluntary custody agreement; or

(c) it is not, in all the circumstances of the case, reasonably practicable to request a particular parent or guardian of a child or young person to enter into a voluntary custody agreement,

the remaining parent or guardian of the child or young person (as the case requires) may enter into a voluntary custody agreement in respect of the child or young person.

(3) Negotiations for a voluntary custody agreement may be initiated by a parent or guardian of a child or young person, or by a child or young person of or above 16 years of age.

(4) A voluntary custody agreement in relation to a child or young person of or above 16 years of age can only be entered into, or extended, with the consent of the child or young person (however, the consent of the child or young person is not required if the child or young person lacks the capacity to consent to such an agreement).

(5) If the Chief Executive is satisfied that a child or young person under 16 years of age has a sufficient understanding of the consequences of a voluntary custody agreement, the child or young person must be consulted before a voluntary custody agreement relating to them can be entered into or extended.

(6) A voluntary custody agreement—

(a) must be in writing; and

(b) may be terminated at any time—

(i) by a parent or guardian of the child or young person who is a party to the agreement; or

(ii) by agreement between the parties to the agreement; and

(c) will be taken to have been terminated on any order being made under this Act or any other Act or law placing the child or young person in the custody, or under the guardianship, of a person.

(7) A termination of a voluntary custody agreement under subsection (6)(b)(i) must be by notice in writing to the Chief Executive.

(8) If a voluntary custody agreement relates to a child or young person of or above 16 years of age, the Chief Executive must, if the Chief Executive is satisfied that proper arrangements exist for the care of the child or young person, terminate the agreement on the request of the child or young person (unless the child or young person lacks the capacity to understand the nature of terminating the agreement, in which case the Chief Executive is not obliged to so terminate the agreement).

(9) Unless the agreement is terminated earlier under this section, a voluntary custody agreement—

(a) has effect for the period (not exceeding 3 months) specified in the agreement; and

(b) may, on its expiration, be extended by the parties to the agreement (but not so that the agreement will operate for a total period of more than 6 months).

Part 10—Proceedings before the Youth Court of South Australia

Division 1—Parties and procedures etc in relation to Court orders

98—Application for Court orders

(1) An application for an order under this Part may be made by—

(a) the Minister; or

(b) the Chief Executive; or

(c) a person authorised by the Chief Executive to apply for such an order.

(2) Subject to this section, an application for an order under this Part (other than an order under section 110) may be made—

(a) if the applicant—

(i) reasonably suspects that a child or young person is at risk of harm; and

(ii) is of the opinion that the making of such an order is necessary or appropriate to—

(A) protect the child or young person from harm; or

(B) allow the performance of functions under this Act in respect of the child or young person; or

(b) if the applicant is of the opinion that—

(i) proper arrangements exist for the care and protection of a child or young person; and

(ii) it would be in the best interests of the child or young person for the arrangements to be the subject of such an order; or

(c) if the applicant is acting under Division 5; or

(d) if the order is to be made with the consent of the parties to the proceeding; or

(e) in any other circumstances with the permission of the Court.

(3) An application for an order under section 110 may be made if the applicant is of the opinion—

(a) that there is information or evidence leading to a reasonable suspicion that a child or young person is at risk of harm; and

(b) that further assessment of the matter is warranted; and

(c) that—

(i) the assessment cannot properly proceed without an order of the Court under section 110; or

(ii) it is desirable that the child or young person be protected from the potential risk of harm while the matter is being assessed.

(4) Without limiting any other provision of this Part, a person may apply for more than 1 order, or more than 1 kind of order, in a single application made to the Court.

(5) Before applying for a prescribed Court order in relation to a child or young person removed under this Act, the Chief Executive must assess the likelihood of reunification occurring and, if reunification is likely, the period within which reunification is likely to occur.

(6) In this section—

prescribed Court order means the following orders of the Court:

(a) an order placing a child or young person under the guardianship of the Chief Executive or another person (except a specified person guardianship order made under section 123);

(b) an order granting custody of a child or young person to the Chief Executive or another person;

(c) any other order prescribed by the regulations.

99—Parties to proceedings

(1) Each of the following persons is a party to an application for an order in relation to a child or young person under this Part, or for the variation, extension or revocation of such an order:

(a) the applicant;

(b) the child or young person;

(c) each parent or guardian of the child or young person;

(d) in the case of an application for a specified person guardianship order, or an order placing the child or young person in the custody, or under the guardianship, of a specified person or persons—each person under whose custody or guardianship the child or young person is to be placed under the order sought;

(e) in the case of an application for revocation or discharge of a specified person guardianship order—the Chief Executive.

(2) If the Court is satisfied in any proceedings that it should make an order under this Part binding on a person who is not a party to the proceedings, the Court—

(a) may join that person as a party to the proceedings; and

(b) must allow the person a reasonable opportunity to make representations to the Court as to why such an order should not be made.

100—Copy of application to be served on parties

(1) A copy of an application for an order under section 110 or 111, or for the variation, extension or revocation of such an order, must be served personally on—

(a) if the child or young person who is the subject of the application is of or above 10 years of age—the child or young person to whom the application relates; and

(b) each other party to the application.

(2) A copy of an application must be endorsed with a notification of the place, date and time for the hearing of the application.

(3) If it is not reasonably practicable to serve a copy of an application personally on a person, or the whereabouts of the person cannot, after reasonable enquiries, be ascertained, the copy of the application may instead be served on that person in accordance with section 51(2)(b) or (c) of the *Legislation Interpretation Act 2021* or in any other manner authorised by the Court.

(4) The Court must not proceed to hear an application for an order under section 110 or 111 unless each party 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.

101—Approved carers to be provided opportunity to be heard

(1) Without limiting any other provision of this Act, the Court should, unless the Court is of the opinion that it would not be in the best interests of the child or young person to do so, allow an approved carer of a child or young person a reasonable opportunity to make representations to the Court in any proceedings relating to the child or young person under this Act.

(2) The Court may determine the manner and form in which such representations are to be heard.

102—Other interested persons may be heard

(1) In any proceedings under this Act relating to a child or young person, the Court may, on the application of—

(a) a member of the child or young person's family; or

(b) a person who has at any time had the care of the child or young person; or

(c) a person who has counselled, advised or aided 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.

(2) The Court may determine the manner and form in which such submissions are to be heard.

103—Court not bound by rules of evidence

Subject to this Act, in any proceedings under this Act the Court—

(a) is not bound by the rules of evidence but may inform itself as it thinks fit; and

(b) must act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms.

104—Standard of proof

A fact to be proved in proceedings under this Act (other than proceedings for an offence) is to be proved on the balance of probabilities.

105—Duties of legal practitioners when representing child or young person

(1) In acting for a child or young person under this Act, 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, having regard to Part 2;

(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.

(2) 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.

106—Views of child or young person to be heard

(1) In any proceedings under this Act, a child or young person to whom the proceedings relate must be given a reasonable opportunity to personally present to the Court their views related to their ongoing care and protection.

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

(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.

Division 2—Case management

107—Expeditious hearings and adjournments

(1) All proceedings under this Act must be dealt with expeditiously, with due regard to the degree of urgency of each particular case.

(2) Without limiting subsection (1), once a trial under this Act commences—

(a) it should, as far as is practicable, continue without adjournment until all evidence has been presented; and

(b) judgement should be delivered as soon as is practicable after all evidence has been presented.

(3) Without limiting the reasons for which the Court may adjourn proceedings under this Act, the Court may adjourn the hearing of an application for the purpose of referring specified matters to a family group conference for consideration and report to the Court by the conference.

(4) The Court may, on an adjournment, make such of the orders it is empowered to make under this Part as it thinks appropriate.

108—Conferences of parties

(1) The Court may, if the Court considers it desirable to do so, convene a conference between the parties to proceedings for the purpose of determining the matters that are in dispute in the proceedings, or resolving any such matters.

(2) A conference may be convened before or during the hearing of proceedings.

(3) A judicial officer of the Court, other than the one who is hearing or is to hear the proceedings, will preside over such a conference.

(4) A conference is to be conducted in accordance with any rules determined by the Court.

(5) Counsel for parties to the proceedings are to be admitted to such a conference.

(6) Evidence of anything said or done at such a conference is, except by consent of all parties to the proceedings, not admissible in the proceedings.

Division 3—Court may convene family group conference

109—Court may convene family group conference

(1) The Court may, if the Court considers that it would be appropriate in all of the circumstances to make arrangements in relation to the care of a child or young person by means of a family group conference, convene a family group conference in respect of the child or young person.

(2) A family group conference convened under subsection (1) is to be conducted by a coordinator nominated by the Judge of the Court.

(3) Subject to this Act, the provisions of Part 8 (including, in the case of a family group conference convened in respect of an Aboriginal or Torres Strait Islander child or young person, any modifications made by Part 4) apply to a family group conference convened by the Court under this section as if it were a conference convened by the Chief Executive under that Part.

Division 4—Court orders

110—Assessment orders

(1) The Court may, on an application under this Part, make an order (an ***assessment order***) granting custody of a specified child or young person to the Chief Executive for a specified period not exceeding 8 weeks to enable an assessment of the circumstances of the child or young person to be carried out.

(2) The Court may only make an assessment order in relation to a particular child or young person once in any 6 month period.

(3) An application for an assessment order—

(a) may only be adjourned once (and the period of adjournment cannot exceed 7 days); and

(b) must be determined within 2 weeks after the application is made.

(4) The Court may, on an application by the Chief Executive, extend the period that an assessment order remains in force for an additional period not exceeding 4 weeks.

(5) The Court may, on making an assessment order, make such ancillary orders as the Court thinks fit (including, to avoid doubt, orders authorising the Chief Executive to take such action as may be reasonably necessary to facilitate the assessment).

(6) An order made by the Court under this section is not subject to appeal.

111—Other orders that may be made by Court

(1) If, on an application under this Act and having regard to Part 2, the Court is satisfied that it is appropriate to do so, the Court may make 1 or more of the following orders in relation to a child or young person:

(a) an order requiring—

(i) the child or young person; or

(ii) a parent or guardian of the child or young person; or

(iii) any other person who has the care of the child or young person,

to enter into a written undertaking (for a specified period not exceeding 12 months) to do a specified thing, or to refrain from doing a specified thing, and, if the Court thinks fit, requiring the child or young person to be under the supervision of the Chief Executive or some other specified person or body during the period of the undertaking;

(b) an order authorising or requiring examination and assessment of the child or young person;

(c) an order authorising or directing the assessment, by such person as the Court may specify, of a parent, guardian or other person who has, or is responsible for, the care of the child or young person to determine the capacity of that person to care for the child or young person (including, to avoid doubt, a drug and alcohol assessment or mental health assessment);

(d) in the case of a child or young person who is at risk of being removed from the State for a purpose set out in section 5(2)(c)(i) or (ii)—such orders as the Court thinks necessary or appropriate to prevent the child or young person from being so removed, including (without limiting the generality of this paragraph)—

(i) an order preventing a specified person from removing the child or young person from the State; or

(ii) an order requiring that the child or young person's passport be held by the Court for a period specified in the order or until further order;

(e) an order placing the child or young person, for a specified period not exceeding 12 months, under the guardianship of the Chief Executive;

(f) an order placing the child or young person, for a specified period not exceeding 12 months, under the guardianship of a specified person or persons (not exceeding 2);

(g) an order placing the child or young person under the guardianship of the Chief Executive until they attain 18 years of age;

(h) an order placing the child or young person under the guardianship of a specified person or persons (not exceeding 2) until they attain 18 years of age;

Note—

This is also a specified person guardianship order.

(i) an order granting custody of the child or young person, for a specified period not exceeding 12 months, to—

(i) a parent or guardian of the child or young person; or

(ii) a member of the child or young person's family; or

(iii) any other person that the Court thinks appropriate in the circumstances of the case;

(j) an order granting custody of the child or young person to the Chief Executive for a specified period;

(k) an order directing a person to do 1 or more of the following:

(i) to cease or refrain from residing in the same premises as the child or young person;

(ii) to refrain from coming within a specified distance of a specified place;

(iii) to do any specified thing, or to refrain from doing any specified thing, in order to minimise the risk of harm to the child or young person;

(l) an order revoking an instrument of guardianship or a restraining notice;

(m) such consequential or ancillary orders as the Court thinks fit, including (without limiting the generality of this paragraph) an order—

(i) requiring a person who has guardianship or custody of the child or young person pursuant to an order of the Court to care for the child or young person in a specified way; or

(ii) requiring a parent, guardian or other person who has the care of a child or young person to undertake a specified course of instruction or a programmed activity in order to increase their capacity to care for the child or young person.

(2) Without limiting the orders that can be made under subsection (1), the Court may make an order placing a child or young person under the guardianship of a specified parent of the child or young person.

Note—

Such an order would confer guardianship on the specified parent to the exclusion of the rights of any other parent of the child or young person—see subsection (5).

(3) The Court, in considering whether it is appropriate to make an order under subsection (1), is not to have regard to—

(a) the person or persons with whom the child or young person is, or is to be, placed by the Chief Executive under this Act; or

(b) any contact arrangements in respect of the child or young person determined by the Chief Executive under this Act.

(4) Subject to this section, an order under this section has effect for the period specified in the order.

(5) If the Court places a child or young person under the guardianship of the Chief Executive or any other person or persons, the Chief Executive or the other person or persons is or are the lawful guardian or guardians of the child or young person to the exclusion of the rights of any other person.

(6) An order under this section ceases to have effect when the child or young person to whom the order relates attains 18 years of age.

112—Interim orders

(1) The Court may make such interim orders in relation to an application under this Part as the Court thinks fit.

(2) However, interim orders relating to an assessment order must not be inconsistent with section 110.

113—Limitations on orders that may be made by Court

(1) Nothing in this Act authorises the Court to make orders of the following kinds (including in an interim order, or as part of any other order, under this Part):

(a) an order relating to the placement (including removing a child or young person from a particular placement) of a child or young person who is in the custody, or under the guardianship, of the Chief Executive;

(b) an order making contact arrangements (however described) in respect of a child or young person (including by varying or revoking arrangements made by the Chief Executive);

and, to the extent that an order of the Court purports to do so, the order will be void and of no effect.

(2) The Court must not, on an application for an order placing a child or young person in the custody, or under the guardianship, of a person, place a child or young person in the custody, or under the guardianship, of a person other than a person specified in the application except with the agreement of the Chief Executive.

114—Limitations on orders that may be made if child or young person unrepresented

(1) Subject to this section, the Court must not hear an application under this Part 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) However, the Court may proceed to hear an application under this Part in the absence of legal representation if the Court is satisfied that the application should be heard as a matter of urgency (however in such a case the Court should make interim orders in respect of the application and then adjourn the proceedings so as to enable the child or young person to be represented by a properly instructed legal practitioner if they so wish).

(3) The Court may, in interim orders under subsection (2), make any order the Court could have made under section 111 (however the interim orders will only have effect for the period of the adjournment).

115—Consent orders

(1) Without limiting section 113 or 114, the Court may, in proceedings under this Act, make an order under this Part with the consent of such of the parties to the proceeding who participate in the proceedings.

(2) An order may be made without consideration of the matters that the Court must otherwise consider in the proceeding.

116—Court may make declaration as to name of child or young person

(1) Without limiting the orders that can be made under this Part, if the Court makes an order placing a child or young person under the guardianship of the Chief Executive or a specified person or persons—

(a) until the child or young person attains 18 years of age; or

(b) such that the child or young person has been under the guardianship of the Chief Executive, or the person or persons, for a period of at least 24 continuous months,

the Court may make a declaration of the name by which the child or young person is to be known.

