

# CHILD PROTECTION AND WELFARE

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# Child Protection and Welfare Act 2016

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# Child Protection and Welfare Act 2016

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## TABLE OF AMENDMENTS

The Child Protection and Welfare Act 2016 No 33 was certified and commenced on 10 June 2016 (GN No 459/2016; Gaz 111/2016).

<b>Amending Legislation</b>	<b>Certified</b>	<b>Date of Commencement</b>
Revised Written Laws Act 2021 No 7	1 June 2021	1 June 2021





An Act to provide for the welfare, care and protection of all children in the Republic and for the enforcement of the rights of children as provided for by international conventions, norms and standards, while taking account of Nauruan culture, traditions and values, and for related purposes.

Enacted by the Parliament of Nauru as follows:

## PART 1 — PRELIMINARY

### 1 Short title

This Act may be cited as the *Child Protection and Welfare Act 2016*.

### 2 Commencement

This Act came into effect on 10 June 2016.

### 3 Definitions

(1) In this Act:

**‘authorised officer’** means a person lawfully appointed or acting as an authorised officer in accordance with Section 9;

**‘child’** or **‘children’** means every person being below the age of 18 years;

**‘Convention on the Rights of the Child’** and **‘the Convention’** mean the United Nations *Convention on the Rights of the Child* adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 and which entered into force on 2 September 1990;

**‘Department’** means the Department of Women and Social Development Affairs;

**‘Director’** means the Director for Child Protection, who is the administrative head of the Child Protection Division of the Department, and includes:

- (a) a person lawfully acting in that position; and
- (b) a person lawfully delegated with authority to exercise the powers of the Director;

**‘long term guardian’** means a person lawfully acting as the guardian of a child in accordance with law, and includes any relative of a child who has assumed the role of the child’s parent in the absence of the child’s natural parents;

**‘Minister’** means the Minister for Women and Social Development Affairs;

**‘Registry’** means the Registry of the District Court of Nauru;

**‘Resident Magistrate’** means a person appointed under Section 4 of the *District Court Act 2018*;

**‘Secretary’** means the Secretary for Women and Social Development Affairs, and includes:

- (a) a person lawfully acting in that position; and
- (b) a person lawfully delegated with authority to exercise the powers of the Secretary; and

*'service providers'* mean any private company or organisation providing service and care to children in the Republic.

- (2) The reference in subsection (1) to the Department of Women and Social Development Affairs or to the Child Protection Division includes any Department or Division which is later vested with authority over child protection and welfare in the place of the Department and the Division, by whatever names they are known.
- (3) Reference may be had to the definitions and other provisions of the *Convention on the Rights of the Child* to determine the meaning of any word or phrase used in this Act, and to assist in determining the purpose or effect of any process or requirement applied under this Act.
- (4) When required to act in the best interests of a child for the purposes of this Act, the action shall be entirely consistent with the principles stated in Article 3 of the *Convention on the Rights of the Child*.

#### **4 Act binds the Republic**

This Act binds the Republic.

#### **5 Guiding Principles**

- (1) The core principle for administering this Act is that the safety, wellbeing and best interests of a child are paramount.
- (2) This Act shall be applied, implemented and enforced in accordance with Nauruan tradition, culture and community values, except where such matters conflict with the rights of children as provided for in this Act.
- (3) When interpreting or applying any provision of this Act, and when exercising any power, duty or function related to the protection of a child or the promotion of the welfare of children, all persons shall act in accordance with the following principles:
  - (a) a child has a right to be protected from harm or risk of harm;
  - (b) a child's family has the primary responsibility for the child's upbringing, protection and development;
  - (c) the preferred way of ensuring a child's safety and wellbeing is through supporting the child's family;
  - (d) if a child does not have a parent who is able and willing to protect the child, the Government is responsible for protecting the child;
  - (e) in protecting a child, the Government should only take action that is warranted in the circumstances;
  - (f) if a child is removed from the child's family, support should be given to the child and the child's family for the purpose of allowing the child to return to the child's family, if the return is in the child's best interests;
  - (g) if a child does not have a parent able and willing to give the child ongoing protection in the foreseeable future, the child should have long-term alternative care;

- (h) if a child is removed from the child's family, consideration should be given to placing the child, as a first option, in the care of relatives as is consistent with Nauruan custom and tradition;
- (i) if a child is removed from the child's family, the child should be placed with the child's siblings, to the extent that is possible;
- (j) a child shall only be placed in the care of a parent or other person who has the capacity and is willing to care for the child, including a parent or other person with capacity to care for the child with assistance or support;
- (k) a child shall have stable living arrangements, including arrangements that provide:
  - (i) for a stable connection with the child's family and community, to the extent that is in the child's best interests; and
  - (ii) for the child's developmental, educational, emotional, spiritual, health, intellectual and physical needs to be met;
- (l) a child shall be able to maintain relationships with the child's parents and relatives, if it is appropriate for the child;
- (m) a child shall be able to know, explore and maintain the child's identity and values, including his or her cultural, ethnic and religious identity and values; and
- (n) a delay in making a decision in relation to a child should be avoided, unless appropriate for the child.

## **6 Application of this Act**

- (1) Any written law which relates to the rights of children, or which provides for processes relevant to dealing with children in any manner and in any context, shall be read and applied subject to the provisions of this Act, and in the event of any inconsistency between the provisions of this Act and of any other written law, the provisions of this Act shall prevail.
- (2) The following provisions apply to all laws which make provision in relation to children, and such laws are deemed to be amended in accordance with this Section:
  - (a) the use of terms such as "infant", "young person" and any other expression referable to a child is to be read as a reference to "child" or "children", as the case may be; and
  - (b) the definition of child or children, whether stated as "infant", "young person" and any other expression referable to a child is as provided for in Section 3.



## PART 2 — ADMINISTRATIVE ARRANGEMENTS

### 7 **Functions and powers of the Department relating to child protection and welfare**

- (1) The functions of the Department relating to the protection and welfare of all children include responsibilities relating to:
- (a) implement and enforce this Act in accordance with the Guiding Principles stated in Section 4, the provisions of the *Convention on the Rights of the Child*, and other international conventions which promote the rights, protection and welfare of children;
  - (b) promote awareness and understanding of issues concerning the rights, welfare and protection of children, and of the application of the *Convention on the Rights of the Child*, and other relevant international conventions, in the Republic;
  - (c) ensure that Nauruan customs, traditions and community values relating to children are promoted and applied, subject to the requirement that they meet accepted standards and are consistent with the rights of children under all applicable international conventions;
  - (d) work in collaboration with other Departments and community agencies to promote the protection and welfare of children;
  - (e) involve and empower non-government organisations in the implementation of this Act and the application of the *Convention on the Rights of the Child* throughout the Republic;
  - (f) promote, apply and enforce bilateral and multilateral measures to protect children from sexual abuse and sexual exploitation, so as to facilitate the extraterritorial application and enforcement of criminal laws relating to the abuse, exploitation and trafficking of children;
  - (g) to ensure that approved carers are given responsibilities for the care and protection of children in accordance with the procedures provided for in this Act;
  - (h) ensure that all approved carers comply with prescribed standards when performing their functions and responsibilities as carers of children under this Act;
  - (i) review the implementation of this Act and other written laws which protect the rights and welfare of children in the Republic on an on-going basis, and to make recommendations for any amendments and modifications to ensure that the *Convention on the Rights of the Child* and other international conventions are complied with;
  - (j) promote the application and implementation of special processes for investigations and judicial proceedings which involve children;
  - (k) ensure that information gained, obtained and used for the purposes of this Act is kept confidential, and that the rights of children and persons who provide information concerning any threat to a child are protected;
  - (l) develop and implement programs aimed at preventing harm to children, and to otherwise provide for the protection of children and the promotion of their welfare; and
  - (m) develop policies and provide programs which involve training and capacity building within the Government of Nauru, and relevant

community based agencies to facilitate the effective application and enforcement of this Act, and other laws which promote and protect the rights and welfare of children.

- (2) The Department has all powers necessary for, or incidental to, any of its functions under this Section.