(2) However, the Court may only make a declaration under this section if the Court is satisfied that it is in the best interests of the child or young person to do so.

(3) If the Court makes a declaration under this section—

(a) the Registrar of the Court must give notice of the declaration to the Registrar of Births, Deaths and Marriages in accordance with any requirements set out in the regulations; and

(b) the Registrar of Births, Deaths and Marriages must, as soon as is reasonably practicable after receiving the notice, register the change of name under section 28(1) of the *Births, Deaths and Marriages Registration Act 1996*.

(4) Sections 26, 27 and 28(2) and (3) of the *Births, Deaths and Marriages Registration Act 1996* do not apply in relation to a change of name under this section.

(5) Nothing in this section prevents the name of a child or young person being later changed in accordance with the law of the State.

117—Variation, revocation or discharge of orders

(1) The Court may, on an application by a party to the proceedings, vary or revoke an order made under this Part.

(2) The Court may, on an application by the Chief Executive, discharge an order made under this Part.

118—Orders for costs

If the Court dismisses an application for an order under section 111 (not being an application for a variation or revocation of an order), the Court may make such order for costs against the Crown in favour of any other party to the proceedings as the Court thinks fit.

119—Noncompliance with orders

(1) A person who, having been personally served with an order made by the Court under this Part, contravenes the order is guilty of an offence.

Maximum penalty: Imprisonment for 2 years.

(2) However, subsection (1) does not apply to the child or young person to whom the order relates.

Division 5—Specified person guardianship orders

120—Certain approved carers may apply to Chief Executive to seek specified person guardianship order

(1) An approved carer in whose care a 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 ***proposed guardian***) may apply to the Chief Executive for an application to be made under this Division for a specified person guardianship order placing the child or young person under the guardianship of the proposed guardian until they attain 18 years of age.

(2) An application under subsection (1)—

(a) must be made in a manner and form determined by the Chief Executive; and

(b) may be made on behalf of a proposed guardian; and

(c) must be accompanied by such information and documents as the Chief Executive may reasonably require.

(3) The Chief Executive must, as soon as is reasonably practicable after receiving an application under subsection (1)—

(a) cause an assessment to be undertaken as to whether the proposed guardian is suitable to be the guardian of the child or young person to whom the application relates; and

(b) make a determination as to whether, in the opinion of the Chief Executive, the proposed guardian is suitable to be the guardian of the child or young person.

121—Guardianship care plan to be prepared

(1) If the Chief Executive determines that the proposed guardian is suitable to be the guardian of the child or young person to whom an application relates, the Chief Executive must cause a plan (a ***guardianship care plan***) to be prepared in respect of the child or young person.

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

122—Chief Executive to apply to Court for specified person guardianship order

(1) Subject to this Act, the Chief Executive must, on completion of the preparation of a guardianship care plan in respect of a child or young person, apply to the Court for a specified person guardianship order and any other order under Part 10 that the Chief Executive considers necessary or appropriate.

(2) However, the Chief Executive need not apply to the Court under subsection (1)—

(a) if following the completion of a guardianship care plan, the Chief Executive—

(i) becomes aware (by any means) of information not considered in the course of an assessment under section 120(3), or in the course of preparing a guardianship care plan under section 121(1); and

(ii) having considered the information, is of the opinion that the proposed guardian is not suitable to be the guardian of the relevant child or young person; or

(b) in any other circumstances prescribed by the regulations.

(3) An application to the Court under subsection (1) must be made without undue delay.

(4) The Chief Executive must cause a copy of the guardianship care plan in respect of the child or young person to be provided to the Court in any application under subsection (1).

123—Court may make specified person guardianship order

(1) If, on an application under this Act and having regard to Part 2, the Court is satisfied that it is in the best interests of a child or young person to do so, the Court may make a specified person guardianship order placing the child or young person under the guardianship of a specified person or persons (not exceeding 2) until they attain 18 years of age.

(2) A specified person guardianship order ceases to have effect when the child or young person to whom the order relates attains 18 years of age.

124—Onus on objector to prove order should not be made

(1) If in proceedings under this Division a person objects to the making of a specified person guardianship order by the Court, the onus is on the person to prove to the Court that the specified person guardianship order should not be made.

(2) However, subsection (1) does not apply if the person objecting to the making of the order is—

(a) the Chief Executive; or

(b) if the Court is satisfied that the child or young person to whom the proceedings relate is not being unduly influenced by any person to object to the making of the order—the child or young person.

125—Variation or revocation of specified person guardianship orders

(1) The Court may, on an application by a party to the proceedings, vary or revoke a specified person guardianship order.

(2) On the revocation of a specified person guardianship order (including, to avoid doubt, a specified person guardianship order made under section 111(1)(h)), the child or young person to whom the order relates will, unless the Court otherwise orders, by force of this section, be taken to be under the guardianship of the Chief Executive until they attain 18 years of age.

Division 6—Court may issue warrants for apprehension and return of certain children and young people

126—Court may issue warrant for apprehension and return of certain children and young people

(1) An application for a warrant under this section may be made by—

(a) the Chief Executive; or

(b) a police officer of or above the rank of inspector; or

(c) a person authorised by the Chief Executive to apply for such a warrant,

where—

(d) a child or young person has been placed in the custody, or under the guardianship, of the Chief Executive under this Act or a repealed Act but the Chief Executive has not been able to take the child or young person into custody; or

(e) a child or young person who has been placed in the custody, or under the guardianship, of the Chief Executive or another person or persons under this Act or a repealed Act is absent from a State care placement without lawful authority.

(2) The Court may, on an application under this section, if satisfied by information given on oath, personally or by affidavit that—

(a) it is reasonably necessary to return a specified child or young person to the custody of the Chief Executive; or

(b) a specified child or young person has been unlawfully removed from the custody or guardianship of the Chief Executive or another person or persons; or

(c) a specified child or young person has been lawfully removed from the custody or guardianship of the Chief Executive or another person or persons but kept beyond the period allowed for the removal,

issue a warrant under this section for the apprehension of the child or young person.

(3) An application for the issue of a warrant under this section—

(a) may be made either personally or by telephone; and

(b) must be made in a manner and form determined by the Court; and

(c) must be accompanied by such documents and information as may be required by the Court.

127—Care of children and young people apprehended on interstate warrants

(1) If a child or young person is apprehended in this State on an interstate child protection warrant, the Chief Executive may arrange for the safe and appropriate care of the child or young person until it is practicable to take the child or young person before a magistrate or court.

(2) The Chief Executive may, for the purposes of subsection (1), exercise any power the Chief Executive may have under this Act in relation to a child or young person apprehended on an interstate child protection warrant.

(3) In this section—

interstate child protection warrant means a warrant (however described) corresponding to a warrant issued under section 126 issued in another State or Territory.

Part 11—Case planning for children and young people in care

128—Chief Executive must prepare case plan in respect of certain children and young people

(1) This section applies to the following children and young people:

(a) a child or young person who is under the guardianship of the Chief Executive under this Act or a repealed Act;

(b) a child or young person who is under the guardianship of a person other than the Chief Executive under this Act or a repealed Act (other than a child or young person in relation to whom a specified person guardianship order has been made);

(c) a child or young person who is in the custody of the Chief Executive pursuant to a voluntary custody agreement under Part 9;

(d) a child or young person who is in the custody of the Chief Executive or another person in accordance with an order made under Part 10 Division 4;

(e) any other child or young person, or child or young person of a class, prescribed by the regulations,

but does not apply to a child or young person, or child or young person of a class, prescribed by the regulations to be excluded from the ambit of this definition.

(2) The Chief Executive must cause a plan (a ***case plan***) to be prepared and maintained in respect of each child or young person to whom this section applies.

(3) The Chief Executive must, in causing a case plan to be prepared, take reasonable steps to ascertain the views, and encourage the participation, of any person who, in the opinion of the Chief Executive, has information relevant to the preparation of the case plan of a particular child or young person.

(4) Without limiting the matters that may be included in a case plan, a case plan must include such of the following parts as may be relevant to the child or young person's circumstances:

(a) a part setting out a plan for the physical health (including the dental health) of the child or young person;

(b) a part setting out a plan for the mental health and emotional wellbeing of the child or young person;

(c) a part setting out a plan for the education and development of the child or young person;

(d) if the case plan relates to a child or young person with a disability or developmental delay—a part setting out a disability care plan;

(e) a part setting out a cultural maintenance plan;

(f) a part setting out contact arrangements;

(g) a part setting out a reunification plan, which must indicate whether the reunification of the child or young person and their parents is in the best interests of the child or young person;

(h) a part setting out any wishes and preferences of the child or young person relating to their care;

(i) a part setting out any wishes and preferences of the parents or guardians of the child or young person;

(j) a part setting out any wishes and preferences of the carer of the child or young person;

(k) a part setting out any decisions made at a family group conference;

(l) a part setting out how disputes as to the matters included in the child or young person's case plan are to be resolved;

(m) if the child or young person is above 15 years of age—a leaving care plan;

(n) any other part required by any other provision of this Act or the regulations.

(5) The Chief Executive may from time to time vary, substitute or revoke a case plan.

129—Case plans must be given effect

(1) Each person or body engaged in the administration, operation or enforcement of this Act must, to the extent that it is consistent with section 10 to do so, perform their functions so as to give effect to a child or young person's case plan.

(2) However, this section does not create legally enforceable rights or obligations on the part of the Crown, the Chief Executive, a child or young person or any other person.

Part 12—Placement and contact arrangements etc of children and young people in care

Division 1—Placement etc of children and young people in care

130—Chief Executive's powers in relation to children and young people in care

(1) Subject to this Act, the Chief Executive may, in relation to a child or young person who is in the custody, or under the guardianship, of the Chief Executive, from time to time do 1 or more of the following:

(a) place the child or young person, or permit the child or young person to remain, with a member of their family;

(b) place the child or young person with any other suitable person;

(c) remove the child or young person from a person referred to in a preceding paragraph with whom the child or young person has been placed;

(d) place the child or young person in a licensed children's residential facility;

(e) place the child or young person in a State residential care facility;

(f) place the child or young person in any other suitable place;

(g) give such directions relating to the care of the child or young person as the Chief Executive thinks fit;

(h) make arrangements for the education of the child or young person;

(i) make arrangements for the professional examination, assessment or treatment of the child or young person (including, for example, admission to hospital);

(j) make such other provision for the care of the child or young person as the Chief Executive thinks fit.

(2) To avoid doubt, nothing in this section limits the operation of section 131 or 145.

(3) The Chief Executive must keep each parent and guardian of a child or young person (if the Chief Executive is not that person) informed about where the child or young person is placed and how the child or young person is being cared for, unless the Chief Executive is of the opinion that it would not be in the best interests of the child or young person to do so.

131—Temporary placement of children and young people

(1) Despite section 145, but subject to this section, the Chief Executive may place a child or young person who is in the custody, or under the guardianship, of the Chief Executive with a person who is not an approved carer if the Chief Executive is satisfied that—

(a) the child or young person requires placement as a matter of urgency; and

(b) it is not, in the circumstances, reasonably practicable to place the child or young person with an approved carer; and

(c) the risk of harm being caused to the child or young person if they are not placed with a person under this section exceeds the risk that the person will cause harm to the child or young person.

(2) Despite subsection (1)(b), 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 with a particular approved carer if the Chief Executive is satisfied that to place the child or young person under that subsection is preferable to placing the child or young person with the approved carer.

(3) The Chief Executive may, if the Chief Executive considers it appropriate to do so, place a child or young person with a member of the child or young person's family, or a person known to the child or young person or their family, in accordance with subsection (1) without being satisfied of the matters set out in subsection (1)(a) or (b).

(4) The placement of a child or young person under this section—

(a) must be of a temporary nature (and in any event must not exceed a period of 3 months); and

(b) except in the circumstances referred to in subsection (2) or (3), and subject to the regulations, must be brought to an end as soon as it is reasonably practicable to place the child or young person with an approved carer; and

(c) must comply with any requirements prescribed by the regulations.

(5) If a child or young person is placed with a person under this section—

(a) section 145 will be taken not to apply to the person; and

(b) sections 134, 135 and 147 are to be construed as if the person were an approved carer (but, to avoid doubt, the person will not otherwise be taken to be an approved carer).

(6) The regulations may make further provisions in relation to the placement of a child or young person with a person under this section (including by modifying the operation of a specified provision or provisions of this Act relating to the placement of children and young people).

Division 2—Provision of information regarding placements and involvement of approved carers in decision making

132—Children and young people to be provided with certain information prior to placement

If a placement agency is considering placing a child or young person with an approved carer under this Act, the agency must, before so placing the child or young person, provide to the child or young person the prescribed information in relation to the approved carer.

133—Approved carers to be provided with certain information prior to placement

(1) Subject to this section, if a placement agency is considering placing a child or young person with an approved carer under this Act, the agency must, before so placing the child or young person, provide to each proposed approved carer any information in the possession of the agency that may be relevant to the person's decision whether or not to accept the placement.

(2) In determining whether to provide particular information to an approved carer, a placement agency must have regard, and may give effect, to any wishes expressed by the child or young person relating to the disclosure of such information.

134—Approved carers to be provided with certain information once child or young person placed

(1) A placement agency must provide to each approved carer with whom a child or young person is placed any information (including, to avoid doubt, any medical reports) held by the agency that is reasonably necessary to ensure—

(a) that the approved carer is able to provide appropriate care to the child or young person in all of their circumstances; and

(b) the safety of the approved carer and any other member of the approved carer's household.

(2) An approved carer who is provided with information under this section, and any other person who becomes aware of the information, must not disclose the information except—

(a) to a health professional for a purpose related to the examination, assessment or treatment of the child or young person; or

(b) to a child protection officer performing a function under this Act; or

(c) to a member of the approved carer's household; or

(d) to a preschool, school or other education service for a purpose related to the educational needs, or the health, safety, welfare or wellbeing, of the child or young person; or

(e) with the consent of the child or young person; or

(f) with the authorisation of the Chief Executive; or

(g) in any other circumstances prescribed by the regulations.

Maximum penalty: $10 000.

135—Approved carers entitled to participate in certain decision making processes

(1) Without limiting Part 2, but despite any other provision of this Act or any other Act, an approved carer with whom a child or young person is placed is entitled to participate in any decision making process relating to the health, safety, welfare or wellbeing of the child or young person.

(2) Subsection (1) does not apply in relation to a particular decision if the decision maker is satisfied that the participation of the approved carer would not be in the best interests of the child or young person.

(3) This section applies whether the decision is made under this Act or any other Act or law.

136—Noncompliance with Division not to invalidate placement

A refusal or failure to comply with a requirement under this Division does not, of itself, affect the validity of a placement of a child or young person with an approved carer or a decision referred to in section 135.

Division 3—Contact arrangements

137—Application of Division

(1) This Division applies to the following children and young people:

(a) a child or young person who is in care;

(b) any other child or young person, or child or young person of a class, prescribed by the regulations.

(2) However, this Division does not apply to a child or young person, or child or young person of a class, prescribed by the regulations.

138—Contact arrangements to be determined by Chief Executive

(1) For the purposes of this Act, contact arrangements in respect of a child or young person to whom this Division applies are to be determined by the Chief Executive.

(2) To avoid doubt, the Chief Executive may, for any reason the Chief Executive thinks fit, determine that there is to be no contact between a specified child or young person and a specified person.