## **8 Responsibilities and powers of the Minister, the Secretary and the Director**

- (1) The Minister, the Secretary and the Director may perform all of the functions provided by this Act, and may exercise any power and take any action that is necessary for or incidental to the performance of the functions of the Department under this Act.
- (2) Without limiting the generality of subsection (1), the Minister is authorised and empowered to:
  - (a) approve or make appointments of authorised officers as provided by Section 9, and to require action to be taken by authorised officers in support of the exercise of a power by the Minister under this Act;
  - (b) appoint and empower committees and boards as provided by Section 10;
  - (c) delegate powers in accordance with Section 11, and to give directions to persons holding delegated powers;
  - (d) take all action necessary to protect children under threat of harm;
  - (e) take action required of State Parties for the application and enforcement of the rights of children under the *Convention on the Rights of the Child*, and other international conventions which provide for the rights and welfare of children;
  - (f) intervene in relation to any investigation or judicial proceeding involving a child to ensure that the special procedures applicable to them are observed and applied;
  - (g) take any action necessary to ensure that confidentiality of information is observed and applied in accordance with the requirements of this Act; and
  - (h) otherwise take any action necessary to effectively apply and implement this Act, the *Convention on the Rights of the Child*, and other international conventions which provide for the rights and welfare of children.
- (3) Without limiting the generality of subsection (1), the Secretary is authorised and empowered to:
  - (a) ensure that authorised officers are appointed under Section 9, and that they are properly directed, supervised, trained and resourced to effectively implement and enforce this Act;
  - (b) provide support to committees and boards appointed and empowered under Section 10;
  - (c) delegate powers in accordance with Section 11, and to give directions to persons holding delegated powers;
  - (d) take all action necessary to protect children under threat of harm;
  - (e) regulate approved carers, and ensure that they comply with approved standards of care;

- (f) take any action necessary for the application and enforcement of the rights of children under this Act and the *Convention on the Rights of the Child*;
  - (g) ensure that investigations or judicial proceedings involving a child are conducted in a manner that observes and applies the special procedures applicable to them;
  - (h) take any action necessary to ensure that confidentiality of information is observed and applied in accordance with the requirements of this Act; and
  - (i) otherwise take any action necessary to effectively implement and enforce this Act and the *Convention on the Rights of the Child*, and other international conventions which provide for the rights and welfare of children.
- (4) Without limiting the generality of subsection (1), the Director is authorised and empowered to:
- (a) supervise and give directions to authorised officers who are appointed under Section 9, and ensure that they are trained and resourced to effectively implement and enforce this Act;
  - (b) provide support to committees and boards appointed and empowered under Section 10;
  - (c) take all action necessary to protect children under threat of harm;
  - (d) monitor approved carers, and ensure that they comply with approved standards of care;
  - (e) take any action necessary for the application and enforcement of the rights of children under this Act and the *Convention on the Rights of the Child* and other international conventions which provide for the rights and welfare of children;
  - (f) monitor investigations and judicial proceedings involving a child to ensure that the special procedures applicable to them are observed and applied, and to make reports about any failures to observe such breaches to the Minister and the Secretary;
  - (g) take any action necessary to ensure that confidentiality of information is observed and applied in accordance with the requirements of this Act; and
  - (h) otherwise take any action necessary to effectively implement and enforce this Act and the *Convention on the Rights of the Child*, and other international conventions which provide for the rights and welfare of children.
- (5) In addition to the powers prescribed in subsections (3) and (4), the Secretary and Director have authority to make any necessary arrangements for the care and well-being of a child who has been taken into the Minister's custody under this Act, or if the Minister becomes the guardian of the child pursuant to a court order made under this Act, or by any other legal process.
- (6) In the performance of any functions and the exercise of any power under this Act, the Minister, Secretary and Director have authority to determine priorities for action to be taken, having regard to available resources, and may request or require any other Government agency having responsibilities in relation to specific groups of children to take the lead role in ensuring that the rights and welfare of children are protected and promoted.

## 9 Authorised officers

- (1) The Secretary and Director are authorised to exercise all of the powers of an authorised officer under this Act.
- (2) All persons employed in the Department in positions designated as a child protection officer are authorised to exercise all of the powers of an authorised officer under this Act.
- (3) The Secretary may, from time to time and with the approval of the Minister, appoint any employee of the Department to be an authorised officer for the purposes of this Act, and may revoke any appointment.
- (4) The Minister may appoint any public service employee or other person who is not an employee of the Department, to be an authorised officer for the purpose of this Act, but any such person is not to be regarded as an employee of the Department by reason of such appointment.
- (5) The Secretary may, with the approval of the Minister, designate any office within the Department so that a person holding that office from time to time, is an authorised officer for the purposes of this Act.
- (6) All authorised officers appointed under this Section, whether officers of the Department or not, shall act in accordance with directions given by the Secretary and the Director, and if they are full time officers or employees of the Public Service they are not entitled to any additional remuneration in respect of their appointment under this Section.

## 10 Advisory and regulatory committees or boards

- (1) The Minister may, by written Order, published in the Government Gazette, appoint any technical, regulatory or advisory committee or board that the Minister considers necessary to assist in carrying out any function under this Act or any applicable law, and may do all of the following:
  - (a) authorise a committee or board established under this Section to make enquiries, conduct research or make reports that the Minister considers will assist the Minister or the Department to efficiently administer this Act;
  - (b) delegate powers and functions to a committee or board, and prescribe the procedures in relation to any matter concerning any committee or board established under this Section;
  - (c) appoint or dismiss any member of a committee or board established under this Section; and
  - (d) dissolve any committee or board established under this Section.
- (2) The Minister shall consider the nature of the community interest and the matters to be addressed by a committee or board when determining its membership, and shall ensure that there is appropriate representation of women, persons with disabilities and community members with experience in relation to the care, protection and welfare of children.
- (3) An Order establishing a committee or board under this Section shall specify:
  - (a) the name of the committee or board;
  - (b) the purpose for establishing the committee or board, and its functions, roles, responsibilities and powers; and
  - (c) the membership of the committee or board.
- (4) The members of committees and boards established under this Section are



entitled to receive such sitting and other allowances as are approved from time to time by Cabinet for members of Government committees and boards.

## **11 Delegation of powers**

- (1) The Minister and the Secretary may delegate to the Director, or to any committee or board established under this Part, any of the functions and powers which are conferred by this Act.
- (2) A delegation made under this Section shall be made in writing.
- (3) The delegation of a function or power under this Act does not prevent the Minister or Secretary, as the case may be, from exercising that function or power.
- (4) A delegation made under this Section may be revoked at will by the Minister or Secretary, as the case may be.
- (5) A delegation made under this Section by a Minister or Secretary who subsequently ceases to hold office continues in force as if made by that person's successor in office, until such delegation is revoked.

## **12 Powers of enforcement**

- (1) For the purposes of implementing and enforcing the provisions of this Act, and for any purpose related to the protection of children, authorised officers have authority to exercise any of the following powers:
  - (a) to enter upon any land or premises;
  - (b) to take photographs and measurements, and to otherwise collect any necessary evidence relating to any issue involving the care or welfare of a child;
  - (c) to require a person apparently having custody or care of any child to state his or her full name and usual place of residence;
  - (d) to require the production of records and information held by a person relating to a child in care or under any protection order made under this Act; or
  - (e) to order that any act, matter or thing which may be adversely affecting the welfare of a child cease or be removed.
- (2) A person who refuses or fails to comply with a requirement or order made or given under subsection (1), commits an offence and upon conviction is liable to a fine not exceeding \$10,000 or to a term of imprisonment not exceeding 6 months or to both.



## PART 3 — ARRANGEMENTS FOR THE PROTECTION OF CHILDREN

### DIVISION 1 — CHILDREN AT RISK OF HARM

#### **13 Investigation of alleged harm to a child**

- (1) Where the Director becomes aware, whether because of notification given to the Director or otherwise of alleged harm or alleged risk of harm to a child, and reasonably suspects the child is in need of protection, the Director shall immediately either:
  - (a) arrange for an authorised officer investigate the allegation and assess the child's need of protection; or
  - (b) take any other action that the Director considers appropriate.
- (2) Where the Director reasonably believes alleged harm to a child may involve the commission of a criminal offence relating to the child, the Director shall immediately give details of the alleged harm to the Commissioner of Police.
- (3) Subsection (2) applies whether or not the Director suspects the child is in need of protection.
- (4) The Director shall take action under this Section if the Minister or Secretary brings any case of alleged or suspected harm, or risk of harm, to a child to the attention of the Director.

#### **14 Information to be given to a child's parents and a long term guardian**

- (1) This Section applies if an authorised officer or police officer:
  - (a) investigates an allegation of harm or risk of harm to a child; or
  - (b) assesses a child's need of protection because of an allegation of harm or risk of harm to the child.
- (2) Where the child does not have a long-term guardian, the officer shall, if one more parent of the child is in the Republic:
  - (a) give details of the alleged harm or risk of harm to at least one of the child's parents; and
  - (b) as soon as practicable after completing the investigation:
    - (i) tell at least one of the child's parents about the outcome of the investigation; and
    - (ii) if asked by the parent, give information about the outcome of the investigation to the parent in writing.
- (3) Where the child has a long-term guardian, the officer shall:
  - (a) take, or make a reasonable attempt to take, the actions stated in subsections (2)(a) and (b), but only if the officer is satisfied it would be in the child's best interests to do so, having regard to all of the following:
    - (i) the nature and extent of the child's connection with the child's parents;
    - (ii) the evidence in support of the allegation of harm or risk of harm; and

- (iii) any other relevant matter; and
  - (b) take the actions in subsections (2)(a) and (b) in relation to the long term guardian.
- (4) Notwithstanding subsections (2) and (3), the officer need only comply with the requirements of subsection (2) or (3) to the extent the officer considers is reasonable and appropriate in the particular circumstances if the officer reasonably believes:
- (a) someone may be charged with a criminal offence for the harm to the child and the officer's compliance with subsection (2) or (3), may jeopardise an investigation into the offence; or
  - (b) compliance with subsection (2) or (3), may expose the child to harm.
- (5) Where under subsection (3)(a), the officer does not take the actions in subsection (2)(a) and (b) but makes a reasonable attempt to take the actions, the officer shall document full details about the actions taken by the officer in making the attempt.