(3) In making a determination under this section, the Chief Executive must have regard to the following provisions:

(a) if the Chief Executive is satisfied that a reunification is likely—the primary aim of the contact arrangements should be to establish or maintain attachment relationships between the child or young person and the person or persons with whom the child or young person is to be reunified;

(b) if the Chief Executive is not satisfied that a reunification is likely, or is satisfied that a reunification is unlikely—particular consideration must be given to the need for the child or young person to maintain a connection with their family and culture;

(c) in any event—the Chief Executive must give weight to the importance of the child or young person maintaining contact with their siblings (if any).

(4) Nothing in this Division authorises or requires contact arrangements to be made in favour of a particular person if, in the opinion of the Chief Executive—

(a) there is a significant possibility that a child or young person would be at risk of harm in the course of contact with the person; or

(b) such contact arrangements would undermine the stability of the child or young person's placement; or

(c) such contact arrangements would not be consistent with a provision of Part 2; or

(d) it would otherwise not be in the best interests of the child or young person to have contact with the person.

(5) A determination under this section must—

(a) be by notice in writing; and

(b) set out—

(i) the frequency of contact visits in a specified period; and

(ii) the duration of each contact visit; and

(iii) the venue or venues at which contact visits are to take place; and

(iv) any person who may be present during contact visits; and

(v) whether contact visits are to take place under the supervision of a person determined by the Chief Executive,

and may make any other provision the Chief Executive thinks appropriate; and

(c) comply with any other requirements set out in the regulations,

however a failure to comply with this subsection does not, of itself, affect the validity of a determination.

(6) The Chief Executive may, from time to time and by notice in writing, vary, substitute or revoke the contact arrangements in respect of a child or young person.

(7) The Chief Executive must cause a copy of each determination under this section, and any variation, substitution or revocation of the determination, to be included as part of the case plan for the child or young person.

139—Minister to establish Contact Arrangements Review Panel

(1) The Minister must, in accordance with any requirements set out in the regulations, establish a panel (the ***Contact Arrangements Review Panel***) for the purposes of reviewing contact arrangements under this Division.

(2) The Contact Arrangements Review Panel may be constituted of such persons as the Minister considers appropriate having regard to any requirements set out in the regulations.

(3) The Contact Arrangements Review Panel has the functions conferred on it by the regulations.

(4) The regulations may make further provisions in relation to the Contact Arrangements Review Panel (including by limiting the jurisdiction of the Contact Arrangements Review Panel to review matters of a specified kind).

140—Review by Contact Arrangements Review Panel

(1) Subject to this Division, the following persons may apply to the Contact Arrangements Review Panel for a review of a determination of the Chief Executive under section 138 in respect of contact arrangements relating to a particular child or young person:

(a) the child or young person;

(b) a person who is allowed contact with the child or young person pursuant to the determination;

(c) a person who is refused contact with the child or young person pursuant to the determination.

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

(a) be made within 14 days after the Chief Executive's determination (or such longer period as the Contact Arrangements Review Panel may allow); and

(b) be made in a manner and form determined by the Contact Arrangements Review Panel.

(3) However, the Contact Arrangements Review Panel may only allow an extension of time under subsection (2)(a) if satisfied that special circumstances exist.

(4) The Contact Arrangements Review Panel must, as soon as is reasonably practicable after receiving an application under this section and in accordance with any requirements set out in the regulations, convene a panel of members of the Contact Arrangements Review Panel to review the contact arrangements relating to the child or young person in accordance with this Division.

(5) The presiding member of the panel must be a person who is not an officer or employee of the Department.

(6) The panel need not conduct a review under this section if the panel is of the opinion that the application for review—

(a) is frivolous, vexatious, misconceived or lacking in substance; or

(b) is being used for an improper purpose; or

(c) is otherwise an abuse of process,

and, in such a case, a further application relating to the same matter may only be made with the permission of the Contact Arrangements Review Panel.

(7) A panel must, within 4 weeks of being convened under this section, and in accordance with any requirements set out in the regulations, complete a review in accordance with this section.

(8) A panel must, in conducting a review, have regard to any submissions made to the panel by—

(a) the child or young person; and

(b) if the applicant was not the child or young person—the applicant; and

(c) any other person, or person of a class, prescribed by the regulations.

(9) A panel may decide, on a review under this section—

(a) to affirm the determination that is being reviewed; or

(b) to vary the determination that is being reviewed; or

(c) to set aside the determination that is being reviewed, and—

(i) substitute its own determination; or

(ii) send the matter back to the Chief Executive for determination in accordance with any directions or recommendations that the panel considers appropriate,

and must, within 14 days of the making of the decision, provide to the applicant notice in writing of the decision and the reasons for the decision.

(10) The Chief Executive's determination as affirmed, varied or substituted by the panel—

(a) will be taken to be a determination of the Chief Executive of contact arrangements in respect of the relevant child or young person; and

(b) has effect from the time specified by the panel; and

(c) must, subject to this Act, be implemented by the Chief Executive.

(11) A determination that has been affirmed, varied or substituted under this section cannot be the subject of a further review under this section.

(12) Subject to this Act, a panel convened under this section may determine its own procedures.

(13) The regulations may make further provision in relation to reviews under this section.

Division 4—Ongoing reviews of circumstances of certain children and young people

141—Ongoing reviews of circumstances of certain children and young people

(1) This section applies to—

(a) a child or young person placed under the guardianship of the Chief Executive until they attain 18 years of age under this Act or a repealed Act; and

(b) any other child or young person, or child or young person of a class, prescribed by the regulations.

(2) Subject to this section, the Chief Executive must cause a review of the circumstances of each child or young person to whom this section applies to be carried out—

(a) if the child or young person, or another person who, in the opinion of the Chief Executive, has a legitimate interest in the affairs of the child or young person, has requested the review—as soon as is reasonably practicable after the request; or

(b) in any case—at least once in each 12 month period.

(3) However, the Chief Executive need not cause a review to be carried out under subsection (2)(a) if—

(a) a review of the child or young person's circumstances has been carried out within the 12 months preceding the request; and

(b) the Chief Executive is of the opinion that the request is frivolous or vexatious, or otherwise not made in good faith.

(4) A review must comply with the following provisions:

(a) the review must be carried out by a panel appointed by the Chief Executive for the purpose;

(b) in carrying out a review, the panel must—

(i) review the case plan; and

(ii) consider whether the existing arrangements for the care of the child or young person—

(A) continue to be in the best interests of the child or young person; and

(B) provide the support necessary to meet the needs of the child or young person; and

(iii) notify each person with whom the child or young person is placed of the review and give them a reasonable opportunity to make submissions to the panel for the purposes of the review; and

(iv) have regard to any submissions made under subparagraph (iii); and

(v) comply with any other requirements set out in the regulations;

(c) on completing a review, the panel must prepare and provide to the Chief Executive a written report on the review setting out—

(i) the conclusions of the panel in respect of the existing arrangements for the care of the child or young person; and

(ii) if the panel wishes to make recommendations in relation to the care of the child or young person—those recommendations.

(5) A person who has been notified of the review by the panel under subsection (4)(b)(iii) must be given a reasonable opportunity to make their submissions in person, unless the panel determines that for the person to do so would not be in the best interests of the child or young person.

(6) The Chief Executive must appoint a member of a panel appointed to carry out a review (being a member who has not previously been involved with the child or young person's case) to be the presiding member of the panel.

(7) However, a person appointed to be the presiding member of the panel in relation to a child or young person may be appointed as the presiding member for subsequent reviews undertaken under this section in relation to the child or young person.

(8) Subject to this Act, and any directions of the Chief Executive, a panel may determine its own procedures.

(9) The Chief Executive must, except if of the opinion that it is inappropriate to do so, cause a copy of a report under subsection (4)(c) to be given to—

(a) the child or young person; and

(b) each parent of the child or young person; and

(c) each person with whom the child or young person is placed under this Act or a repealed Act,

and may give a copy of the report to any other person the Chief Executive thinks fit.

Division 5—Miscellaneous

142—Chief Executive may provide assistance to persons caring for children and young people

(1) The Chief Executive may grant to the following persons such financial or other assistance in relation to the care and maintenance of a child or young person as may be determined by the Chief Executive:

(a) an approved carer of the child or young person;

(b) a person with whom the child or young person has been placed under this Act or a repealed Act;

(c) a person who cares for the child or young person in the custody, or under the guardianship, of the Chief Executive under the *Adoption Act 1988*.

(2) The Chief Executive may provide assistance to a person described in subsection (1)(a) in relation to the care of a child or young person until the child or young person attains 25 years of age.

143—Facilitating agreements for funeral arrangements of certain children and young people

(1) This section applies to a child or young person who—

(a) is in the custody, or under the guardianship, of the Chief Executive or another person pursuant to this Act; or

(b) is otherwise placed with an approved carer pursuant to this Act.

(2) If—

(a) a child or young person to whom this section applies dies; and

(b) the person with whom the child or young person was placed at the time of their death and the person who is responsible for arranging the funeral and the disposal of the deceased's remains disagree about those arrangements,

the Chief Executive may, at the request of 1 or both of the parties, endeavour to assist the parties to reach an agreement about those arrangements.

Part 13—Approved carers, licensed foster care agencies and licensed children's residential facilities

Division 1—Approved carers

144—Chief Executive may establish categories of approved carers

(1) The Chief Executive may establish such categories of approved carers as the Chief Executive from time to time considers appropriate.

(2) Subject to this Act, the Chief Executive may determine the circumstances in which children and young people are to be placed with a particular category of approved carer.

(3) A determination under this section must be consistent with any requirements prescribed by the regulations.

145—Out of home care to be provided by approved carers

(1) Subject to this Act, a person must not provide out of home care unless the person is an approved carer.

Maximum penalty: $10 000.

(2) In this section—

out of home care means—

(a) care provided to a child or young person where—

(i) the child or young person is in the custody, or under the guardianship, of the Chief Executive; and

(ii) the care is provided by a person with whom the child or young person is placed under section 130; and

(iii) the care is provided on a residential basis apart from the child or young person's parents; and

(iv) the provider of the care receives, or may receive, payment, or financial or other assistance, in relation to the care provided; or

(b) any other care of a kind prescribed by the regulations,

but does not include—

(c) care provided to children and young people at a licensed children's residential facility; or

(d) care provided to children and young people at a State residential care facility; or

(e) care of a kind prescribed by the regulations to be excluded from the ambit of this definition.

146—Approval of carers

(1) The Chief Executive may, on an application under this section and by notice in writing, approve a person as an approved carer for the purposes of this Act.

(2) An application for approval must—

(a) be made in a manner and form determined by the Chief Executive; and

(b) be accompanied by any information or documents as may be required by the Chief Executive.

(3) The Chief Executive may refuse to accept an application for approval under this section for any reason the Chief Executive thinks fit.

(4) In determining an application for approval, the Chief Executive must have regard to—

(a) the operation of the *Child Safety (Prohibited Persons) Act 2016*; and

(b) whether the person is willing and able to care for each child or young person placed with the person in a manner consistent with Part 2 and this Act generally; and

(c) if relevant, whether the person will, where appropriate—

(i) provide opportunities for the child or young person to maintain or recover their identity as a member of their own family and will allow the child or young person reasonable access to their own family; and

(ii) assist the child or young person to return to their own family; and

(d) any other matter prescribed by the regulations,

however, the Chief Executive may refuse to approve a person for any reason the Chief Executive thinks fit.

(5) The Chief Executive must impose on each approval—

(a) a condition setting out the category of care that may be provided by the approved carer; and

(b) a condition setting out the maximum number of children and young people that may be placed with the approved carer at any time,

and may impose such other conditions as the Chief Executive thinks appropriate.

(6) The Chief Executive may, by notice in writing, vary, substitute or revoke a condition of an approval.

(7) An approved carer must not, without reasonable excuse, refuse or fail to comply with a condition of an approval.

Maximum penalty: $10 000.

147—Ongoing reviews of approved carers

The Chief Executive must, in relation to each approved carer, ensure that—

(a) regular assessments are undertaken of the provision of care by the approved carer under this Act; and

(b) relevant courses of training are made available to the approved carer; and

(c) ongoing support and guidance are provided to the approved carer; and

(d) proper assessments are made of any requirement of the approved carer for financial or other assistance.

148—Cancellation of approval

(1) The Chief Executive must, by notice in writing, cancel the approval of an approved carer if the Chief Executive reasonably suspects that the person is a prohibited person under the *Child Safety (Prohibited Persons) Act 2016*.

(2) The Chief Executive may, by notice in writing, cancel the approval of an approved carer if the Chief Executive reasonably suspects that—

(a) a child or young person who is placed with the approved carer is not being adequately cared for; or

(b) the approved carer has contravened a provision of this Act; or

(c) the approved carer has refused or failed to comply with a condition of their approval; or

(d) a working with children check has not been conducted in relation to the person within the preceding 5 years; or

(e) it is otherwise appropriate that the approval be cancelled.

(3) The Chief Executive must give an approved carer at least 28 days notice in writing of the Chief Executive's intention to cancel the person's approval under subsection (2).

149—Certain information to be provided to Chief Executive

(1) An approved carer must, as soon as is reasonably practicable, advise the Chief Executive if any of the following occurs:

(a) there is a change in the approved carer's address;

(b) any other person comes to reside with the approved carer;

(c) the approved carer, or any person residing with the approved carer, is charged with an offence punishable by imprisonment;

(d) the approved carer, or any person residing with the approved carer, becomes a prohibited person under the *Child Safety (Prohibited Persons) Act 2016*.

Maximum penalty: $10 000.

(2) Nothing in this section limits any other power of the Chief Executive or a child protection officer to require a person to produce information.

150—Delegation of certain powers to approved carers

(1) The Chief Executive may, in relation to a child or young person who is under the guardianship of the Chief Executive, delegate such of the Chief Executive's powers as the guardian of the child or young person as the Chief Executive thinks fit to an approved carer with whom the child or young person is placed.

(2) A delegation under this section—

(a) must be by instrument in writing; and

(b) may be absolute or conditional; and

(c) does not derogate from the ability of the Chief Executive to act in any matter; and

(d) may be varied or revoked at will.

(3) Nothing in this section limits any other power the Chief Executive may have to delegate a function under this Act.

Division 2—Licensed foster care agencies

151—Interpretation

For the purposes of this Division, a reference to the ***business of a foster care agency*** will be taken to be a reference to the placement of children and young people with approved carers (whether on a commercial basis or otherwise).

152—Foster care agencies to be licensed

A person must not carry on the business of a foster care agency unless the person is the holder of a licence under this Division.

Maximum penalty:

(a) in the case of a body corporate—$120 000;

(b) in the case of an individual—imprisonment for 2 years.

153—Licence to carry on business as foster care agency

(1) The Chief Executive may, on an application under this section and by notice in writing, grant a licence to a person to carry on the business of a foster care agency.

(2) An application for a licence must—

(a) be made in a manner and form determined by the Chief Executive; and

(b) be accompanied by any information or documents as may be required by the Chief Executive.

(3) The Chief Executive must not grant a licence to a person unless satisfied that—

(a) the person is a fit and proper person to hold a licence (including by having regard to the qualifications and experience in the field of foster care, or any other related field, of the persons who will be carrying on or managing the business, and of any employees of the business); and

(b) the person (or, in the case of a body corporate, each director of the body corporate) is not a prohibited person under the *Child Safety (Prohibited Persons) Act 2016*; and

(c) a working with children check has been conducted in relation to the person (or, in the case of a body corporate, in relation to each director of the body corporate) within the preceding 5 years; and

(d) the system of management within the agency is appropriate; and

(e) the procedures proposed by the agency for the selection, approval, training and support of approved carers are appropriate; and

(f) the procedures proposed by the agency for the placement and supervision of children and young people are appropriate,

and may refuse to grant a licence for any reason the Chief Executive thinks fit.

(4) A licence may be conditional or unconditional.

(5) The Chief Executive may, by notice in writing, vary, substitute or revoke a condition of a licence.

(6) The holder of a licence under this Division must not refuse or fail to comply with a condition of the licence.

Maximum penalty:

(a) in the case of a body corporate—$50 000;

(b) in the case of an individual—imprisonment for 1 year.

(7) Subject to this Act, a licence remains in force for the period specified in the licence (not exceeding 3 years) and may be renewed in accordance with the regulations.

154—Cancellation of licence

(1) The Chief Executive may, by notice in writing, cancel a licence under this Division if the Chief Executive reasonably suspects that—

(a) a child or young person placed with an approved carer pursuant to the licence is not being adequately cared for; or

(b) the provisions of this Act are not being complied with by the licensed foster care agency to which the licence relates; or

(c) the holder of the licence no longer meets a requirement for granting the licence under section 153(3); or

(d) the holder of the licence has refused or failed to comply with a condition of the licence; or

(e) the holder of the licence (or, if the holder of the licence is a body corporate, a director of the body corporate) is a prohibited person under the *Child Safety (Prohibited Persons) Act 2016*; or

(f) a working with children check has not been conducted in relation to the holder of the licence (or, if the holder of the licence is a body corporate, in relation to a director of the body corporate) within the preceding 5 years; or

(g) it is otherwise appropriate that the licence be cancelled.

(2) The Chief Executive must (except in relation to a cancellation for a reason referred to in subsection (1)(d) or (e)) give the holder of a licence under this Division at least 28 days notice in writing of the Chief Executive's intention to cancel the licence.

155—Record keeping

(1) The holder of a licence under this Division must make such records as may be required by the regulations.

Maximum penalty: $50 000.

(2) The holder of a licence under this Division must keep the records referred to in subsection (1) in accordance with any requirements set out in the regulations.

Maximum penalty: $50 000.

156—Ongoing reviews of approved carers by agency

The holder of a licence under this Division must, in relation to each approved carer with whom the foster care agency places children and young people pursuant to the licence—

(a) undertake regular assessments of the provision of care by the approved carer under this Act; and

(b) assess any requirement of the approved carer for financial or other assistance.

Maximum penalty: $50 000.

Division 3—Licensed children's residential facilities

157—Interpretation

In this Division—

children's residential facility means—

(a) a place where 3 or more children or young people are, for monetary or other consideration, cared for on a residential basis apart from their parents; or

(b) any other place in which children or young people are cared for on a residential basis prescribed by the regulations,

but does not include—

(c) the residence of an approved carer with whom a child or young person is placed under this Act; or

(d) a State residential care facility; or

(e) a training centre established under the *Youth Justice Administration Act 2016*; or

(f) residential premises that are attached to a school or a tertiary education institution, or that are used solely for the purposes of caring for tertiary students; or

(g) any other facility or place, or facility or place of a class, prescribed by the regulations not to be included in the ambit of this definition.

158—Children's residential facilities to be licensed

A person must not operate a children's residential facility unless the person is the holder of a licence under this Division in respect of the facility.

Maximum penalty:

(a) in the case of a body corporate—$120 000;

(b) in the case of an individual—imprisonment for 2 years.

159—Licence to operate children's residential facility

(1) The Chief Executive may, on an application under this section and by notice in writing, grant a licence to a person to operate a children's residential facility.

(2) An application for a licence must—

(a) be made in a manner and form determined by the Chief Executive; and

(b) be accompanied by such information or documents as may be reasonably required by the Chief Executive.

(3) The Chief Executive must not grant a licence to a person unless satisfied that—

(a) the person is a fit and proper person to hold a licence (including by having regard to the suitability, qualifications and experience of the persons who will be operating the children's residential facility and of any persons who will be employed in the facility); and

(b) the person (or, in the case of a body corporate, each director of the body corporate) is not a prohibited person under the *Child Safety (Prohibited Persons) Act 2016*; and

(c) a working with children check has been conducted in relation to the person (or, in the case of a body corporate, in relation to each director of the body corporate) within the preceding 5 years; and

(d) the premises proposed to be used as a children's residential facility are suitable for that purpose; and

(e) the system of management within the children's residential facility is appropriate,

and may refuse to grant a licence for any reason the Chief Executive thinks fit.

(4) The Chief Executive must impose on each licence a condition setting out the maximum number (not exceeding the prescribed number) of children and young people that may reside in the licensed children's residential facility at any time (and may impose such other conditions as the Chief Executive thinks appropriate).

(5) The Chief Executive may, by notice in writing, vary, substitute or revoke a condition of a licence.

(6) The holder of a licence under this Division must not refuse or fail to comply with a condition of the licence.

Maximum penalty:

(a) in the case of a body corporate—$50 000;

(b) in the case of an individual—imprisonment for 1 year.

(7) Subject to this Act, a licence remains in force for the period specified in the licence (not exceeding 3 years) and may be renewed in accordance with the regulations.

(8) In this section—

prescribed number means—

(a) if the regulations prescribe a number for the purposes of this definition—that number; or

(b) if the regulations do not prescribe a number for the purposes of this definition—4.

160—Cancellation of licence

(1) The Chief Executive may, by notice in writing, cancel a licence under this Division if the Chief Executive reasonably suspects that—

(a) a child or young person in the licensed children's residential facility is not being adequately cared for; or

(b) the provisions of this Act are not being complied with in respect of the licensed children's residential facility to which the licence relates; or

(c) the holder of the licence no longer meets a requirement for granting the licence under section 159(3); or

(d) the holder of the licence has refused or failed to comply with a condition of the licence; or

(e) the holder of the licence (or, if the holder of the licence is a body corporate, a director of the body corporate) is a prohibited person under the *Child Safety (Prohibited Persons) Act 2016*; or

(f) a working with children check has not been conducted in relation to the holder of the licence (or, if the holder of the licence is a body corporate, in relation to a director of the body corporate) within the preceding 5 years; or

(g) it is otherwise appropriate that the licence be cancelled.

(2) The Chief Executive must (except in relation to a cancellation for a reason referred to in subsection (1)(d) or (e)) give the holder of a licence at least 28 days notice in writing of the Chief Executive's intention to cancel the licence.

161—Record keeping

(1) The holder of a licence under this Division must make such records as may be required by the regulations.

Maximum penalty: $50 000.

(2) The holder of a licence under this Division must keep the records referred to in subsection (1) in accordance with any requirements set out in the regulations.

Maximum penalty: $50 000.

Division 4—State residential care facilities

162—Minister may establish State residential care facilities

(1) The Minister may, in accordance with any requirements set out in the regulations, establish such residential care facilities as the Minister thinks necessary or desirable for children or young people who are in need of care and protection from harm.

(2) A residential care facility established under this section will be under the control of the Minister, and the Chief Executive must ensure that proper standards of administration are observed in the management of every such facility.

Division 5—Miscellaneous

163—Persons not to be employed in certain residential facilities unless they have been assessed

(1) A person must not be employed in a licensed children's residential facility or a State residential care facility unless the person has undergone a psychological or psychometric assessment of a kind determined by the Chief Executive for the purposes of this section.

(2) However, subsection (1) does not apply to the employment of a person or a person of a class, or the employment of a person in circumstances, prescribed by the regulations.

(3) A person who is employed in a licensed children's residential facility or a State residential care facility in contravention of subsection (1) is guilty of an offence.

Maximum penalty:

(a) for a first or second offence—$20 000;

(b) for a third or subsequent offence—$50 000 or imprisonment for 1 year.

(4) A person who employs, or continues to employ, a person in a licensed children's residential facility or a State residential care facility in contravention of subsection (1) is guilty of an offence.

Maximum penalty:

(a) in the case of a body corporate—$120 000;

(b) in the case of an individual—$50 000 or imprisonment for 1 year.

(5) For the purposes of this section, a reference to a person being ***employed*** will be taken to include a reference to a person who—

(a) is a self-employed person; or

(b) carries out work under a contract for services; or

(c) carries out work as a minister of religion or as part of the duties of a religious or spiritual vocation; or

(d) undertakes practical training as part of an educational or vocational course; or

(e) carries out work as a volunteer; or

(f) performs unpaid community work in accordance with an order of a court,

and a reference to ***employ*** is to be construed accordingly.

164—Chief Executive to hear complaints regarding certain residential and other facilities

(1) A child or young person being cared for in a prescribed facility, or a parent or guardian of such a child or young person, may make a complaint to the Chief Executive with respect to the care that the child or young person is receiving in the facility.

(2) A complaint under subsection (1) must be made in a manner and form determined by the Chief Executive.

(3) The Chief Executive must cause a complaint made under this section to be investigated in accordance with the regulations.

(4) In this section—

prescribed facility means—

(a) a licensed children's residential facility; or

(b) a State residential care facility; or

(c) any other facility, or facility of a class, prescribed by the regulations.

Part 14—Offences relating to certain children and young people in care

165—Direction not to communicate etc with certain child or young person

(1) The Chief Executive may, by notice in writing, direct a specified person not to communicate, or attempt to communicate, (whether in any way or in a way specified in the notice) 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) 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.

(3) The Chief Executive may, by notice in writing, direct a specified person not to harbour or conceal, or assist another person to harbour or conceal, a specified child or young person who is in the custody, or under the guardianship, of the Chief Executive during the period in the notice.

(4) However, the Chief Executive may only give a direction under this section if the Chief Executive believes such a direction is reasonably necessary to—

(a) prevent harm to the child or young person; or

(b) prevent the child or young person from engaging in, or being exposed to, conduct of a criminal nature.

(5) A person who, without reasonable excuse, refuses or fails to comply with a direction under this section is guilty of an offence.

Maximum penalty:

(a) for a first offence—imprisonment for 3 years;

(b) for a second or subsequent offence—imprisonment for 4 years.

(6) Despite section 267 of the *Criminal Law Consolidation Act 1935* or any other Act or law, a child or young person to whom a direction under this section relates commits no offence in relation to a contravention of a direction under this section.

(7) 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.

(8) A notice under this section must be served personally on the person to whom the notice is directed (however, if it is not reasonably practicable to serve a notice personally on the person, or the whereabouts of the person cannot, after reasonable enquiries, be ascertained, the notice may instead be served on that person in accordance with section 51(2)(b) or (c) of the *Legislation Interpretation Act 2021*).

166—Harbouring, concealing etc certain absent child or young person

(1) A person must not—

(a) harbour or conceal, or assist another person to harbour or conceal, a child or young person; or

(b) prevent, or assist another person to prevent, the return of a child or young person to a State care placement,

if the person knows that the child or young person is absent from a State care placement without lawful authority.

Maximum penalty:

(a) for a first offence—imprisonment for 3 years;

(b) for a second or subsequent offence—imprisonment for 4 years.

(2) Despite section 267 of the *Criminal Law Consolidation Act 1935* or any other Act or law, a child or young person who is absent from a State care placement without lawful authority and to whom a charge of an offence against this section relates commits no offence under this section.

(3) Despite a provision of the *Evidence Act 1929* or any other Act or law, a child or young person who is absent from a State care placement without lawful authority to whom a charge of an offence against this section relates is competent, but is not compellable, to give evidence in proceedings relating to the charge of the offence.

167—Unlawful taking etc of certain child or young person

(1) This section applies to a child or young person placed with a person under this Act.

(2) A person who, without lawful excuse—

(a) induces or encourages a child or young person to whom this section applies to leave a place in which the child or young person has been placed under this Act; or

(b) takes a child or young person to whom this section applies from a place in which the child or young person has been placed under this Act; or

(c) harbours or conceals a child or young person contemplated by a preceding subsection,

is guilty of an offence.

Maximum penalty:

(a) for a first offence—imprisonment for 3 years;

(b) for a second or subsequent offence—imprisonment for 4 years.

(3) Despite section 267 of the *Criminal Law Consolidation Act 1935* or any other Act or law, a child or young person to whom this section applies and to whom a charge of an offence against this section relates commits no offence under this section.

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

Part 15—Assistance to certain children and young people leaving care

168—Leaving care plans to be prepared for certain children and young people leaving care

(1) This section applies to a child or young person placed under the guardianship of the Chief Executive until they attain 18 years of age under this Act or a repealed Act who is lawfully leaving that care.

(2) The Chief Executive must, in relation to a child or young person to whom this section applies, and in consultation with the child or young person, prepare a plan (a ***leaving care plan***) setting out steps to assist the child or young person in making their transition from care.

(3) Without limiting the matters that may be included in a leaving care plan, each leaving care plan must include such of the following parts as may be relevant to the child or young person's circumstances:

(a) a part setting out the specific needs of the child or young person as they prepare to make their transition from care and that may arise in the period after leaving care;

(b) a part setting out any information requested by the child or young person relating to their care as may be held by the Department;

(c) a part detailing which (if any) of the following documents (being documents held by the Department) have been requested by the child or young person:

(i) a birth certificate;

(ii) religious certificates;

(iii) certificates of achievement;

(iv) education and training reports;

(v) health records;

(vi) correspondence addressed to the child or young person;

(vii) passports;

(viii) photographs;

(ix) any other documents prescribed by the regulations;

(d) if the child to whom the leaving care plan relates is above 15 years of age—a part setting out the specific arrangements that should be made to assist the child or young person to transition into adulthood and independence;

(e) any other part required by the regulations.

(4) The Department, and any other State authority specified by the Chief Executive in a leaving care plan under this section, must take reasonable steps to implement the leaving care plan.

(5) Subject to this section, the Department must provide to the child or young person the requested documents referred to in subsection (3)(c).

(6) If the Department holds an original of a document referred to in subsection (5), the Department must give the original to the child or young person and must ensure that a copy of the document is retained for the purposes of the laws of the State.

(7) For the purposes of the *State Records Act 1997*, the disclosure or provision of an official record (within the meaning of that Act) is authorised under this Part.

(8) The Department may, in accordance with any guidelines published by the Department for the purposes of this section—

(a) refuse to provide a document to a child or young person; or

(b) provide a document in redacted form.

(9) If the Department refuses to provide a document or information, or provides a document in redacted form, the Department must give the child or young person a written notice that sets out—

(a) the reasons for the decision; and

(b) the child or young person's right to seek a review of the decision under section 171; and

(c) any other information prescribed by the regulations.

(10) If—

(a) a document that must be provided to a child or young person under this section contains information concerning the child or young person; and

(b) the Department is of the opinion that disclosure of the information may have an adverse effect on the physical or mental health, or the emotional state, of the child or young person,

the Department—

(c) is not required to give access to the document directly to the child or young person; and

(d) may instead give access to the document to—

(i) a medical practitioner nominated by the child or young person; or

(ii) a person or body nominated by the child or young person and approved by the Department.

(11) However, a leaving care plan does not create legally enforceable rights or entitlements.

169—Chief Executive to assist eligible care leavers

(1) The Chief Executive must cause such assistance as the Chief Executive thinks appropriate to be offered to each eligible care leaver for the purposes of making their transition from care as easy as is reasonably practicable.

(2) Without limiting the kinds of assistance that may be offered to an eligible care leaver, such assistance may include 1 or more of the following:

(a) the provision of information about Government and other resources and services available to the eligible care leaver;

(b) assistance in accessing education and training services;

(c) assistance in finding accommodation;

(d) assistance in finding employment;

(e) assistance in accessing legal advice;

(f) assistance in accessing health services;

(g) assistance in accessing disability services;

(h) assistance in accessing counselling and support services.

(3) If an eligible care leaver accepts an offer of assistance, the Chief Executive must take reasonable steps to provide such assistance, or cause such assistance to be provided, to the eligible care leaver.