## **15 Contact with child at immediate risk of harm**

- (1) This Section applies if all of the following apply:
- (a) an authorised officer or police officer is investigating an allegation of harm, or risk of harm, to a child;
  - (b) the officer has been denied contact with the child, or cannot reasonably gain entry to the place where the officer reasonably believes the child is; and
  - (c) the officer reasonably suspects the child:
    - (i) is at immediate risk of harm; or
    - (ii) is likely to leave or be taken from a place and suffer harm if the officer does not take immediate action.
- (2) The officer may exercise the following powers:
- (a) enter the place;
  - (b) search the place to find the child; and
  - (c) remain in the place, and have contact with the child for as long as the officer reasonably considers necessary for investigating the allegation or the child's circumstances.
- (3) The officer may exercise a power under subsection (2), using such assistance and force as is reasonable in the circumstances.
- (4) The officer may arrange for a medical examination of the child, and for medical treatment for the child that is necessary in the circumstances.
- (5) At the first reasonable opportunity, the officer shall record, in a register kept for the purpose by the Department or the Nauru Police Force, full details about the exercise of the powers and other actions taken by the officer.

## **16 Contact with children in school or other care service premises**

- (1) This Section applies if all of the following apply:
- (a) an authorised officer or police officer is investigating an allegation of harm, or risk of harm, to a child;
  - (b) the officer reasonably believes:
    - (i) it is in the child's best interests that the officer has contact with the child before the child's parents or a long term guardian are told about the investigation; and

- (ii) the child's parents or a long term guardian knowing in advance about the proposed contact with the child, is likely to adversely affect or otherwise prevent the proper and effective conduct of the investigation;
  - (c) the child is at a school, or place where education or other care or supervision of the child is provided, when the officer is to have contact with the child; and
  - (d) the officer has lawfully entered, and is lawfully remaining at the school or place.
- (2) The officer may have contact with the child for as long as the officer considers necessary for investigating the allegation or child's circumstances.
- (3) Before exercising a power under subsection (2), the officer shall notify the person in charge of the school or place of the intention to exercise the power.
- (4) As soon as practicable after the officer has had contact with the child, the officer shall:
  - (a) if the child has a long term guardian, tell at least one long term guardian of the child that the officer has had contact with the child and the reasons for the contact; or
  - (b) in all other cases, tell at least one of the child's parents that the officer has had contact with the child and the reasons for the contact.
- (5) The officer's obligation under subsection (4), is limited to the extent the officer considers is reasonable and appropriate in particular circumstances if the officer reasonably believes:
  - (a) someone may be charged with a criminal offence for harm to the child and the officer's compliance with the subsection may jeopardise an investigation into the offence; or
  - (b) compliance with the subsection may expose the child to harm.
- (6) At the first reasonable opportunity, the officer shall record, in a register kept for the purpose by the Department or the Nauru Police Force, full details about the exercise of the powers and other actions taken by the officer.

## **17 Child at immediate risk may be taken into custody**

- (1) This Section applies:
  - (a) if an authorised officer or police officer reasonably believes a child is at risk of harm and the child is likely to suffer harm if the officer does not immediately take the child into custody; and
  - (b) even if guardianship of the child has been vested in a person under any written law.
- (2) The officer may take the child into the Minister's custody.
- (3) For the purposes of subsection (2), the officer may exercise any of the following powers:
  - (a) enter the place where the officer reasonably believes the child is;
  - (b) search the place to find the child; or
  - (c) remain in the place for as long as the officer reasonably considers is necessary to find the child.
- (4) The officer may exercise a power under subsection (2) or (3) using force that is reasonable in the circumstances.

- (5) The officer shall ensure that an application is made for a child protection order for the child as soon as practicable.
- (6) The officer may arrange for a medical examination of the child, and for medical treatment for the child that is necessary in the circumstances.
- (7) The Minister's custody of the child ends on the earlier of the following:
  - (a) when the application for the child protection order for the child is finalised; or
  - (b) 48 hours has elapsed after the child is taken into custody, unless the court orders otherwise.

## **18 Effect of taking child into custody on existing order**

- (1) This Section applies if:
  - (a) an authorised officer or police officer takes a child into the Minister's custody; and
  - (b) guardianship of the child is vested in a person other than the Minister under any court order or by reason of any Act.
- (2) The order or provision of a written law under which guardianship applies, so far as it relates to the child's custody or guardianship, ceases to have effect while the Minister's custody of the child continues.

## **19 Officer's obligations on taking child into custody**

- (1) This Section applies if an authorised officer or police officer takes a child into the Minister's custody.
- (2) Where the child does not have a long term guardian, the officer shall, as soon as practicable:
  - (a) take reasonable steps to tell at least one of the child's parents:
    - (i) that the child has been taken into custody, and the reasons for the action; and
    - (ii) when the Minister's custody ceases;
  - (b) tell the child about their being taken into the Minister's custody; and
  - (c) tell the Director the child has been taken into the Minister's custody, the reasons for the action and where the child has been taken.
- (3) Where the child has a long term guardian, the officer shall, as soon as practicable:
  - (a) comply with subsection (2)(a), (b) and (c) as if the reference in subsection (2)(a) to parents were a reference to a long term guardian; and
  - (b) comply, or make a reasonable attempt to comply, with subsection (2)(a).
- (4) Subsections (2) and (3) do not require the officer to tell the child's parents or a long term guardian in whose care the child has been placed.
- (5) The officer's obligation under subsection (2)(a)(i) or (3) is limited to the extent the officer considers is reasonable and appropriate in particular circumstances if the officer reasonably believes:
  - (a) someone may be charged with a criminal offence for harm to the child and the officer's compliance with the provision may jeopardise an investigation into the offence; or
  - (b) compliance with the provision may expose the child to harm.

- (6) Where, under subsection (3)(b), the officer does not comply with subsection (2)(a) but makes a reasonable attempt to comply, the officer shall document full details about the actions taken by the officer in making the attempt.

## **20 Moving a child to a safe place**

- (1) All approved carers and care service providers shall take reasonable steps to ensure a child placed in their care under this Act is cared for in a way that meets all of the following standards:
- (a) the child's dignity and rights will be respected at all times;
  - (b) the child's needs for physical care will be met, including adequate food, clothing and shelter;
  - (c) the child will receive emotional care that allows him or her to experience being cared about and valued and that contributes to the child's positive self-regard;
  - (d) the child's religious upbringing will be respected and continued;
  - (e) the child's culture, traditions and values will be respected and promoted;
  - (f) the child's material needs relating to his or her schooling, physical and mental stimulation, recreation and general living will be met;
  - (g) the child will receive education, training or employment opportunities relevant to the child's age and ability;
  - (h) the child will receive positive guidance when necessary to help him or her to change inappropriate behaviour;
  - (i) the child will receive dental, medical and other health support and services necessary to meet his or her needs;
  - (j) the child will be given the opportunity to participate in positive social and recreational activities appropriate to his or her developmental level and age;
  - (k) the child will be encouraged to maintain family and other significant personal relationships; and
  - (l) where the child has a disability, the child will receive care and help appropriate to the child's special needs.
- (2) The Director may take any action that is necessary to ensure that a child placed in care under this Act, is cared for in a way that meets the standards stated in subsection (1).
- (3) For the purposes of subsection (1)(g), techniques for managing the child's behaviour shall not include punishment that:
- (a) humiliates, frightens or threatens the child in a way that is likely to cause any harm, including any physical, psychological, or emotional harm; and
  - (b) involves any cruel, inhumane or degrading treatment of the child.
- (4) For the purposes of subsection (1)(j), if the Minister has custody or guardianship of the child, the child's carer shall act in accordance with the Minister's or Director's reasonable directions.
- (5) The moving of the child does not:
- (a) prevent the child's parents or family members resuming or assuming care of the child; or
  - (b) affect existing parental rights for the child.

- (6) The Minister has authority to take any necessary action to ensure that a safe place provided for the purposes of this Section is appropriately located and adequately resourced and maintained.

## **21 Protection of unborn children**

- (1) This Section applies if, before the birth of a child, the Director reasonably suspects the child may be in need of protection after he or she is born.
- (2) The Director has authority to take the action, the Director considers appropriate including:
  - (a) having an authorised officer investigate the circumstances and assess the likelihood that the child will need protection after he or she is born; or
  - (b) offering help and support to the pregnant woman.
- (3) The purpose of this Section is to reduce the likelihood that the child will need protection after he or she is born.
- (4) The Director shall take action under this Section if the Minister or Secretary brings any case of alleged or suspected harm, or risk of harm to an unborn child to the attention of the Director.

## **22 Protection from liability for persons giving information about alleged harm or risk of harm**

- (1) This Section applies if a person, acting honestly:
  - (a) notifies the Minister, Secretary, Director, a police officer or any officer of the Department that the person suspects:
    - (i) a child has been, is being or is likely to be harmed; or
    - (ii) an unborn child may be at risk of harm after he or she is born; or
  - (b) gives the Minister, Secretary, Director, an authorised officer or a police officer:
    - (i) information about alleged harm or alleged risk of harm to a child; or
    - (ii) information relating to an unborn child, about a suspected risk of harm to the child after he or she is born.
- (2) The person is not liable in any civil or criminal proceeding for giving the notification or information.
- (3) By giving the notification or information, the person cannot be held to have:
  - (a) breached any code of professional etiquette or ethics; or
  - (b) departed from accepted standards of professional conduct.
- (4) Without limiting subsections (2) and (3):
  - (a) in a proceeding for defamation, the person has a defence of absolute privilege for publishing or providing the information; and
  - (b) if the person would otherwise be required to maintain confidentiality about the information under any written law, oath or rule of law or practice, the person:
    - (i) does not contravene that other written law, oath or rule of law or practice by giving the information; and
    - (ii) is not liable to disciplinary action for giving the information.



## DIVISION 2 — PROTECTION ORDERS

**23 Preference to be given to placing children with relatives**

- (1) Whenever a child is removed from the care of his or her parents, the child shall be placed in the care and protection of members of his or her extended family, unless reasons relating to the safety or welfare of the child require alternative arrangements to be made.
- (2) The Department shall take all necessary steps to confirm that the care which will be provided by a child's extended family is appropriate, adequate and in the child's interests.
- (3) Subject to the approval of the Minister, the Director has authority to develop, approve and apply any necessary procedure, standard or code of practice to be applied in the assessment and confirmation of the proposed arrangements involving the care of a child by members of his or her extended family.
- (4) Authorised officers are empowered to take any necessary action to investigate and confirm that the arrangements for the care of a child by his or her extended family are adequate and in the child's interests, and that any approved procedure, standard or code of practice, is being complied with.

**24 Application for child protection order**

- (1) The Director may apply to a Resident Magistrate for a child protection order for a child.
- (2) The application shall:
  - (a) state the grounds on which it is made;
  - (b) state the nature of the order sought;
  - (c) comply with applicable rules of court; and
  - (d) be filed in the court.
- (3) When the application is filed, the Registry shall immediately fix the time and place for hearing the application having regard to the principle that it is in the best interests of the child for the application to be heard as early as possible.
- (4) Subject to subsection (5), as soon as practicable after the application is filed, the Director shall:
  - (a) arrange for a copy of the application to be personally served on each of the child's parents; and
  - (b) ensure that the child is told about the application.
- (5) Where it is not practicable to serve the copy personally, a copy of the application may be served on a parent by leaving it at the last known residential address of the parent.
- (6) The copy of the application served under this Section shall state:
  - (a) when and where the application is to be heard; and
  - (b) that the application may be heard and decided even though the parent does not appear in court.
- (7) The child's parents are respondents to the application.

## 25 Hearing of application in absence of parents

- (1) The Resident Magistrate may hear and decide the application in the absence of the child's parents, only if:
  - (a) the parents have been given reasonable notice of the hearing and fail to attend or continue to attend the hearing; or
  - (b) the Resident Magistrate is satisfied that it was not practicable to give the parents notice of the hearing.
- (2) Subsection (1) does not limit the jurisdiction of the court to exclude a person from a proceeding.

## 26 Making of child protection orders

- (1) A Resident Magistrate may make a child protection order if he or she is satisfied that all of the following apply:
  - (a) the child is a child in need of protection, and the order is appropriate and desirable for the child's protection;
  - (b) appropriate arrangements have been made for the care of the child;
  - (c) the child's wishes or views, if able to be ascertained, have been made known to the court; and
  - (d) any other procedural requirements applying under Regulations or court rules have been complied with.
- (2) Before making a child protection order, the court may have regard to a contravention of this Act or of an order made under this Act.
- (3) Before making a child protection order granting custody or guardianship of a child to a person other than the Director, the Resident Magistrate shall have regard to any report given, or recommendation made, to the court by the Director about the person, including a report about the person's criminal history and domestic violence history.
- (4) Before making a child protection order granting a long term guardianship of a child, the court shall be satisfied:
  - (a) there is no parent able and willing to protect the child within the foreseeable future; or
  - (b) the child's need for emotional security will be best met in the long term by making the order.
- (5) The Resident Magistrate shall not grant a long term guardianship of a child to:
  - (a) a person who is not a member of the child's family, unless the child is already in custody or guardianship under a child protection order; or
  - (b) the Minister, if the court can properly grant guardianship to another suitable person.
- (6) Before the court extends or makes a further child protection order granting custody or short-term guardianship of the child, the court shall have regard to the child's need for emotional security and stability.
- (7) This Section does not apply to the making of an interim order under Section 33.

## 27 Extraterritoriality

For the avoidance of any doubt, a Resident Magistrate may make a child

protection order even if the events causing the child to become a child in need of protection happened outside the Republic, or partly in the Republic and partly outside the Republic.

## 28 Types of child protection orders

- (1) A Resident Magistrate may make any one or more of the following child protection orders that the Resident Magistrate considers to be appropriate in the circumstances:
  - (a) an order directing a parent of the child to do or refrain from doing something directly related to the child's protection;
  - (b) an order directing a parent not to have contact, direct or indirect:
    - (i) with the child; or
    - (ii) with the child other than when a stated person or a person of a stated category is present;
  - (c) an order requiring the Director to supervise the child's protection in relation to the matters stated in the order;
  - (d) an order granting custody of the child to:
    - (i) a suitable person, other than a parent of the child, who is a member of the child's family; or
    - (ii) the Minister;
  - (e) an order granting short-term guardianship of the child to the Minister; or
  - (f) an order granting a long term guardianship of the child to:
    - (i) a suitable person, other than a parent of the child, who is a member of the child's family;
    - (ii) another suitable person, other than a member of the child's family, nominated by the Director; or
    - (iii) the Minister.
- (2) An order may be made under subsection (1)(e) or (f) even if guardianship of the child is vested in another person under any written law, and while the order granting guardianship under this Section is in force, the provision of any other law relating to the guardianship of the child ceases to have effect.

## 29 Duration of child protection orders

- (1) A child protection order for a child shall state the time when it ends.
- (2) The stated time for the order:
  - (a) if it does not grant custody or guardianship of the child, shall not be more than 1 year after the day it is made;
  - (b) if it grants custody or short-term guardianship of the child, shall not be more than 2 years after the day it is made; or
  - (c) if it grants a long term guardianship of the child, shall be the end of the day before the child turns 18 years.
- (3) The order ends at the stated time unless it is extended or earlier revoked.
- (4) Despite subsections (1), (2) and (3), the order ends when the child turns 18 years.

## 30 Director's obligations after making of child protection order

As soon as practicable after a child protection order for a child is made, the Director shall give the parties to the application for the order:

- (a) a copy of the order; and
- (b) a written notice:
  - (i) explaining the terms and effect of the order;
  - (ii) stating that a party may appeal against the decision to make the order within 28 days after the order is made; and
  - (iii) stating how to appeal.

### **31 Extension of certain child protection orders**

- (1) The Director may apply to a Resident Magistrate for an order to extend a child protection order for a child other than an order granting long term guardianship of a child.
- (2) The application shall be made before the order ends.
- (3) This Division applies, with all necessary changes, to the application as if it were an application for a child protection order.

### **32 Variation and revocation of child protection orders**

- (1) The Director, a child's parent or the child may apply to a Resident Magistrate for an order to either:
  - (a) vary or revoke a child protection order for the child; or
  - (b) revoke a child protection order for the child and make another child protection order in its place.
- (2) A child's parents cannot:
  - (a) apply for an order to revoke a child protection order for the child and make another child protection order in its place that grants guardianship of the child; or
  - (b) without the leave of the court, apply for an order to vary or revoke a child protection order for the child if another application for an order by a parent of the child to vary or revoke the child protection order has been decided by the court.
- (3) For the purposes of subsection (2)(b), the Resident Magistrate may grant leave only if he or she is satisfied the child's parent has new evidence to give to the court.
- (4) This Division applies, with the changes prescribed in subsection (5) and all other necessary changes, to the application as if it were an application for a child protection order for the child.
- (5) Where the application is made by the child or a parent of the child:
  - (a) other parents of the child and the Director become respondents to the application;
  - (b) immediately after the application is made, the Registry shall give written notice to the Director of the time and place for hearing the application; and
  - (c) as soon as practicable after receiving the Registry's notice, the Director shall comply with Section 30, except so far as it relates to the applicant.
- (6) The Resident Magistrate may, under subsection (1)(a), revoke a child protection order for a child, only if he or she is satisfied the order is no longer appropriate and desirable for the child's protection.
- (7) Without limiting the things to which the Resident Magistrate may have regard in deciding an application under this Section, the Resident Magistrate:

- (a) may have regard to a contravention of the child protection order or this Act; and
  - (b) for an application to revoke a child protection order granting a long term guardianship of a child, shall have regard to the child's need for emotional security and stability.
- (8) This Section does not apply to an interim order made under Section 33.