(4) To avoid doubt, assistance may, at the discretion of the Chief Executive, be provided for a specified period or until a person ceases to be an eligible care leaver.

(5) However, an offer of assistance under this section does not create legally enforceable rights or entitlements.

(6) In this section—

eligible care leaver means a person who—

(a) is above 15, but under 25, years of age; and

(b) was in the custody, or under the guardianship, of the Chief Executive or another person or persons for a period of 6 months or more; and

(c) is leaving, or has left, care under this Act or a repealed Act.

170—Certain persons to be provided with documents and information held by Department

(1) An eligible applicant in respect of a person formerly in care may apply to the Chief Executive for the provision of documents and information relating to the person being held by the Department in respect of the period in which the person was in care.

(2) An application made under this section must be made in the manner and form determined by the Chief Executive.

(3) Subject to this section, the Department must, on an application under subsection (1), provide to the eligible applicant—

(a) such of the following documents relating to the person formerly in care as may be held by the Department:

(i) a birth certificate;

(ii) religious certificates;

(iii) certificates of achievement;

(iv) education and training reports;

(v) health records;

(vi) correspondence addressed to the person formerly in care;

(vii) passports;

(viii) photographs;

(ix) any other documents of a kind prescribed by the regulations; and

(b) such information relating to the person of a kind specified in the application as may be held by the Department.

(4) If the Department holds an original of a document referred to in subsection (3)(a), the Department must give the original to the eligible applicant and must ensure that a copy of the document is retained for the purposes of the laws of the State.

(5) For the purposes of the *State Records Act 1997*, the disclosure or provision of an official record (within the meaning of that Act) is authorised under this Part.

(6) The Department may, in accordance with any guidelines published by the Department for the purposes of this section—

(a) refuse to provide a document or information; or

(b) provide a document in redacted form.

(7) If the Department refuses to provide a document or information, or provides a document in redacted form, the Department must give the eligible applicant a written notice that sets out—

(a) the reasons for the decision; and

(b) the eligible applicant's right to seek a review of the decision under section 171; and

(c) any other information prescribed by the regulations.

(8) If—

(a) a document that must be provided to an eligible applicant under this section contains information concerning the person formerly in care; and

(b) the Department is of the opinion that disclosure of the information may have an adverse effect on the physical or mental health, or the emotional state, of the person formerly in care,

the Department—

(c) is not required to give access to the document directly to the eligible applicant; and

(d) may instead give access to the document to—

(i) a medical practitioner nominated by the person formerly in care or the eligible applicant; or

(ii) a person or body nominated by the person formerly in care or the eligible applicant and approved by the Department.

(9) In this section—

eligible applicant, in respect of a person formerly in care, means—

(a) the person formerly in care; or

(b) a person authorised by the person formerly in care to make an application under this section; or

(c) in the case of a person formerly in care who has died—a grandparent, parent, child or grandchild of the person; or

(d) any other person authorised by the Chief Executive;

person formerly in care means a person of or above 18 years of age who was, at any point while the person was a child or young person, in care under this or a repealed Act, or in care of a corresponding kind provided under an earlier Act of the State.

171—Internal review of decision to refuse to provide document or information etc

(1) A child or young person who is the subject of a leaving care plan under section 168 or an eligible applicant under section 170 may apply to the Chief Executive for a review of a decision to refuse to provide a document or information, or to provide a document in redacted form, within 30 days of the making of the decision (or such longer period as the Chief Executive may allow).

(2) On a review under this section, the Chief Executive may confirm, vary or reverse the decision.

(3) If the Chief Executive fails to determine an application made under this section within 14 days after it is received, the Chief Executive will be taken to have confirmed the decision in respect of which the review is sought.

Part 16—Transfer of certain orders and proceedings between South Australia and other jurisdictions

Division 1—Preliminary

172—Purpose of Part

The purpose of this Part is to provide for the transfer of certain child protection orders and proceedings between South Australia and another State or a Territory of Australia or between South Australia and New Zealand—

(a) so that children who are in need of protection may be protected despite moving from one jurisdiction to another; and

(b) so as to facilitate the timely and expeditious determination of court proceedings relating to the protection of a child.

173—Interpretation

(1) In this Part—

appropriate court, in relation to a participating State, means the court in that State that has jurisdiction to hear and determine child protection proceedings at first instance;

child protection order means an order (not being an interim order (see definition) or any other order made on an interim basis) made under a child welfare law that gives—

(a) a minister of the Crown; or

(b) a person who is the chief executive of a government department or statutory authority or otherwise holds an office or position in, or is employed in, a government department or statutory authority; or

(c) the chief executive of a licensed children's residential facility or any other organisation or its chief executive,

responsibility in relation to the guardianship, custody or supervision of the child, however that responsibility is described;

child protection proceeding means any proceeding brought in a court under a child welfare law for—

(a) the making of a finding that a child is in need of protection or any other finding (however described) the making of which is a prerequisite under the child welfare law to the exercise by the court of a power to make a child protection order; or

(b) the making of a child protection order or an interim order or for the variation or revocation or the extension of the period of such an order;

child welfare law means—

(a) this Act; or

(b) the *Children and Young People (Safety) Act 2017*; or

(c) the *Children's Protection Act 1993*; or

(d) a law of another State that is declared by proclamation under subsection (2) to be a child welfare law for the purposes of this Part;

interim order means—

(a) an order made under section 185; or

(b) an equivalent order made under an interstate law;

interstate law means a law of another State that is declared by proclamation under subsection (3) to be an interstate law for the purposes of this Part;

interstate officer, in relation to a State other than South Australia, means—

(a) the holder of an office or position that is declared by proclamation under subsection (4) to be an office or position the holder of which is the interstate officer in relation to that State for the purposes of this Part; or

(b) the person holding the office or position to which there is given by or under the child welfare law of that State principal responsibility for the protection of children in that State;

participating State means a State in which an interstate law is in force;

Registrar means the Registrar of the Youth Court;

sending State means the State from which a child protection order or proceeding is transferred under this Part or an interstate law;

State means—

(a) a State or a Territory of Australia; or

(b) New Zealand.

(2) The Governor may, by proclamation, declare a law of a State (other than South Australia) to be a child welfare law for the purposes of this Part if satisfied that the law substantially corresponds to this Act.

(3) The Governor may, by proclamation, declare a law of a State (other than South Australia) to be an interstate law for the purposes of this Part if satisfied that the law substantially corresponds to this Part.

(4) The Governor may, by proclamation, declare an office or position in a State (other than South Australia) to be an office or position the holder of which is the interstate officer in relation to that State for the purposes of this Act.

(5) The Governor may, by proclamation, vary or revoke a proclamation made under this section.

(6) For the purposes of this Part, a decision or order is not subject to review or appeal if—

(a) the time for instituting a review of or appeal against the decision or order has expired; or

(b) where a review or appeal was instituted, the decision or order was confirmed on the review or appeal or the review or appeal was discontinued.

(7) The following persons are parties to proceedings before the Court on an application for the transfer of a child protection order or a child protection proceeding under this Part:

(a) the applicant;

(b) the child the subject of the application;

(c) each parent and guardian of the child.

Division 2—Administrative transfer of child protection order

174—When Chief Executive may transfer order

(1) The Chief Executive may transfer a child protection order (the ***home order***) to a participating State if—

(a) in the Chief Executive's opinion a child protection order to the same or a similar effect as the home order could be made under the child welfare law of that State; and

(b) the home order is not subject to an appeal; and

(c) the relevant interstate officer has consented in writing to the transfer and to any proposed variation of the terms of the order pursuant to subsection (3); and

(d) the persons whose consent to the transfer is required under section 175 have so consented.

(2) In determining whether a child protection order to the same or a similar effect as the home order could be made under the child welfare law of the participating State, the Chief Executive must not take into account the period for which it is possible under that law for such an order to be in force.

(3) For the purposes of transferring a child protection order to a participating State, the Chief Executive may vary the terms of the order so that it makes provision for any matter in terms that could be included in a child protection order of that type made in the participating State.

(4) The Chief Executive must specify in the transferred order the period for which it is to remain in force.

(5) That period must be—

(a) if the same period as that of the home order is possible for the transferred order under the child welfare law of the participating State commencing on and including the date of the registration of the order in that State—that period; or

(b) in any other case—as similar a period as is possible under that law but in no case longer than the period of the home order.

175—Persons whose consent is required

(1) For the purposes of section 174(1)(d)—

(a) if the home order grants custody (but not guardianship) of the child to the Minister or the Chief Executive, consent to the transfer is required from the child's parents;

(b) if the home order grants custody of the child to the chief executive of a licensed children's residential facility or to any other organisation or its chief executive, consent to the transfer is required from the child's parents and the chief executive of the facility or organisation;

(c) if the home order requires the child to be under the supervision of the Chief Executive or some other specified person or authority, consent to the transfer is required from the child's parents and guardians;

(d) if the home order or any ancillary order grants a person access to the child, consent to the transfer is required from that person.

(2) However, if a person whose consent would normally be required is residing in, or is intending to reside in, the relevant participating State, the consent of that person to the transfer is not required.

(3) Despite subsection (1), if a person whose consent is required—

(a) cannot, after reasonable enquiries, be found; or

(b) fails to respond within a reasonable period of time to a request for consent,

the consent of that person to the transfer is not required.

176—Chief Executive to have regard to certain matters

In determining whether to transfer a child protection order to a participating State under this Division, the Chief Executive must have regard to—

(a) any sentencing order (other than a fine) in force in respect of the child, or criminal proceeding pending against the child in a court, of which the Chief Executive is aware; and

(b) whether the Chief Executive or an interstate officer is in the better position to exercise the powers and responsibilities under the order; and

(c) the desirability of the order being an order under the child welfare law of the State where the child resides.

177—Notification to child, parents and guardians

(1) If the Chief Executive has decided to transfer a child protection order to a participating State under this Division, the Chief Executive must cause—

(a) the parents and guardians of the child who is the subject of the order and any other person who is granted access to the child under the order (or an ancillary order); and

(b) if the child is of or above 10 years of age, the child,

to be served with a notice of the decision as soon as practicable but in any event no later than 3 business days after making it.

(2) A notice under subsection (1) must, in addition to providing notice of the decision, give particulars of the rights of review of the decision and of how and when an application for such a review may be made.

(3) The notice of the decision must be served personally, but—

(a) if it is not practicable to serve the notice personally on a person (not being the child); or

(b) if the whereabouts of such a person cannot, after reasonable enquiries, be ascertained,

the notice of the decision may be served on that person by post addressed to the person at their last known place of residence or employment or in any other manner authorised by the Court.

178—Review of decision may be sought

(1) Any person who is required to be notified of a decision of the Chief Executive to transfer a child protection order to a participating State under this Division may apply to the Court for a review of the decision.

(2) An application for review must be lodged with the Court and served on the Chief Executive within 13 business days after the day on which the decision is made.

(3) Subject to subsection (2), an application for review must be brought in accordance with the rules of the Court.

(4) The lodgment and service of an application in accordance with subsections (2) and (3) operate as a stay of the decision pending the determination of the review.

(5) A review is to be conducted by way of a hearing and for that purpose the Court may receive evidence, including, if the Court so determines, evidence given by affidavit.

(6) The Court must, on a review, give due weight to the decision being reviewed and the reasons for it and not depart from the decision except for cogent reasons.

(7) On a review, the Court may—

(a) affirm the decision the subject of the review; or

(b) rescind the decision; or

(c) rescind the decision and substitute a decision that the Court considers appropriate; or

(d) remit the subject matter of the review to the Chief Executive for reconsideration in accordance with any directions or recommendations of the Court,

and may make any ancillary or consequential order that the Court considers appropriate.

(8) Each party to the proceedings is to bear their own costs unless the Court considers that some other order should be made to do justice between the parties.

Division 3—Judicial transfer of child protection order

179—When Court may make order under this Division

The Court may make an order under this Division transferring a child protection order to a participating State if—

(a) an application for the making of the order is made by the Chief Executive; and

(b) the child protection order is not subject to an appeal; and

(c) the relevant interstate officer has consented in writing to the transfer and to the proposed terms of the order.

180—Type of order

(1) If the Court determines to transfer a child protection order (the ***home order***) under this Division, the Court may, for the purpose of the transfer, vary the terms of the order so that it makes provision for any matter in terms that could be included in a child protection order made under the child welfare law of the participating State and that the Court believes to be—

(a) to the same or a similar effect as the terms of the home order; or

(b) otherwise in the best interests of the child.

(2) In determining whether an order to the same or a similar effect as the home order could be made under the child welfare law of the participating State, the Court must not take into account the period for which it is possible under that law for such an order to be in force.

(3) The Court must specify in the transferred order the period for which it is to remain in force.

(4) The period must be any period that is possible for a child protection order of the type of the transferred order under the child welfare law of the participating State commencing from the date of its registration in that State and that the Court considers appropriate.

181—Court to have regard to certain matters

In determining an application under this Division, the Court must have regard to—

(a) whether the Chief Executive or an interstate officer is in the better position to exercise the powers and responsibilities under a child protection order relating to the child; and

(b) the desirability of a child protection order being an order under the child welfare law of the State where the child resides; and

(c) any information given to the Court by the Chief Executive under section 182.

182—Duty of Chief Executive to inform the Court of certain matters

If the Chief Executive is aware that—

(a) a sentencing order, other than a fine, is in force in respect of the child who is the subject of an application under this Division; or

(b) a criminal proceeding is pending against that child in any court,

the Chief Executive must, as soon as possible, inform the Court of that fact and of the details of the sentencing order or pending criminal proceeding.

Division 4—Transfer of child protection proceedings

183—When Court may make order under this Division

(1) The Court may make an order under this Division transferring a child protection proceeding pending in the Court to the appropriate court in a participating State if—

(a) an application for the order is made by the Chief Executive; and

(b) the relevant interstate officer has consented in writing to the transfer.

(2) The proceeding is discontinued in the Court on the registration of the order in the appropriate court in the participating State in accordance with the interstate law.

184—Court to have regard to certain matters

(1) In determining an application to transfer a proceeding under this Division, the Court must have regard to—

(a) whether any other proceedings relating to the child are pending, or have previously been heard and determined, under the child welfare law in the participating State; and

(b) the place where any of the matters giving rise to the proceeding in the Court arose; and

(c) the place of residence, or likely place of residence, of the child, their parents or guardians and any other people who are significant to the child; and

(d) whether the Chief Executive or an interstate officer is in the better position to exercise the powers and responsibilities under a child protection order relating to the child; and

(e) the desirability of a child protection order being an order under the child welfare law of the State where the child resides; and

(f) any information given to the Court by the Chief Executive under subsection (2).

(2) If the Chief Executive is aware that—

(a) a sentencing order, other than a fine, is in force in respect of the child who is the subject of an application under this Division; or

(b) a criminal proceeding is pending against that child in any court,

the Chief Executive must, as soon as possible, inform the Court of that fact and of the details of the sentencing order or pending criminal proceeding.

185—Interim order

(1) If the Court makes an order transferring a proceeding under this Division, the Court may also make an interim order.

(2) An interim order—

(a) may make provision for the guardianship, custody or care of the child in such terms as the Court considers to be appropriate; and

(b) may give responsibility for the supervision of the child to the interstate officer in the participating State or any other person in that State to whom responsibility for the supervision of a child could be given under the child welfare law of that State; and

(c) remains in force for the period (not exceeding 30 days) specified in the order.

(3) The appropriate court in the participating State may vary or revoke, or extend the period of, an interim order in accordance with the relevant interstate law.