### **33 Interim protection orders**

- (1) On the adjournment of a proceeding for a child protection order, the Resident Magistrate may make any one or more of the following orders:
- (a) an interim order granting temporary custody of the child to the Minister or a suitable person who is a member of the child's family;
  - (b) an interim order directing a parent of the child not to have contact, direct or indirect:
    - (i) with the child; or
    - (ii) with the child other than when a stated person or a person of a stated category is present; or
  - (c) an interim order authorising an authorised officer or police officer to have contact with the child.
- (2) The Resident Magistrate may make an interim order authorising an authorised officer or police officer to enter and search any place the officer reasonably believes the child is, to find the child, if the Resident Magistrate is satisfied:
- (a) entry to a place has been, or is likely to be, refused, or it is otherwise justified in particular circumstances, including, for example, because the child's whereabouts are not known; and
  - (b) the entry is necessary for the effective enforcement of an order made under subsection (1)(c).
- (3) On entering a place, an authorised officer or police officer may remain in the place for as long as the officer considers necessary for exercising the officer's powers under this Section.
- (4) An authorised officer or police officer may exercise the officer's powers under the order using force that is reasonable in the circumstances.
- (5) The order has effect for the period of the adjournment.

### **34 Procedure before entry**

- (1) This Section applies if an authorised officer or police officer is intending to enter a place under the authority of an interim order made under Section 33.
- (2) Before entering the place, the officer shall do or make a reasonable attempt to do the following things:
- (a) identify himself or herself to a person present at the place who is an occupier of the place;
  - (b) give the person a copy of the order so far as it relates to the entry and searching of the place;
  - (c) tell the person the officer is permitted by the order to enter and search the place to find the child; and
  - (d) give the person an opportunity to allow the officer immediate entry to the place without using force.

### **35 Court's other powers on adjournment of proceedings for child protection orders**

- (1) On the adjournment of a proceeding for a child protection order, the Resident Magistrate may also make one or more of the following orders:
  - (a) an order requiring a written social assessment report about the child and the child's family be prepared and filed in the court;
  - (b) an order authorising a medical examination or treatment of the child and requiring a report of the examination or treatment be filed in the court;
  - (c) subject to subsection (5), an order about the child's contact with the child's family during the adjournment;
  - (d) an order requiring the Director:
    - (i) to convene a family group meeting to develop or revise a case plan and file the plan in the court; or
    - (ii) to convene a family group meeting to consider, make recommendations about, or otherwise deal with, another matter relating to the child's wellbeing and protection and care needs;
  - (e) an order that a conference between the parties be held before the proceeding continues to decide the matters in dispute or to try to resolve the matters; or
  - (f) an order that the child be separately legally represented.
- (2) Where the Resident Magistrate makes an order under subsection (1)(a) or (b), the Resident Magistrate shall state the particular issues the report shall address.
- (3) Subsection (2) does not limit the issues that may be addressed in the report.
- (4) Without limiting subsection (1)(c), an order in that subsection may limit the child's contact with the child's family or provide for how the contact is to happen.
- (5) The Resident Magistrate shall not make an order under subsection (1)(c), requiring the Director to supervise family contact with the child unless the Director agrees to supervise the contact.

## PART 4 — APPROVAL OF CARERS AND CARE SERVICE PROVIDERS

### DIVISION 1 — STANDARDS OF CARE

#### **36 Standards to be applied by all approved carers**

- (1) All approved carers and care service providers shall take reasonable steps to ensure a child placed in their care under this Act, is cared for in a way that meets all of the following standards:
  - (a) the child's dignity and rights will be respected at all times;
  - (b) the child's needs for physical care will be met, including adequate food, clothing and shelter;
  - (c) the child will receive emotional care that allows him or her to experience being cared about and valued and that contributes to the child's positive self-regard;
  - (d) the child's religious upbringing will be respected and continued;
  - (e) the child's culture, traditions and values will be respected and promoted;
  - (f) the child's material needs relating to his or her schooling, physical and mental stimulation, recreation and general living will be met;
  - (g) the child will receive education, training or employment opportunities relevant to the child's age and ability;
  - (h) the child will receive positive guidance when necessary to help him or her to change inappropriate behaviour;
  - (i) the child will receive dental, medical and other health support and services necessary to meet his or her needs;
  - (j) the child will be given the opportunity to participate in positive social and recreational activities appropriate to his or her developmental level and age;
  - (k) the child will be encouraged to maintain family and other significant personal relationships; and
  - (l) if the child has a disability, the child will receive care and help appropriate to the child's special needs.
- (2) The Director may take any action that is necessary to ensure that a child placed in care under this Act, is cared for in a way that meets the standards stated in subsection (1).
- (3) For the purposes of subsection (1)(g), techniques for managing the child's behaviour shall not include punishment that:
  - (a) humiliates, frightens or threatens the child in a way that is likely to cause any harm, including any physical, psychological, or emotional harm; and
  - (b) involves any cruel, inhumane or degrading treatment of the child.
- (4) For the purposes of subsection (1)(j), if the Minister has custody or guardianship of the child, the child's carer shall act in accordance with the Minister or Director's reasonable directions.
- (5) The application of the standards to the child's care shall take into account what is reasonable having regard to:
  - (a) the length of time the child is in the care of the carer or care service provider; and

- (b) the child's age and development.

## DIVISION 2 — APPROVAL OF CARERS

### 37 Purpose of this Division

The purpose of this Division is to apply a system for approving individuals to provide care for children to enable the Minister and Director to ensure the care of children in the Minister's custody or guardianship meets the standards of care under Section 36(1).

### 38 Approval of foster carers and kinship carers

The Minister may give approval under this Part for the issue of:

- (a) a certificate of approval as an approved foster carer, a foster carer certificate; or
- (b) a certificate of approval as an approved kinship carer, a kinship carer certificate.

### 39 Eligibility for a certificate

- (1) Two or more individuals may hold a certificate jointly.
- (2) A person living with his or her spouse may only hold a certificate jointly with the spouse.
- (3) A person may hold more than one kinship carer certificates.

### 40 Process for initial issue of a certificate

- (1) A person may apply to the Director to be issued with a certificate under this Division.
- (2) The application shall be in the form approved by the Director.
- (3) An applicant shall give full disclosure of each of the following:
  - (a) the applicant's criminal history and any domestic violence history;
  - (b) the members of the applicant's household; and
  - (c) information of which the applicant is aware, or that the applicant reasonably suspects, about the criminal history and domestic violence history of each member of the applicant's household.
- (4) The application shall be signed by the applicant and each adult member of the applicant's household.
- (5) Where the Director recommends that an application under this Section be approved, the Minister has authority to issue a certificate to the applicant.
- (6) The certificate may be issued subject to any conditions the Director or Minister considers appropriate, and conditions may be imposed at any time during which the certificate is valid.
- (7) If it is a kinship carer certificate, it shall relate only to the care of one child.
- (8) The matters stated in the certificate shall include all of the following:
  - (a) the approved carer's name;
  - (b) whether the carer is an approved foster carer or approved kinship carer;
  - (c) for a kinship carer certificate, the name of the child for whom the carer is approved;
  - (d) any conditions applying to the certificate;
  - (e) the day of its issue; and



- (f) the day on which it is due to expire.
- (9) The expiry day shall be either:
  - (a) for a foster carer certificate, 1 year from the day of issue; or
  - (b) for a kinship carer certificate, not more than 1 year from the day of issue.
- (10) Subject to this Act, the certificate has effect until the date of its expiry.

#### **41 Process to renew a certificate**

- (1) Before a certificate ceases to be valid, the holder may apply to the Director to renew the certificate.
- (2) The application shall be in the form approved by the Director.
- (3) The approved form may require the disclosure of a change to any of the following information that has not been previously notified to the Director:
  - (a) the applicant's criminal history or domestic violence history;
  - (b) the membership of the applicant's household; or
  - (c) information of which the applicant is aware, or that the applicant reasonably suspects, about the criminal history or domestic violence history of a member of the applicant's household.
- (4) The application shall be signed by the applicant and each adult member of the applicant's household.
- (5) Where the Director recommends that an application under this Section be approved, the Minister has authority to issue a new certificate to the applicant.
- (6) The matters stated in the certificate shall include all of the following:
  - (a) that it is a renewed certificate;
  - (b) the approved carer's name;
  - (c) whether the carer is an approved foster carer or approved kinship carer;
  - (d) for a kinship carer certificate - the name of the child for whom the carer is approved;
  - (e) any conditions of the certificate;
  - (f) the day of its issue; and
  - (g) the day on which it is due to expire.
- (7) The expiry date for a renewed certificate is either:
  - (a) for a foster carer certificate, 2 years from the day of issue; or
  - (b) for a kinship carer certificate, not more than 2 years from the day of issue.
- (8) Subject to this Act, the certificate has effect until the date of its expiry.

#### **42 Restrictions on granting applications**

- (1) The Director shall not recommend the grant of an application for a certificate under this Division, or for the renewal of a certificate, unless the Director is satisfied of all of the following matters:
  - (a) for a foster carer certificate:
    - (i) the applicant is a suitable person to be an approved foster carer;
    - (ii) all members of the applicant's household are suitable persons to associate on a daily basis with children;
    - (iii) the applicant is able to meet the standards of care required by Section 36(1); and

- (iv) the applicant is able to help in appropriate ways towards achieving plans for the protection of a child placed in the carer's care; and
- (b) for a kinship carer certificate:
  - (i) the applicant is a relative to the child to whom the approval relates;
  - (ii) the applicant is a suitable person to be an approved kinship carer for the child;
  - (iii) all members of the applicant's household are suitable persons to associate on a daily basis with the child;
  - (iv) the applicant is able to meet the standards of care required by Section 36(1); and
  - (v) the applicant is able to help in appropriate ways towards achieving plans for the child's protection.
- (2) Before making a recommendation under this Section, the Director shall consult the Secretary.

### **43 Grant of provisional certificate as a carer**

- (1) The Director may give a limited approval to a person to care for a particular child in circumstances if:
  - (a) the person has been provisionally assessed as suitable to care for the child; and
  - (b) it is not possible, or not in the child's best interests, for the child to be placed in the care of an approved kinship carer for the child, approved foster carer, entity conducting a departmental care service or licensee.
- (2) The Director may issue a person with a provisional certificate relating to the care of a particular child if all of the following apply:
  - (a) the Director proposes to place the child in care under this Act;
  - (b) the person has applied for a certificate of approval as either:
    - (i) an approved foster care; or
    - (ii) an approved kinship carer for the child.
  - (c) the application has not yet been decided;
  - (d) the person agrees to being issued with a provisional certificate of approval as a provisionally approved carer for the child; and
  - (e) the Director is satisfied of all the following matters:
    - (i) the person is a suitable person to be a provisionally approved carer for the child;
    - (ii) all members of the person's household are suitable persons to associate on a daily basis with the child; and
    - (iii) the person is able to meet the standards of care required by Section 36(1).

### **44 Issue of provisional certificate**

- (1) Where the Director approves the grant of a provisional certificate the Director shall issue a certificate and give it to the applicant.
- (2) The certificate may be issued subject to any conditions the Director considers appropriate.
- (3) The certificate shall relate only to the care of one child.
- (4) The matters stated in the certificate shall include the following:
  - (a) the approved carer's name;

- (b) that it is a certificate of approval as a provisionally approved carer;
  - (c) the name of the child for whom the carer is approved;
  - (d) any conditions of the certificate;
  - (e) the date of its issue; and
  - (f) the date on which it is due to expire.
- (5) The expiry date shall be not more than 60 days from the day of issue.
- (6) Subject to this Act, the certificate has effect until the earlier of the following days:
- (a) the expiry date; or
  - (b) the date the carer is:
    - (i) issued with a foster carer certificate or kinship certificate for the child; or
    - (ii) given written notice that the carer's application for a foster carer certificate or kinship carer certificate for the child has been refused.

### DIVISION 3 — AMENDMENT, SUSPENSION AND CANCELLATION OF CERTIFICATES

#### 45 Amendment certificates

- (1) The Director may amend a certificate issued under this Part at any time if either of the following apply:
- (a) the holder agrees to the amendment; or
  - (b) the Director considers it is necessary or desirable for any of the following reasons:
    - (i) the holder is not meeting the standards required under the certificate or a condition applying to the certificate;
    - (ii) the holder has contravened a provision of this Act;
    - (iii) the certificate was issued because of a materially false or misleading representation or declaration, made either orally or in writing; or
    - (iv) there are other circumstance which the Director considers to be affecting the welfare of the child.
- (2) Where the Director is satisfied that an amendment is necessary or desirable, the Director shall give written notice to the holder of the amendments and re-issue the certificate accordingly.
- (3) An amendment may be made under this Section to extend the date of a kinship carer certificate by up to 2 years from the next applicable expiry date of the certificate.
- (4) An amendment may be made under this Section to extend the date of a kinship carer certificate by up to 60 days from the next applicable expiry date of the certificate, but only one such extension may be made.

#### 46 Certificates may be suspended or cancelled

- (1) The Minister and the Director have authority to suspend or cancel a certificate issued under this Part, on the following grounds:
- (a) in the case of a certificate of approval as an approved foster care:
    - (i) the holder of the certificate is not a suitable person to be an approved foster carer; or
    - (ii) a member of the holder's household is not a suitable person to associate on a daily basis with children;

- (b) in the case of a certificate of approval as an approved kinship carer:
    - (i) the holder of the certificate is not a suitable person to be an approved kinship carer for the child to whom the approval relates; or
    - (ii) a member of the holder's household is not a suitable person to associate on a daily basis with the child to whom the approval relates;
  - (c) in the case of a certificate of approval as a provisionally approved carer:
    - (i) the holder is not a suitable person to be a provisionally approved carer for the child to whom the approval relates; or
    - (ii) a member of the holder's household is not a suitable person to associate on a daily basis with the child to whom the approval relates;
  - (d) the holder is not meeting the standards required under the certificate or another condition of the certificate;
  - (e) the holder has contravened a provision of this Act;
  - (f) the authority was issued because of a materially false or misleading representation or declaration, made either orally or in writing; and
  - (g) any other circumstance prescribed under by regulations.
- (2) Subject to subsection (4), the Director may cancel a certificate of approval if the holder lives with the holder's spouse but does not hold the certificate jointly with the spouse.
- (3) Subject to subsection (4), the Director may cancel a certificate of approval held jointly by two persons if:
- (a) when the certificate was issued to them, they were spouses living together;
  - (b) they have stopped being spouses or stopped living together; and
  - (c) the Director considers it inappropriate in all the circumstances for them to continue to jointly hold the certificate.
- (4) Where the holder of a certificate of approval referred to in subsection (2) or (3), the current certificate applies for another certificate of approval, the Director shall not cancel the current certificate under subsection (2) or (3) until the application is decided.

## 47 Procedure for suspension or cancellation

- (1) Where the Minister, Secretary or Director consider that a ground exists to suspend or cancel a certificate issued under this Part, written notice shall be given to the holder that states all of the following:
- (a) the proposed action;
  - (b) the grounds for the proposed action;
  - (c) the facts and circumstances forming the basis for the grounds;
  - (d) if the proposed action is suspension of the certificate, the proposed suspension period; and
  - (e) that the holder may make, within a stated time of at least 28 days, written representations to show why the proposed action should not be taken.
- (2) Where, after considering all written representations made within the stated time, the Minister, Secretary or Director still considers a ground to take the proposed action exists, the Minister, Secretary or Director may suspend or cancel the certificate.

- (3) The Director shall inform the holder of the decision by written notice.
- (4) The Director shall record particulars of the suspension or cancellation on the certificate, and in the records held by the Department in relation to it.
- (5) This Section does not apply to a provisional certificate, which may be suspended or cancelled by service of a notice to that effect on the holder of the provisional certificate.



## PART 5 — PROTECTING THE RIGHTS OF CHILDREN UNDER THE LAW

### 48 Criminal punishments applying to children

Notwithstanding the provision of any other written law to the contrary, the following apply to any criminal proceedings taken against a child:

- (a) no child may be sentenced to death or to imprisonment for life under any written law act and for any offence; and
- (b) a sentence of imprisonment may only be imposed against a child as a sentencing option of last resort.

### 49 Minimum age for children to marry

For the purposes of this Act, and despite the provision of any written law to the contrary, no male or female child may be married, whether in law or custom, if they have not attained the age of 18 years.

### 50 Duty to report abuse, neglect and exploitation of children

- (1) This Section applies to all persons who become aware of any sexual abuse or exploitation of a child in a school, church or other religious institution, health facility, or in a prison, detention or corrections facility, or any other place where children are supervised or cared for, and who:
  - (a) holds a position of authority in that place; or
  - (b) is employed in any position or capacity which involves the provision of care, supervision or protection of children in that place.
- (2) A person to whom this Section applies, shall immediately report any sexual abuse or exploitation of a child, or circumstance in which the person believes that sexual abuse or exploitation of a child has, or may have taken place, to the Commissioner of Police and to the Director.
- (3) A person to whom this Section applies, shall cooperate with the police and the Department in relation to any subsequent inquiry, investigation or other action taken as a result of the report made.
- (4) A person commits an offence and is liable to a fine not exceeding \$20,000 or to a term of imprisonment not exceeding 12 months, or to both if the person:
  - (a) fails to make a report of sexual abuse or exploitation against a child as required by this Section; or
  - (b) fails to cooperate with the police or the Department as required by subsection (3).
- (5) Subsection (6) applies to health practitioners, nurses, police officers, members of the emergency services, teachers, school liaison officers, employees of service providers and community liaison officers who become aware of the neglect or abuse of a child, or have grounds to suspect that a child might be subject to abuse, violence or exploitation.
- (6) A person to whom subsection (5) applies, shall make a report as soon as possible to the Director giving details of the nature of the abuse, neglect, violence or exploitation, and the grounds upon which it is suspected that the child is being subject to it.

- (7) A person who makes a report under subsection (6) is entitled to the protections provided for under Sections 22 and 56.