Division 5—Registration of interstate orders and proceedings

186—Filing and registration of interstate documents

(1) Subject to subsection (3), the Chief Executive must, as soon as possible, file in the Court for registration a copy of a child protection order transferred to South Australia under an interstate law.

(2) Subject to subsection (3), the Chief Executive must, as soon as possible, file in the Court for registration a copy of an order under an interstate law to transfer a child protection proceeding to South Australia, together with a copy of any interim order made at the same time.

(3) The Chief Executive must not file in the Court a copy of a child protection order or of an order to transfer a child protection proceeding if—

(a) the decision or order to transfer the child protection order or the order to transfer the child protection proceeding (as the case requires) is subject to review or appeal or a stay; or

(b) the time for instituting a review or appeal has not expired,

under the interstate law.

187—Notification by Registrar

The Registrar must immediately notify the appropriate officer of the appropriate court in the sending State and the interstate officer in that State of—

(a) the registration of any document filed under section 186; or

(b) the revocation under section 189 of the registration of any document so filed.

188—Effect of registration

(1) A child protection order registered in the Court under this Division will be taken for all purposes (except for the purposes of appeal) to be a care and protection order of the relevant type made by the Court on the day on which it is registered and it may be varied or revoked, or the period of the order extended, or a breach of it dealt with, under this Act accordingly.

(2) An interim order registered in the Court under this Division will be taken for all purposes (except for the purposes of appeal) to be an order made by the Court under this Act on the day on which it is registered and it may be varied, or the period of the order extended, or a breach of it dealt with, accordingly.

(3) If an order under an interstate law to transfer a child protection proceeding to South Australia is registered under this Division, the proceeding will be taken to have been commenced in the Court on the day on which the order is so registered.

189—Revocation of registration

(1) An application for the revocation of the registration of any document filed under section 186 may be made to the Court by—

(a) the Chief Executive; or

(b) the child concerned; or

(c) a parent or guardian of the child concerned; or

(d) a party to the proceeding in the appropriate court in the sending State in which the decision to transfer the order or proceeding (as the case requires) was made.

(2) The Registrar must cause a copy of an application under subsection (1) to be given personally or by post as soon as possible to—

(a) the relevant interstate officer; and

(b) each person (other than the applicant) by whom such an application could have been made.

(3) The Court may only revoke the registration of a document filed under section 186 if satisfied that it was inappropriately registered because—

(a) the decision or order to transfer the child protection order or the order to transfer the child protection proceeding (as the case requires) was at the time of registration subject to review or appeal or a stay; or

(b) the time for instituting a review or appeal had not expired,

under the relevant interstate law.

(4) The Registrar must cause any document filed in the Court under section 186 to be sent to the appropriate court in the sending State if the registration of the document is revoked under this section.

(5) The revocation of the registration of a document does not prevent the later re-registration of that document.

Division 6—Miscellaneous

190—Appeals

(1) An appeal against a final order of the Court—

(a) if made in a proceeding to transfer a child protection order to a participating State, must be lodged within 10 business days after the day on which the order was made; or

(b) if made in a proceeding to transfer a child protection proceeding to the appropriate court in a participating State, must be lodged within 3 business days after the day on which the order was made.

(2) An appeal operates as a stay of the order.

191—Effect of registration of transferred order

(1) On a child protection order being registered in a participating State under an interstate law, the child protection order made by the Court under this Act ceases to have effect.

(2) Despite subsection (1), an order that has ceased to have effect by force of that subsection is revived if the registration of the transferred order is revoked in the participating State under the interstate law.

(3) The period for which a child protection order is revived is the balance of the period for which it would have remained in force but for the registration of the transferred order.

192—Transfer of Court file

The Registrar must cause all documents filed in the Court in connection with a child protection proceeding to be sent to the appropriate court in a participating State if—

(a) the child protection order or proceeding is transferred to the participating State; and

(b) the decision or order to transfer the child protection order or the order to transfer the child protection proceeding (as the case requires) is not subject to review or appeal or a stay.

193—Hearing and determination of transferred proceeding

In hearing and determining a child protection proceeding transferred to the Court under an interstate law, the Court—

(a) is not bound by any finding of fact made in the proceeding in the appropriate court in the sending State before its transfer; but

(b) may have regard to the transcript of, or any evidence adduced in, the proceeding referred to in paragraph (a).

194—Disclosure of information

(1) Despite anything to the contrary in a prescribed child protection law, the Chief Executive may disclose to an interstate officer any information that has come to the Chief Executive's notice in the performance of functions under a prescribed child protection law if the Chief Executive considers that it is necessary to do so to enable the interstate officer to perform functions under a child welfare law or an interstate law.

(2) In this section—

prescribed child protection law means—

(a) this Act;

(b) the *Children and Young People (Safety) Act 2017*;

(c) the *Children's Protection Act 1993*;

(d) any other Act prescribed by the regulations.

195—Discretion of Chief Executive to consent to transfer

(1) If, under an interstate law, there is a proposal to transfer a child protection order to South Australia, the Chief Executive may consent or refuse to consent to the transfer and the proposed terms of the child protection order to be transferred.

(2) If, under an interstate law, there is a proposal to transfer a child protection proceeding to the Court, the Chief Executive may consent or refuse to consent to the transfer.

196—Evidence of consent of relevant interstate officer

A document or a copy of a document—

(a) purporting to be the written consent of the relevant interstate officer to—

(i) the transfer of a child protection order to a participating State and to the proposed terms of the child protection order to be transferred; or

(ii) the transfer of a child protection proceeding pending in the Court to the appropriate court in a participating State; and

(b) purporting to be signed by the relevant interstate officer or their delegate,

is admissible in evidence in any proceeding under this Part and, in the absence of evidence to the contrary, is proof that consent in the terms appearing in the document was duly given by the relevant interstate officer.

Part 17—Review of certain decisions under Act

Division 1—Internal review of certain decisions under Act

197—Internal review

(1) A prescribed person is entitled to apply for a review (an ***internal review***) under this section of a prescribed decision.

(2) An application for an internal review must be made—

(a) in a manner and form determined by the Chief Executive; and

(b) within 30 days after the day on which notice of the prescribed decision was given to the applicant (or such longer time as the Chief Executive may allow).

(3) The Chief Executive may, in the Chief Executive's discretion, use such alternative dispute resolution methods as the Chief Executive considers appropriate in the course of an internal review.

(4) On completion of an internal review under this section the Chief Executive must affirm, vary, substitute or set aside the prescribed decision under review.

(5) The Chief Executive must, within 14 days of making a decision under subsection (4), provide to the applicant notice in writing of the decision and the reasons for the decision.

(6) In this section—

prescribed decision means—

(a) a decision of a kind specified in column 2 of the table in Schedule 1; and

(b) any other decision prescribed by the regulations;

prescribed person, in respect of a prescribed decision, means a person specified in column 4 of the table in Schedule 1 in relation to a decision of the relevant kind and includes—

(a) in the case of any prescribed decision relating to an Aboriginal or Torres Strait Islander child or young person—an Aboriginal or Torres Strait Islander person who is recognised to have a relationship of responsibility for the child or young person; or

(b) in any case—a person, or a person of a class, prescribed by the regulations,

but does not include a person, or a person of a class, prescribed by the regulations to be excluded from the ambit of this definition.

Division 2—Review by SACAT of decisions made under section 197

198—Review by SACAT of decisions made under section 197

(1) Subject to this section, SACAT is, by force of this section, conferred with jurisdiction to deal with matters consisting of the review of the following decisions (***reviewable decisions***):

(a) a decision of the Chief Executive under section 197(4);

(b) any other decision under this Act prescribed by the regulations.

(2) However, a decision referred to in subsection (1) will only be taken to be a reviewable decision if an internal review under section 197 has been conducted in respect of the decision.

(3) An application for review of a reviewable decision may be made to SACAT by a person aggrieved by the decision.

(4) An application must be made within 28 days after the applicant receives notice of the outcome of the internal review under section 197 (or such longer period as SACAT may allow).

(5) However, SACAT may only allow an extension of time under subsection (4) if satisfied that—

(a) special circumstances exist; and

(b) another party will not be unreasonably disadvantaged because of the delay in the making of the application.

(6) For the purposes of section 22 of the *South Australian Civil and Administrative Tribunal Act 2013*, there will be—

(a) a panel of assessors consisting of persons with social work qualifications or at least 7 years experience in the child protection sector; and

(b) a panel of assessors consisting of Aboriginal or Torres Strait Islander persons.

(7) Subject to this Act, in performing its functions under this Act, SACAT will, unless the President of SACAT determines that SACAT is to be constituted by fewer than 3 members, be constituted of 3 members of whom—

(a) in the case of a matter relating to an Aboriginal or Torres Strait Islander child or young person—1 will be selected from the panel of assessors referred to in subsection (6)(b); and

(b) in any case—1 will be selected from the panel of assessors referred to in subsection (6)(a).

(8) For the purposes of proceedings under this section, SACAT, constituted of the presiding member sitting alone, may—

(a) deal with—

(i) preliminary, interlocutory or procedural matters; or

(ii) questions of costs; or

(iii) questions of law; or

(b) enter consent orders; or

(c) perform any other function of a prescribed kind,

and may, for that purpose or as a consequence, make any determination or order (including a final order) that the presiding member considers appropriate.

(9) SACAT must direct that the publication of the following information be either prohibited or restricted:

(a) the name and address of a witness appearing before SACAT in the proceedings;

(b) information which would directly or indirectly identify a child or young person who is the subject of the reviewable decision;

(c) evidence given before, or the contents of any document produced to, SACAT in the proceedings.

(10) Proceedings under this section must be held in private.

199—Views of child or young person to be heard

(1) In any proceedings under this Part, a child or young person to whom the proceedings relate must be given a reasonable opportunity to personally present to SACAT their views related to their ongoing care and protection.

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

(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.

Part 18—Interagency practice review panels

200—Interpretation

In this Part—

adverse incident means—

(a) the death of a child or young person if 1 or more of the following applies in relation to the child or young person and their death:

(i) the child or young person was in the custody, or under the guardianship, of the Chief Executive;

(ii) the child or young person was the subject of a report under section 71(1), or a corresponding notification under a repealed Act, within the period of 1 year before their death;

(iii) the child or young person was the subject of a decision by the Chief Executive under this Act or a repealed Act within the period of 1 year before their death;

(iv) the child was less than 1 year old at the time of their death and, before the child was born, the child was the subject of an unborn child report under section 71, or a corresponding report under a repealed Act;

(v) any other circumstances prescribed by the regulations; or

(b) any other incident of a kind prescribed by the regulations,

but does not include an incident occurring in circumstances prescribed by the regulations to be excluded from the ambit of this definition.

201—Purpose of reviews under Part

The purpose of a review of an adverse incident under this Part is to—

(a) identify actions, issues or events that contributed to, or may have contributed to, the adverse incident; and

(b) make recommendations for measures that may be taken to prevent the recurrence of a similar adverse incident; and

(c) facilitate ongoing learning and improvement in the provision of services to children and young people; and

(d) support collaboration and joint learning by State authorities and other service providers.

202—Interagency practice review panels

(1) Subject to this section, the Chief Executive may, as soon as is reasonably practicable after becoming aware of an adverse incident and in accordance with any requirements set out in the regulations, appoint a panel of persons (an ***interagency practice review panel***) to review and report on the adverse incident in accordance with this Part.

(2) An interagency practice review panel may be constituted of such persons (whether employees of the Department or otherwise) as the Chief Executive considers appropriate, having regard to the circumstances of the adverse incident and any requirements set out in the regulations.

(3) To avoid doubt, an interagency practice review panel may be constituted wholly or partly of representatives from State authorities or service providers other than the Department.

203—Review of adverse incident by interagency practice review panel

(1) The Chief Executive must, in accordance with any requirements set out in the regulations, develop terms of reference in respect of the review of an adverse incident under this Part.

(2) Subject to this section, an interagency practice review panel reviewing an adverse incident must address the matters set out in the terms of reference (and may, if the terms of reference permit, inquire into such other matters as may be specified by the Chief Executive).

(3) An interagency practice review panel must not make a finding about civil or criminal liability.

(4) Subject to this Act and any directions of the Chief Executive, an interagency practice review panel may determine its own procedures.

204—Reports

(1) An interagency practice review panel must, at the completion of a review of an adverse incident under this Part, prepare 2 reports as follows:

(a) a first report that contains—

(i) a description of the adverse incident, based on facts that, in the opinion of the interagency practice review panel, are known independently of its investigation; and

(ii) the recommendations of the interagency practice review panel as to the need for changes or improvements in relation to a procedure or practice associated with the incident;

(b) a second report that contains 1 or more of the following elements, as the interagency practice review panel thinks fit:

(i) a description of the adverse incident;

(ii) a description of any processes that, in the opinion of the interagency practice review panel, caused or contributed to the adverse incident;

(iii) the recommendations of the interagency practice review panel;

(iv) any other information considered relevant by the interagency practice review panel.

(2) The report under subsection (1)(a) may be released publicly.

(3) The report under subsection (1)(b) may only be released by the interagency practice review panel to the following persons:

(a) the Minister;

(b) the Chief Executive;

(c) a person who provided expert, technical, administrative or secretarial assistance to a member of the interagency practice review panel;

(d) any other person, or person of a class, prescribed by the regulations.

205—Protection of information

(1) This section applies to—

(a) a person who is, or has been, a member of an interagency practice review panel; or

(b) a person—

(i) who provides, or has provided, expert, technical, administrative or secretarial assistance to an interagency practice review panel; or

(ii) who acts, or has acted, for the purposes of receiving or gathering information on behalf of an interagency practice review panel.

(2) A person to whom this section applies must not make a record of, or use or disclose, information obtained by or in relation to an interagency practice review panel except—

(a) to the extent necessary for the proper performance of the activities of the interagency practice review panel; or

(b) as may be required or authorised for the purposes of reporting under this Act; or

(c) in accordance with the regulations.

Maximum penalty: $60 000.

(3) The Minister, the Chief Executive, a person to whom this section applies or any other person or body prescribed by the regulations, cannot be required to produce or disclose to a court, agency or other person or body any report, document or information prepared or obtained in relation to an interagency practice review panel.

(4) However, subsections (2) and (3) do not apply to—

(a) information contained in a report of an interagency practice review panel that may be released publicly; and

(b) any information or document (other than a report under section 204(1)(b)) that does not identify, either expressly or by implication, a specified person or persons.

206—Application of *Freedom of Information Act 1991*

For the purposes of the *Freedom of Information Act 1991*—

(a) an interagency practice review panel will be taken to be an exempt agency within the meaning of that Act; and

(b) a report prepared by an interagency practice review panel under section 204(1)(b) will be taken to be an exempt document within the meaning of that Act.

Part 19—Miscellaneous

207—Hindering or obstructing person in execution of duty

A person who hinders or obstructs the Chief Executive, a child protection officer or any other person or body in the performance of a function under this Act is guilty of an offence.

Maximum penalty: $10 000.

208—Impersonating child protection officer

A person who falsely represents (whether directly or indirectly) that—

(a) they are a child protection officer; or

(b) they are performing a function under this Act,

is guilty of an offence.

Maximum penalty: $10 000.

209—Protection of identity of persons who report to or notify Department

(1) A person who receives a report or notification that a child or young person may be at risk of harm, or who otherwise becomes aware of the identity of a person who has made such a report or notification, must not disclose the identity of the person who made the report or notification to any other person unless the disclosure—

(a) is made with the consent of the person who made the report; or

(b) is required or authorised by the Chief Executive or under this Act; or

(c) is made to the Coroner's Court or a coroner or investigator under the *Coroners Act 2003* for the purposes of a coronial investigation; or

(d) is made by way of evidence adduced in accordance with this section; or

(e) is otherwise authorised by the regulations.