## **51 Prohibition on the sale of children**

- (1) No child in the Republic may be bought or sold, and any contract, agreement or arrangement purporting to be the basis of such a sale is void and of no legal effect.
- (2) A person commits an offence and is liable to a fine not exceeding \$100,000 or to a term of imprisonment not exceeding 15 years or to both if the person:
- (a) enters into any arrangement for the sale or purchase of a child in the Republic;
  - (b) offers any money or valuable consideration to the parent or guardian of a child in the Republic in order to purchase the child, or to obtain or assume any parental status or authority over the child; or
  - (c) facilitates the sale or purchase of a child in the Republic in any way.

## **52 Children not to be used for the purposes of research, etc**

- (1) No child may be used for any form of research, including medical or scientific experimentation, unless all of the following apply:
- (a) appropriate consents have been obtained from the child and his or her parents or legal guardians;
  - (b) the research is conducted in a manner which protects the health and welfare of the child to the fullest extent possible; and
  - (c) the purpose and effect of the research is demonstrably beneficial to the child's health or well-being.
- (2) A person commits an offence and is liable to a fine not exceeding \$20,000 or to a term of imprisonment not exceeding 12 months, or to both if the person:
- (a) undertakes research relating to a child in contravention of this Section;
  - (b) permits research to be undertaken in relation to child in contravention of this Section; or
  - (c) during any authorised research, acts in a manner which is detrimental to the health or well-being of the child without lawful or reasonable justification.

## **53 Child's employer to provide proof of child's age**

- (1) A person who employs a child shall provide proof of the child's age if required to do so by an authorised officer.
- (2) Where a child has been employed by reason of any written law which permits the employment of a person who is under 18 years of age, it is the responsibility of the employer to ensure that the consent of a parent has been obtained, and the employer shall produce evidence of such consent if requested to do so by an authorised officer.



**PART 6 — INVESTIGATIONS AND COURT PROCEDURES WHERE  
CHILDREN ARE INVOLVED**

**54 Special requirements applying to investigations and inquiries involving children**

- (1) Notwithstanding the provision of any other written law to the contrary, the following matters apply whenever an investigation or inquiry is undertaken in relation to a child by a police officer, an authorised officer, or any other person lawfully exercising powers of investigation or inquiry in relation to a child under any written law:
- (a) at all stages of the investigation or inquiry, the best interests of the child shall be the primary consideration;
  - (b) the investigation of or inquiry into the child, shall recognise and protect the rights and interests of the child at all stages of the justice process, and shall reduce trauma and secondary traumatisation of the child;
  - (c) the matter shall be promptly notified and referred to other relevant agencies to promote the protection and welfare of the child and his or her rights;
  - (d) any action taken shall permit the child to fully state his or her views, and the relevant officer shall take into account the child's views in accordance with his or her age and maturity and shall respect the child's right to privacy;
  - (e) child-friendly interview environments and interview techniques shall be implemented and applied;
  - (f) special procedures shall be applied to reduce the number and length of interviews which children are subjected to;
  - (g) special facilities and appropriate processes shall be provided and applied where the child has a disability to ensure the effective application of the requirements of this Section;
  - (h) children are entitled to have a parent, guardian, legal representative or other appropriate support person agreed to by the child, present with them at all stages of the investigation and trial proceedings;
  - (i) measures shall be implemented to ensure children are protected from direct confrontation with persons accused of violating their rights, and shall not be subjected to hostile, insensitive or repetitive questioning or interrogation;
  - (j) investigations shall be conducted expeditiously and shall be followed by expedited court proceedings; and
  - (k) investigators who have received special training in relation to dealing with cases involving children shall be engaged in the process, if they are available.
- (2) All orders or approved procedures applying to members of the Nauru Police Force when they deal with children, shall be consistent with the requirements in subsection (1).

**55 Special requirements applying to court proceedings**

- (1) Notwithstanding, the provision of any other written law to the contrary, court proceedings involving children shall be undertaken in accordance with the following requirements:

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- (a) the hearing of the cases shall be expedited and prioritised as far as is practicable;
  - (b) measures shall be applied and enforced to protect the child's privacy, including closed court proceedings and bans on publishing the child's identity or any information leading to identification of the child;
  - (c) measures shall be applied and implemented to protect the safety of children and their families and to prevent intimidation and retaliation;
  - (d) appropriate facilities and support shall be provided to children with disabilities;
  - (e) children are entitled to have a parent, guardian, legal representative or other appropriate support person agreed to by the child, present with them at all stages of the court proceedings;
  - (f) child-friendly court procedures shall be promoted and applied, including alternative arrangements for giving testimony such as the use of screens, video-taped evidence and closed circuit television;
  - (g) social and legal counselling is to be provided where appropriate and children shall be given adequate information concerning the purpose and effect of the court processes;
  - (h) children shall be fully accorded the right to effectively participate in any proceedings that affect them, to express their views, and to have those views given due weight;
  - (i) police officers, prosecutors, lawyers and court officers are to receive specialised training in dealing with cases involving children;
  - (j) no proof of resistance to establish non-consent in sexual assault proceedings is to be required where the victim is a child;
  - (k) no corroboration of a child's evidence in criminal proceedings for sexual assault is to be required;
  - (l) the use of prior sexual conduct to establish non-consent in sexual assault proceedings involving a child is prohibited;
  - (m) expert evidence regarding patterns of disclosure or behaviour of children in cases involving sexual abuse is to be automatically admissible; and
  - (n) discriminatory provisions or processes applying to children are to be removed.
- (2) All rules of court are to be read and applied subject to the requirements under subsection (1) and necessary modifications to make such rules consistent with this Section shall be made as soon as is practicable.

## PART 7 — CONFIDENTIALITY REQUIREMENTS

### 56 Confidentiality of notifiers of harm or risk of harm

- (1) This Section applies if a person, the notifier, notifies the Minister, Secretary, Director an authorised officer or a police officer that the notifier suspects:
  - (a) a child has been, is being or is likely to be, harmed; or
  - (b) an unborn child may be at risk of harm after he or she is born.
- (2) The person who receives the notification, or a person who becomes aware of the identity of the notifier, shall not disclose the identity of the notifier to another person, unless the disclosure is made:
  - (a) in the course of performing functions or exercising powers under this Act;
  - (b) to a person for the purpose of that person performing functions or exercising powers under this Act; or
  - (c) by way of evidence given in a legal proceeding under subsections (3) and (4).
- (3) Subject to subsection (4):
  - (a) evidence of the identity of the notifier, or information from which the identity of the notifier could be deduced, shall not be given in a proceeding before a court or tribunal without leave of the court or tribunal; and
  - (b) unless leave is granted, a party or witness in the proceeding:
    - (i) shall not be asked, and, if asked, cannot be required to answer, any question that cannot be answered without disclosing the identity of, or leading to the identification of, the notifier; and
    - (ii) shall not be asked to produce, and, if asked, cannot be required to produce, any document that identifies, or may lead to the identification of, the notifier.
- (4) The court or tribunal shall not grant leave under subsection (3), unless:
  - (a) it is satisfied the evidence is of critical importance in the proceeding, and there is compelling reason in the public interest for disclosure; or
  - (b) the notifier agrees to the evidence being given in the proceeding.
- (5) In deciding whether to grant leave under subsection (3), the court or tribunal shall take into account:
  - (a) the possible effects of disclosure on the safety or wellbeing of the notifier and the notifier's family; and
  - (b) the public interest in maintaining confidentiality of notifiers.
- (6) As far as practicable, an application for leave under this Section, shall be heard in a way that protects the identity of the notifier pending a decision on the application.

### 57 Confidentiality of information obtained by persons involved in administration of this Act

- (1) This Section applies to a person who:
  - (a) is or has been:

- (i) a public servant or a police officer, who performs functions or exercises powers under or in relation to the administration of this Act;
  - (ii) any other person who has been duly authorised to perform functions or exercise powers under this Act; or
  - (iii) an approved carer or other person in whose care a child has been anyone else; and
- (b) in that capacity, the person acquired information about another person's affairs or has access to, or custody of a document about another person's affairs.
- (2) Subject to subsections (2) and (3), the person shall not use or disclose the information, or give access to the document, to any other person.
- (3) The person may use or disclose the information, or give access to the document to another person:
- (a) to the extent necessary to perform the person's functions or to exercise the person's powers under or in relation to this Act;
  - (b) if the use, disclosure or giving of access is for purposes related to a child's protection or wellbeing; or
  - (c) if the use, disclosure or giving of access:
    - (i) relates to cooperating with government entities that have roles relating to the protection of children, or that provide services to children in need of protection, or to their families;
    - (ii) is for the lawful performance of a function or the exercise of a power under any other written law; or
    - (iii) is otherwise required or permitted under this Act.
- (4) The person may disclose the information or give access to the document:
- (a) to another person, to the extent that the information or document is about that other person; or
  - (b) to the Minister, Secretary, Director or an authorised officer, to enable the proper administration of Part 4.