Maximum penalty: $10 000.

(2) In proceedings before a court or tribunal—

(a) evidence that directly or indirectly discloses the identity of a person who made a report or notification referred to in subsection (1) cannot be adduced without the permission of the court or tribunal; and

(b) a party or witness must not, without the permission of the court or tribunal, be asked, nor required to answer, any question that cannot be answered without directly or indirectly disclosing the identity of a person who made a report or notification referred to in subsection (1).

(3) A court or tribunal cannot grant permission under subsection (2) unless—

(a) the court or tribunal is satisfied that the evidence is of critical importance in the proceedings and that failure to admit it would prejudice the proper administration of justice; or

(b) the person who made the relevant report or notification consents to the admission of the evidence in the proceedings.

(4) An application for permission under subsection (2)—

(a) must not, except as authorised by the court or tribunal, be heard and determined in public; and

(b) must be conducted in such a manner as to protect, so far as may be practicable, the identity of the person who made the relevant report or notification pending the determination of the application.

210—Restrictions on publication of certain information relating to family group conferences and other proceedings

(1) A person must not publish a report of a family group conference, or of any statement made or thing done at a family group conference, if the report—

(a) directly or indirectly identifies—

(i) the child or young person who is the subject of the family group conference; or

(ii) a participant in the family group conference; or

(b) reveals the name, address or school, or includes any particulars, picture or film that may lead to the identification, of the child or young person who is the subject of the family group conference.

Maximum penalty:

(a) in the case of a body corporate—$120 000;

(b) in the case of an individual—$50 000.

(2) However, subsection (1) does not apply to the publishing of a report in circumstances prescribed by the regulations.

(3) Except as may be permitted under subsection (4), a person must not publish prescribed information in relation to proceedings before any court or tribunal in which a child or young person is alleged to be at risk of harm or in need of care or protection if—

(a) the court or tribunal prohibits publication of any prescribed information in relation to the proceedings; or

(b) the prescribed information—

(i) directly or indirectly identifies the child or young person; or

(ii) reveals the name, address or school, or includes any particulars, picture or film that may lead to the identification of any child or young person who is concerned in the proceedings, either as a party or a witness.

Maximum penalty:

(a) in the case of a body corporate—$120 000;

(b) in the case of an individual—$50 000.

(4) The court or tribunal before which proceedings referred to in subsection (3) are heard may, on such conditions as it thinks fit, permit the publication of information or images that would otherwise be suppressed from publication under subsection (3)(b).

(5) In this section—

prescribed information, in relation to proceedings before a court or tribunal, means—

(a) any information contained in, or making up, the evidence tendered in the proceedings; or

(b) any information contained in any other document whatsoever considered in the proceedings; or

(c) any information contained in a report of the proceedings; or

(d) any other information prescribed by the regulations.

211—Restrictions on publication of certain names and identifying information

(1) A person who publishes or broadcasts information in any form that expressly states or implies that a person is a protected person, or that directly or indirectly identifies a person as a protected person, is guilty of an offence.

Maximum penalty:

(a) in the case of a body corporate—$120 000;

(b) in the case of an individual—$50 000.

(2) However, subsection (1) does not apply—

(a) to the protected person; or

(b) if the protected person is of or above 16 years of age—to a person acting with the consent of the protected person; or

(c) if the protected person is under 16 years of age, or is over 16 years of age but lacks capacity to give consent—to a person acting with the consent of the Chief Executive; or

(d) in any other circumstances prescribed by the regulations.

(3) In this section—

protected person means a person who—

(a) is, or has ever been, in the custody, or under the guardianship, of the Minister or the Chief Executive under this Act or a repealed Act; or

(b) is a person, or a person of a class, of a kind prescribed by the regulations,

but a person ceases to be a protected person when the person—

(c) attains 25 years of age; or

(d) dies,

whichever occurs first.

212—Payment of money to Chief Executive on behalf of child or young person

(1) The Chief Executive may receive money on behalf of a child or young person who is under the guardianship of the Chief Executive.

(2) The Chief Executive must cause any money received on behalf of a child or young person—

(a) to be held by the Public Trustee on behalf of the child or young person in accordance with the scheme set out in the regulations; or

(b) to be deposited in an ADI account in the name of the child or young person.

(3) Without limiting the regulations that may be made under subsection (2)(a), the regulations may make provisions relating to the transfer of money to the Public Trustee, interest payable on money held by the Public Trustee, and the application of money held by the Public Trustee, under this section.

(4) Any money held on behalf of a child or young person pursuant to this section is payable to the following persons on the Chief Executive ceasing to have guardianship of the child or young person:

(a) in the case where the child or young person is under 18 years of age—the person under whose guardianship the child or young person is or will be placed;

(b) in the case where an administrator has been appointed in relation to the child or young person under the *Guardianship and Administration Act 1993*—the person determined by the administrator;

(c) in any other case—the child or young person.

213—Confidentiality

(1) Subject to this Act, a person engaged or formerly engaged in the administration, operation or enforcement of this Act or a repealed Act must not disclose personal information obtained (whether by that person or otherwise) in the course of performing functions under this Act or a repealed Act except—

(a) as required or authorised by or under this Act or any other Act or law; or

(b) with the consent of the person to whom the information relates; or

(c) with the authorisation of the Chief Executive; or

(d) in connection with the administration, operation or enforcement of this Act or any other Act; or

(e) for the purposes of referring the matter to a law enforcement agency, or a person or agency exercising official duties under an Act relating to the care or protection of children and young people; or

(f) to an agency or instrumentality of this State, the Commonwealth or another State or Territory of the Commonwealth for the purposes of the proper performance of its functions; or

(g) if the disclosure is reasonably necessary for the protection of the lawful interests of the person making the disclosure; or

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

Maximum penalty: $10 000.

(2) Despite any other Act or law (including the *Child Sex Offenders Registration Act 2006*), personal information may be disclosed to any person in accordance with subsection (1) if the Chief Executive is of the opinion that such disclosure is reasonably required to protect a child or young person from harm or a risk of harm.

(3) Subsection (1) does not prevent disclosure of statistical or other data that could not reasonably be expected to lead to the identification of any person to whom it relates.

(4) Information that has been disclosed under subsection (1) for a particular purpose must not be used for any other purpose by—

(a) the person to whom the information was disclosed; or

(b) any other person who gains access to the information (whether properly or improperly and whether directly or indirectly) as a result of that disclosure.

Maximum penalty: $10 000.

214—Victimisation

(1) A person who causes detriment to another on the ground, or substantially on the ground, that the other person or a third person has provided, or intends to provide, information under this Act or a repealed Act commits an act of victimisation.

(2) However, causing detriment on the ground that a person—

(a) has made a false allegation; or

(b) has not acted in good faith,

does not constitute an act of victimisation.

(3) An act of victimisation under this Act may be dealt with—

(a) as a tort; or

(b) as if it were an act of victimisation under the *Equal Opportunity Act 1984*,

but, if the victim commences proceedings in a court seeking a remedy in tort, the victim cannot subsequently lodge a complaint under the *Equal Opportunity Act 1984* and, conversely, if the victim lodges a complaint under that Act, the victim cannot subsequently commence proceedings in a court seeking a remedy in tort.

(4) If a complaint alleging an act of victimisation under this Act has been lodged with the Commissioner for Equal Opportunity and the Commissioner is of the opinion that the subject matter of the complaint has already been adequately dealt with by a competent authority, the Commissioner may decline to act on the complaint or to proceed further with action on the complaint.

(5) In proceedings against a person seeking a remedy in tort for an act of victimisation committed by an employee or agent of the person, it is a defence to prove that the person exercised all reasonable diligence to ensure that the employee or agent would not commit an act of victimisation.

(6) A person who personally commits an act of victimisation under this Act is guilty of an offence.

Maximum penalty: $10 000.

(7) Proceedings for an offence against subsection (6) may only be commenced by a police officer or a person approved by either the Commissioner of Police or the Director of Public Prosecutions.

(8) In this section—

detriment includes—

(a) injury, damage or loss; and

(b) intimidation or harassment; and

(c) discrimination, disadvantage or adverse treatment in relation to a person's employment; and

(d) threats of reprisal.

215—Protections, privileges and immunities

(1) Nothing in this Act affects any rule or principle of law relating to—

(a) legal professional privilege; or

(b) "without prejudice" privilege; or

(c) public interest immunity.

(2) A person is excused from answering a question or producing a document or other material in connection with an inquiry if the person could not be compelled to answer the question or produce the document or material in proceedings in the Supreme Court.

(3) A person who provides information or a document to an inquiry under this Act has the same protection, privileges and immunities as a witness in proceedings before the Supreme Court.

(4) A person who does anything in accordance with this Act, or as required or authorised by or under this Act, cannot by so doing be held to have breached any code of professional etiquette or ethics, or to have departed from any acceptable form of professional conduct.

216—Limitation on tortious liability for acts of certain children and young people

No liability in tort attaches to the Crown, the Minister, the Chief Executive or any employee of the Department, or a recognised Aboriginal or Torres Strait Islander entity or member of such an entity, in respect of an act or omission of a child or young person who is in the custody, or under the guardianship, of the Chief Executive, unless the act or omission occurs while the child or young person—

(a) is acting as the servant, agent or delegate of the Chief Executive or employee of the Department; and

(b) is acting within the scope of such employment or authority.

217—Evidentiary provision

(1) In proceedings for an offence against this Act, an allegation in an information—

(a) that a prohibition notice had, or had not, been issued to a specified person; or

(b) that a specified person was, or was not, a child protection officer at a specified time; or

(c) that a specified person was, or was not, an approved carer at a specified time; or

(d) that specified premises were, or were not, a licensed children's residential facility at a specified time; or

(e) that a specified person was, or was not, a protected person within the meaning of section 211 at a specified time; or

(f) that a working with children check relating to a specified person had, or had not, been conducted on a specified day or within a specified period,

must be accepted as proved in the absence of evidence to the contrary.

(2) In any legal proceedings, a document apparently certified by the Chief Executive and certifying that a specific person or body was, on a particular day or during a particular period, a recognised Aboriginal or Torres Strait Islander entity, or a delegated decision maker under Part 4 for a specified Aboriginal or Torres Strait Islander child or young person, will, in the absence of proof to the contrary, be proof of the matters certified.

(3) In this section—

prohibition notice have the same meanings as in the *Child Safety (Prohibited Persons) Act 2016*.

218—Regulations

(1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.

(2) Without limiting the generality of subsection (1), the regulations may provide for—

(a) the exemption of a person, or persons of a class, from the operation of a specified provision or provisions of this Act; and

(b) fees or charges in respect of any matter under this Act and their payment, recovery or waiver; and

(c) fines, not exceeding $10 000, for offences against the regulations; and

(d) facilitation of proof of the commission of offences against the regulations.

(3) The regulations may—

(a) be of general or limited application; and

(b) make different provision according to the matters or circumstances to which they are expressed to apply; and

(c) make provisions of a saving or transitional nature consequent on the enactment of this Act or on the commencement of specified provisions of this Act or on the making of regulations under this Act; and

(d) provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Minister, the Chief Executive or any other specified person or body; and

(e) apply or incorporate, wholly or partly and with or without modification, a code, standard, policy or other document prepared or published by the Minister or another specified person or body.

(4) If a code, standard, policy or other document is referred to or incorporated in the regulations—

(a) a copy of the code, standard, policy or other document must be kept available for public inspection, without charge and during ordinary office hours, at an office or offices specified in the regulations; and

(b) evidence of the contents of the code, standard, policy or other document may be given in any legal proceedings by production of a document apparently certified by the Minister to be a true copy of the code, standard, policy or other document.

Schedule 1—Persons who may apply for internal review of decisions under Act

Note—

See section 197 for further information in relation to the prescribed persons who may (or may not) be entitled to apply for a review of a prescribed decision under that section.

Item	Prescribed decision	Provision under which decision was made	Prescribed person in relation to decision
1	A determination as to whether a proposed guardian is suitable to be the guardian of a child or young person	Section 120(3)(b) of this Act	The proposed guardian
2	A refusal to approve a person as an approved carer	Section 146(4) of this Act	The applicant
3	A decision to cancel an approval of an approved carer	Section 148(2) of this Act	The approved carer
4	A refusal to grant a licence to carry on the business of a foster care agency	Section 153(3) of this Act	The applicant
5	A decision to cancel a licence to carry on the business of a foster care agency	Section 154 of this Act	The licence holder
6	A refusal to grant a licence to operate a children's residential facility	Section 159 of this Act	The applicant
7	A decision to cancel a licence to operate a children's residential facility	Section 160 of this Act	The licence holder

Item	Prescribed decision	Provision under which decision was made	Prescribed person in relation to decision
8	A decision to— (a) place a child or young person, or permit a child or young person to remain, with a member of their family; or (b) place a child or young person with any other suitable person; or (c) remove the child or young person from a person referred to in a preceding paragraph with whom the child or young person has been placed; or (d) place a child or young person in a licensed children's residential facility; or (e) place a child or young person in a State residential care facility; or (f) place a child or young person in any other suitable place; or (g) give a direction relating to the care of a child or young person as the Chief Executive thinks fit; or (h) make arrangements for the education of a child or young person; or (i) make arrangements for the professional examination, assessment or treatment of a child or young person (including, for example, admission to hospital); or (j) make such other provision for the care of a child or young person as the Chief Executive thinks fit	Section 130(1) of this Act	The following persons: (a) a parent or guardian of the child or young person to whom the decision relates; (b) the child or young person to whom the decision relates; (c) if the child or young person to whom the decision relates has been placed with an approved carer for a period of at least 6 continuous months—the approved carer

Item	Prescribed decision	Provision under which decision was made	Prescribed person in relation to decision
9	A direction— (a) not to communicate, or attempt to communicate with a child or young person; or (b) not to be in the company of, or otherwise associate with, a child or young person; or (c) not to harbour or conceal, or assist another person to harbour or conceal, a specified child or young person	Section 165 of this Act	The following persons: (a) the person to whom the direction is given; (b) the child or young person to whom the direction relates
10	A decision to direct the Registrar to register a change of the name of a child or young person	Section 25A of the *Births, Deaths and Marriages Registration Act 1996*	A parent or guardian of the child or young person to whom the decision relates

Schedule 2—Repeals and related amendments

Part 1—Repeal of *Children and Young People (Safety) Act 2017*

1—Repeal of *Children and Young People (Safety) Act 2017*

The *Children and Young People (Safety) Act 2017* is repealed.

Part 2—Amendment of *Births, Deaths and Marriages Registration Act 1996*

2—Amendment of section 25A—Change of name of child under guardianship

Section 25A(8)—delete "section 157 of the *Children and Young People (Safety) Act 2017* (and for the purposes of that section the decision will be taken to be a decision under that Act)" and substitute:

section 195 of the *Children and Young People (Safety and Support) Act 2024*

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

Section 38A(4), definition of ***court appointed guardian***—delete "under the *Children and Young People (Safety) Act 2017*" and substitute:

appointed as guardian of a person under the *Children and Young People (Safety and Support) Act 2024* or a repealed Act (within the meaning of that Act)

Part 3—Amendment of *Criminal Law Consolidation Act 1935*

4—Amendment of section 5AA—Aggravated offences

Section 5AA(1)—after paragraph (e) insert:

(ea) the offender committed the offence knowing that the victim was, at the time of the offence, in care (within the meaning of the *Children and Young People (Safety and Support) Act 2024*);

Part 4—Amendment of *Family and Community Services Act 1972*

5—Repeal of Part 3 Division 3

Part 3 Division 3—delete Division 3

6—Repeal of Part 4

Part 4—delete Part 4

Part 5—Amendment of *Health and Community Services Complaints Act 2004*

7—Amendment of section 4—Interpretation

Section 4(1), definition of community service, (c)—delete paragraph (c) and substitute:

(c) a service for the care or protection of any child who is, or has been or may be, at risk of harm (within the meaning of the *Children and Young People (Safety and Support) Act 2024*) and includes—

(i) a service that relates to a notification that a child is, or may be, at risk of harm; and

(ii) an investigation of a case where a child is, or may be, at risk of harm, and any subsequent action taken by a service provider arising from such an investigation,

but does not include a service that consists of or relates to—

(iii) a reviewable decision within the meaning of section 198 of the *Children and Young People (Safety and Support) Act 2024*; or

(iv) a determination of the contact arrangements relating to a child under Part 12 Division 3 of the *Children and Young People (Safety and Support) Act 2024*; or

(v) a matter relating to a quality of care report that is able to be dealt with in accordance to the Quality of Care Report Guidelines under the *Children and Young People (Safety and Support) Act 2024*; or

(vi) a complaint contemplated by section 164(1) of the *Children and Young People (Safety and Support) Act 2024*; or

(vii) a systemic issue relating to the operation of the *Children and Young People (Safety and Support) Act 2024*; or

(viii) a decision made under section 170 of the *Children and Young People (Safety and Support) Act 2024*; or

8—Amendment of section 9—Functions

Section 9(1)—delete "The" and substitute:

Subject to this Act, the

9—Amendment of section 16—Annual report

Section 16—after subsection (1b) insert:

(1c) However, an annual report must not include information of a kind prescribed by the regulations in respect of a complaint to which Part 4A applies.

10—Amendment of section 17—Other reports

Section 17(1)—after "Act" insert:

(other than a function relating to complaints to which Part 4A applies)

11—Repeal of Part 4 Division 1A

Part 4 Division 1A—delete Division 1A

12—Insertion of Part 4A

After section 34 insert:

Part 4A—Complaints relating to certain child protection matters

34A—Interpretation

In this Part—

at risk of harm, in relation to a child, has the same meaning as in the *Children and Young People (Safety and Support) Act 2024*.

34B—Application of Part

(1) This Part applies to complaints of the following kinds (being complaints relating to community services used, received by or sought by a person after the commencement of this section):

(a) a complaint relating to a community service provided to, or for the benefit of, a child—

(i) who may be, or who has been, at risk of harm; or

(ii) that consists of, or includes, a notification (whether mandatory or otherwise) of a suspicion that a child may be at risk at harm; or

(iii) that consists of, or includes or arises out of, an investigation of a case where a child may be at risk of harm; or

(iv) that is provided to, or for the benefit of, a child who is under the guardianship, or in the custody of, the Minister, the Chief Executive or another person under the *Children and Young People (Safety and Support) Act 2024* or a repealed Act within the meaning of that Act;

(b) any other complaint of a kind declared by the regulations to be included in the ambit of this definition,

but does not include a complaint of a kind declared by the regulations not to be included in the ambit of this definition.

(2) Subject to subsection (3), Parts 4, 5 and 6 of this Act do not apply in relation to a complaint to which this Part applies.

(3) Without limiting section 34J, if a person makes a complaint that purports to be a complaint to which this Part applies, but the Commissioner is of the opinion that it is not such a complaint, then—

(a) the Commissioner may deal with the complaint as if it were a complaint made under Part 4 Division 1; and

(b) this Act will be taken to apply to the complaint as if it were not a complaint to which this Part applies.

(4) The *Health and Community Services Complaints Act 2004* and the *Ombudsman Act 1972* (both as in force immediately before the commencement of this section) continue to apply to a complaint relating to a community service used, received by or sought by a person prior to the commencement of this section (whether or not the complaint is made before or after such commencement).

34C—Arrangements between Commissioner and Ombudsman

(1) The Commissioner and the Ombudsman may enter into an administrative arrangement to identify—

(a) classes of complaints to which this Part applies should be dealt with by the Commissioner under this Act; and

(b) classes of complaints to which this Part applies should be dealt with by the Ombudsman under the *Ombudsman Act 1972*.

(2) An administrative arrangement may be varied or revoked by agreement between the Commissioner and the Ombudsman.

(3) An administrative arrangement, or variation or revocation of an administrative arrangement, has effect from the time it is approved by the Minister.

(4) Before approving an administrative arrangement, or variation or revocation of an administrative arrangement, the Minister must consult with the Minister to whom the administration of the *Children and Young People (Safety and Support) Act 2024* is committed.

(5) A copy of an administrative arrangement, as in force from time to time, must be published on a website determined by the Minister.

(6) The Minister must, within 6 sitting days after an administrative arrangement is entered into under subsection (1), cause a copy of the administrative arrangement to be laid before both Houses of Parliament.

34D—Who may complain

The following persons (and no others) may make a complaint to which this Part applies:

(a) the child to whom the community service the subject of the complaint relates;

(b) a parent, or other family member of the child within the meaning of the *Children and Young People (Safety and Support) Act 2024*;

(c) a person under whose guardianship, or in whose custody, the child is placed under the *Children and Young People (Safety and Support) Act 2024* or a repealed Act (within the meaning of that Act);

(d) an approved carer under the *Children and Young People (Safety and Support) Act 2024*;

(e) any other person in whose care the child had been placed under the *Children and Young People (Safety and Support) Act 2024* or a repealed Act (within the meaning of that Act) at the relevant time;

(f) any other person prescribed by the regulations.

34E—Grounds on which complaint may be made

A complaint to which this Part applies may be made on any of the grounds set out in section 25(1) (other than paragraph (h)).

34F—Time within which complaint may be made

A complaint to which this Part applies must be made within 2 years from the day on which the complainant first had notice of the circumstances giving rise to the complaint.

34G—Form of complaint

(1) A complaint to which this Part applies is to be made in a manner approved or determined by the Commissioner.

(2) A person must, in making a complaint to which this Part applies, disclose to the Commissioner, to the best of the person's abilities, all grounds of complaint on which they intend to rely.

(3) The Commissioner may, at any time, require a complainant—

(a) to provide further information or documents; or

(b) to verify all or any part of the complaint by statutory declaration.

(4) When making a requirement under subsection (3), the Commissioner must specify a reasonable period within which the requirement is to be satisfied.

(5) The Commissioner may extend the period specified under subsection (4) (whether before or after its expiry).

34H—Assessment and investigation of complaints

(1) The Commissioner must, in accordance with the scheme set out in the regulations, assess a complaint to which this Part applies and make a determination under this section as to how the complaint is to be dealt with.

(2) Subject to this Act, the Commissioner may determine to deal with a complaint to which this Part applies by—

(a) referring, in accordance with any scheme set out in the regulations, the complaint for resolution by alternative dispute resolution methods; or

(b) investigating the complaint in accordance with the scheme set out in the regulations; or

(c) if the Commissioner is of the opinion that the complaint relates to a matter that falls within the functions conferred on another person or body and that it is appropriate in the circumstances to refer the complaint to that person or body, referring the complaint to the other person or body; or

(d) taking no further action on the complaint in accordance with section 34J.

(3) Within 14 days after making a determination under this section, the Commissioner must provide written notice of the determination to—

(a) the complainant; and

(b) the community service provider.

34I—Powers of Commissioner

In assessing a complaint to which this Part applies, or investigating such a complaint, the Commissioner has such powers as may be conferred on the Commissioner by the regulations.

34J—No further action on complaint

(1) The Commissioner may determine to take no further action on a complaint to which this Part applies if the Commissioner is satisfied that—

(a) the complainant is not entitled to make the complaint under this Part; or

(b) the complaint does not disclose a ground of complaint under this Part; or

(c) the matter should be determined by way of legal proceedings; or

(d) the complainant has been given reasonable explanations or information and there would be no benefit in further entertaining the complaint; or

(e) the complainant is seeking to act on a ground that should have been disclosed by the complainant at an earlier time in accordance with the requirements of section 34G(2); or

(f) the complaint lacks substance, is unnecessary or unjustifiable, or is frivolous, vexatious or not made in good faith; or

(g) the commencement or continuance of proceedings on the complaint would otherwise be an abuse of the processes under this Act; or

(h) the complaint has been resolved or abandoned; or

(i) there is some other reasonable cause that justifies the discontinuance or suspension of proceedings under this Part,

(and such a determination will have effect according to its terms).

(2) The Commissioner must take no further action on a complaint if the Commissioner is satisfied that all issues arising out of the subject matter of the complaint have been adjudicated by a court, tribunal, authority or other person or body acting under a law of the State, another State, a Territory or the Commonwealth.

(3) The Commissioner must suspend action on a complaint if the Commissioner is satisfied—

(a) that proceedings that relate to the subject matter of the complaint have been commenced before the court; or

(b) that an inquest that relates to the subject matter of the complaint has been commenced by a coroner.

(4) The Commissioner must, in a case where a preceding subsection applies, give written notice to—

(a) the complainant; and

(b) the community service provider,

setting out such information relating to the matter as may be required by the regulations.

(5) The Commissioner may recommence action on a suspended complaint for any reasonable cause by giving written notice to—

(a) the complainant; and

(b) the community service provider.

34K—Withdrawal of complaint

(1) A complainant may withdraw a complaint at any time by written notice to the Commissioner.

(2) If a complaint is withdrawn—

(a) any investigation under this Act in relation to the matter must cease; and

(b) the Commissioner must notify that community service provider of the withdrawal within 14 days—

(3) If the Commissioner has referred a complaint to which this Part applies to another person or body under this Part, the withdrawal of that complaint under subsection (1) does not affect the performance and exercise by the person or body of their functions and powers in respect of the matters raised by or in the complaint.

34L—Commissioner may make recommendations

(1) The Commissioner may, on dealing with a complaint to which this Part applies, or in response to issues observed by the Commissioner in the course of dealing with such a complaint, by notice in writing make recommendations to a prescribed community service provider in relation to the complaint.

(2) The prescribed community service provider must, in relation to a recommendation under subsection (1), provide to the Commissioner a report setting out—

(a) whether the prescribed community service provider proposes, or does not propose, to implement the recommendation; and

(b) if the prescribed community service provider proposes to implement the recommendation—details of how the implementation is to be recommended; and

(c) if the prescribed community service provider does not propose to implement the recommendation—an explanation as to why the recommendation is not to be implemented.

(3) If—

(a) a prescribed community service provider proposes to implement a recommendation; and

(b) the Commissioner is of the opinion that the prescribed community service provider has failed or refused to do so,

the Commissioner may require the prescribed community service provider to provide to the Commissioner within a specified period a report setting out the reasons for the failure or refusal.

(4) The Commissioner may submit a report (along with a copy of the report under subsection (3)) to the Minister setting out the views of the Commissioner in respect of the prescribed community service provider's failure or refusal to implement a recommendation.

(5) The Minister must, within 6 sitting days after receiving a report under subsection (4), cause a copy of the report to be laid before both Houses of Parliament.

(6) In this section—

Minister means the Minister to whom the administration of the *Children and Young People (Safety and Support) Act 2024* is committed;

prescribed community service provider means—

(a) the Department within the meaning of the *Children and Young People (Safety and Support) Act 2024*; or

(b) any other person or body prescribed by the regulations.

34M—Commissioner may prepare report relating to complaint

(1) The Commissioner may, on dealing with a complaint to which this Part applies, prepare and deliver to the Minister a report in relation to the complaint (which may include recommendations made in respect of the complaint).

(2) The Minister must, within 6 sitting days after receiving a report under subsection (1), cause a copy of the report to be laid before both Houses of Parliament.

(3) The Minister must, on receiving a report under subsection (1), prepare a report setting out—

(a) the Minister's response to the Commissioner's report; and

(b) if any action has been taken, or is proposed to be taken, (whether by the Minister or otherwise) in relation to the Commissioner report—details of that action or proposed action; and

(c) if no action is to be taken (whether by the Minister or otherwise) in relation to the Commissioner's report—the reasons for not taking action; and

(d) any other information required by the regulations.

(4) The Minister must, within 6 sitting days after completing a report under subsection (3), cause a copy of the report to be laid before both Houses of Parliament.

(5) In this section—

Minister means the Minister to whom the administration of the *Children and Young People (Safety and Support) Act 2024* is committed.

34N—Commissioner to have regard to Part 2 of *Children and Young People (Safety and Support) Act 2024*

In performing functions under this Part, the Commissioner must have regard to, and where relevant give effect to, the provisions of Part 2 of the *Children and Young People (Safety and Support) Act 2024* and the Aboriginal and Torres Strait Islander Child Placement Principle as set out in Part 4 of that Act.

13—Amendment of section 86—Interaction with *Ombudsman Act 1972*

Section 86(b)—delete paragraph (b)

Part 6—Amendment of *Intervention Orders (Prevention of Abuse) Act 2009*

14—Amendment of section 20—Application to Court for Intervention order

Section 20(1)(d)—delete paragraph (d) and substitute:

(d) if the defendant or a person protected by the order is a child and there is a State child protection order (being an order made under Part 10 of the *Children and Young People (Safety and Support) Act 2024*, or a corresponding order under section 38 of the *Children's Protection Act 1993* or section 53 of the *Children and Young People (Safety) Act 2017*) in force in respect of the child—the Chief Executive within the meaning of the *Children and Young People (Safety and Support) Act 2024*; or

15—Amendment of section 26—Intervention orders

Section 26(1)(c)—delete paragraph (c) and substitute:

(c) if the defendant or a person protected by the order is a child and there is a State child protection order (being an order made under Part 10 of the *Children and Young People (Safety and Support) Act 2024*, or a corresponding order under section 38 of the *Children's Protection Act 1993* or section 53 of the *Children and Young People (Safety) Act 2017*) in force in respect of the child—the Chief Executive within the meaning of the *Children and Young People (Safety and Support) Act 2024*; or

Part 7—Amendment of *Ombudsman Act 1972*

16—Amendment of section 13—Matters subject to investigation

(1) Section 13(3c)(b)—delete "section 28A of"

(2) Section 13(6), definition of ***at risk***—delete the definition and substitute:

at risk of harm has the same meaning as in the *Children and Young People (Safety and Support) Act 2024*;

(3) Section 13(6), definition of ***prescribed child protection complaint***—delete "has the same meaning as in section 28A of the *Health and Community Services Complaints Act 2004*" and substitute:

means—

(a) a complaint relating to a health or community service (within the meaning of the *Health and Community Services Complaints Act 2004*)—

(i) that is provided to, or for the benefit of, a child who may be, or who has been, at risk of harm; or

(ii) that consists of, or includes, a notification (whether mandatory or otherwise) of a suspicion that a child may be at risk of harm; or

(iii) that consists of, or includes or arises out of, an investigation of a case where a child may be at risk of harm; or

(iv) that is provided to, or for the benefit of, a child who is under the guardianship, or in the custody of, the Minister, the Chief Executive or another person under the *Children and Young People (Safety and Support) Act 2024* or a repealed Act (within the meaning of that Act);,

where the provision of the service constitutes an administrative act on the part of an agency to which the *Ombudsman Act 1972* applies; or

(b) any other complaint of a kind declared by the regulations to be included in the ambit of this definition,

but does not include—

(c) a complaint to which Part 4A of the *Health and Community Services Complaints Act 2004* applies; or

(d) any other complaint of a kind declared by the regulations not to be included in the ambit of this definition.