## **58 Confidentiality of information given by person involved in administration of this Act**

- (1) This Section applies if the Minister, Secretary, Director, an authorised officer, a police officer and any other person performing functions or exercising powers under or in relation to the administration of this Act, gives a person, the receiver, information or a document about another person's affairs.
- (2) Subject to subsection (3), the receiver shall not use or disclose the information, or give access to the document, to any other person.
- (3) The receiver may, subject to Section 61, use or disclose the information or give access to the document to another person:
- (a) if the use, disclosure or giving of access is authorised by the Minister, Secretary or Director;
  - (b) if the use, disclosure or giving of access is for purposes directly related to a child's protection or wellbeing;
  - (c) if the use, disclosure or giving of access is for purposes directly related to obtaining information requested by the Minister, Secretary or Director; or

- (d) if the use, disclosure or giving of access is otherwise required or permitted by law.

## **59 Police use of confidential information**

- (1) This Section applies if a police officer acquires information during the course of performing a function or exercising a power under this Act.
- (2) The police officer, and any other police officer to whom the information is disclosed under this Section, may use the information to the extent necessary to perform his or her functions and duties as a police officer.

## **60 Disclosure of information to a child's family group**

- (1) The Minister, Secretary, Director or an authorised officer may disclose information about a child to a member of the child's family if he or she is satisfied the disclosure would be in the child's best interests.
- (2) Before disclosing information under this Section, the Minister, Secretary, Director or the authorised officer shall:
  - (a) obtain and have regard to the child's views, if the child is able to form and express views, taking into account the child's age and ability to understand;
  - (b) consider whether the disclosure is likely to adversely affect the child's relationship with members of the child's family group;
  - (c) consider whether the disclosure is likely to have adverse effects for anyone else, including a risk to anyone's safety; and
  - (d) have regard to:
    - (i) any views expressed by the child's parents; and
    - (ii) the relationship between the child and the person to whom it is proposed to disclose the information, and any views expressed by that person.

## **61 Prohibition of publication of information relating to identity of children**

- (1) A person shall not, without the Minister's written approval, publish information that identifies, or is likely to lead to the identification of, a child as:
  - (a) a child who is or has been the subject of an investigation under this Act of an allegation of harm or risk of harm;
  - (b) a child in the Minister's custody or guardianship under this Act; or
  - (c) a child for whom an order under this Act is in force.
- (2) A person shall not, without the Minister's written approval, publish information that identifies, or is likely to lead to the identification of, a child living in the Republic as a child who:
  - (a) has been harmed or allegedly harmed by a parent or step-parent of the child or another member of the child's family;
  - (b) is, or allegedly is, at risk of harm being caused by a parent or step-parent of the child or another member of the child's family; or
  - (c) has been harmed or allegedly harmed by a teacher or any other person responsible for the child at a school or other educational institution.



## PART 8 — OFFENCES AGAINST THIS ACT

### 62 General penalty for a breach of this Act

A person who breaches any requirement of this Act for which no offence is prescribed, commits an offence and upon conviction is liable to a fine not exceeding \$10,000 or to a term of imprisonment of up to 1 month, or to both.

### 63 Obstructing authorised officers

- (1) A person commits an offence and is liable upon conviction to a fine not exceeding \$10,000 or to a term of imprisonment of up to 6 months, or both, if the person does any of the following:
  - (a) impedes, hinders or obstructs an authorised officer or police officer who is lawfully discharging a function or exercising a power under this Act;
  - (b) fails to provide any information relating to a child when requested to do so by an authorised officer; or
  - (c) impersonates an authorised officer.
- (2) A child does not commit an offence against subsection (1)(a), merely because the child resists being taken into custody under this Act for the child's protection.

### 64 Offence to remove child from carer

- (1) This Section applies if a child is in the Minister's custody or guardianship under any order made under this Act or as a result of the exercise of any power provided for in this Act.
- (2) A person commits an offence and is liable upon conviction to a fine not exceeding \$20,000 or to a term of imprisonment of up to 12 months, or both, if the person does any of the following:
  - (a) unlawfully removes a child from the care of the Minister or other person who has been authorised by the Minister or Director to be the child's carer;
  - (b) if the child has been unlawfully removed from the care of the Minister or other person who has been authorised by the Minister or Director to be the child's carer, keeps the child; or
  - (c) if the child has been lawfully removed from the care of the Minister or other person who has been authorised by the Minister or Director to be the child's carer, keeps the child beyond the period allowed for the removal.
- (3) Subsection (2) applies, whether the removal or keeping of the child is done within or outside the Republic.

### 65 Offence to remove child from custody or guardianship

- (1) This Section applies if a child is in the custody or guardianship of a person (the first person) in accordance with this Act.
- (2) A person commits an offence and is liable upon conviction to a fine not exceeding \$20,000 or to a term of imprisonment of up to 12 months, or both, if the person does any of the following:

- (a) unlawfully removes the child from the first person's custody or guardianship;
  - (b) if the child has been unlawfully removed from the first person's custody or guardianship, keep the child; or
  - (c) if the child has been lawfully removed from the first person's custody or guardianship, keep the child beyond the period allowed for the removal.
- (3) Subsection (2) applies, whether the removal or keeping of the child is done within or outside the Republic.

## **66 Offence to refuse contact with child in custody or guardianship**

- (1) This Section applies:
- (a) to a child in the Minister's custody or guardianship under an order made under this Act, or pursuant to the exercise of a power under this Act; and
  - (b) if an authorised officer reasonably asks a person who has been authorised by the Minister or Director to be the child's carer for permission to enter premises for the purpose of having contact with a child in the premises to ensure the child's protection.
- (2) A person who refuses the authorised officer's request without a reasonable excuse commits an offence and is liable upon conviction to a fine not exceeding \$10,000 or to a term of imprisonment of up to 1 month, or both.

## **67 Offence for person to take child out of the Republic**

A person who takes a child who is under the custody or guardianship of the Minister under this Act out of Nauru with the intention of obstructing, preventing or defeating the administration or enforcement of this Act, commits an offence and is liable upon conviction to a fine not exceeding \$25,000 or to a term of imprisonment of up to 5 years, or both.

## **68 Child's parent shall comply with orders made under this Act**

- (1) This Section applies in any case where an order has been made under this Act preventing or limiting rights of access of a parent to a child or otherwise affecting any right that the parent may have in relation to the child.
- (2) A child's parent commits an offence and is liable upon conviction to a fine not exceeding \$20,000 or to a term of imprisonment of up to 12 months, or both, if the parent knowingly contravenes an order directing the parent not to have contact (direct or indirect):
- (a) with the child; or
  - (b) with the child other than when a stated person or a person of a stated category is present.
- (3) A child's parent who knowingly contravenes any other order made under this Act which affects the rights of the parent in relation to the child, commits an offence and is liable upon conviction to a fine not exceeding \$20,000 or to a term of imprisonment of up to 12 months, or both.



## PART 9 — MISCELLANEOUS

### 69 Protection of persons performing duties under this Act

Any person who lawfully exercises any power or who performs any function under the authority of this Act is not liable to any person for any loss or damage, and is not subject to any civil or criminal proceedings, in relation to the lawful exercise of that power or the performance of that function in accordance with this Act.

### 70 Regulations

- (1) Any regulations made under this Act, may:
  - (a) prescribe offences; or
  - (b) prescribe penalties of fines not exceeding \$10,000, or imprisonment for terms not exceeding 6 months, or to both a fine and a term of imprisonment.
- (2) The Cabinet may make Regulations not inconsistent with this Act, prescribing all matters which are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act or applying its guiding principles and in particular for prescribing matters in relation to any of the following:
  - (a) additional functions of the Department in relation to the protection of children, and promoting the welfare of children;
  - (b) additional powers under this Act and processes for enforcing them;
  - (c) specific processes and requirements for the protection of children held in custody or detention and which apply to refugee children and children for whom asylum has been claimed;
  - (d) further empowering authorised officers and police officers to effectively implement and enforce this Act;
  - (e) empowering committees established under this Act;
  - (f) protecting children (including unborn children) at risk of harm, or likely to be at such risk;
  - (g) clarifying any matter concerning the making, scope and effect of protection orders for children;
  - (h) additional standards applicable to approved carers;
  - (i) procedures for licencing care service providers and any aspect of the regulation and control of licenced care services providers;
  - (j) additional requirements for the mandatory reporting of abuse, neglect, violence or exploitation of children and any matter relevant to mandatory reporting under this Act;
  - (k) providing for any other matter, consistent with the *Convention on the Rights of the Child* and other applicable international conventions, to ensure that the rights of children are respected and protected under the law;
  - (l) additional special requirements applying to investigations, inquiries and court proceedings to protect the rights and interest of children who are subject to them;

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- (m) providing for processes such a family group conferencing and other measures to be applied in the interests of a child in relation to whom action has been taken under this Act;
  - (n) additional requirements applying to information obtained or given under this Act;
  - (o) requirements for the provision of information concerning any aspect of this Act for the purposes of collecting relevant data, statistics and information;
  - (p) clarifying what are permissible or prohibited forms of punishment for children, either generally or in any specific context; or
  - (q) additional offences for breaches of this Act or the regulations.