

REPUBLIC OF NAURU

CHILD PROTECTION AND WELFARE BILL 2016

EXPLANATORY MEMORANDUM

The Child Protection and Welfare Bill 2016 is a Bill for the Child Protection and Welfare Act 2016.

EXPLANATION OF CLAUSES

Part 1 - Preliminary

- Clause 1** provides that once enacted, the short title of the Bill will be the *Child Protection and Welfare Act 2016*.
- Clause 2** provides that the Act will commence once it is certified by the Speaker.
- Clause 3** provides an interpretation and meaning of some words used in the Act.
- Clause 4** binds the Government to comply with the Act whenever children are involved in any matter.
- Clause 5** sets out the general principles which must be applied whenever this Act and other laws are applied to children. These are consistent with the rights of children under the Convention on the Rights of the Child ('CRC'). It sets out the framework on what should be considered when dealing with child protection matters.
- Clause 6** provides that the provisions of this Act will prevail over any other law which is inconsistent with this Act. It outlines the need for laws dealing with children to be read in conjunction with this Act.

Part 2 - Administrative Arrangements

- Clause 7** provides for the functions and powers of the Ministry relating to child protection and welfare. They include promoting awareness to ensure that Nauruan customs, traditions and community values relating to children are promoted and applied; working in collaboration with other Ministries and community agencies; promoting bilateral and multilateral measures to protect children from sexual abuse and sexual exploitation; ensuring all approved carers comply with prescribed standards; reviewing the implementation of this Act; developing and implementing programs aimed at preventing harm to children; and developing policies and providing programs which involve training and capacity building within Nauru.

Clause 8 prescribes the responsibilities and powers of the Minister, Secretary and Director as follows:

- (i) The Minister can appoint authorised officers; appoint and empower committees and boards; take all action necessary to protect children under threat of harm; 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; 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; and take any action necessary to ensure that confidentiality of information is observed and applied.
- (ii) The Secretary is authorised and empowered to: ensure that authorised officers are appointed; provide support to committees and boards appointed and empowered; regulate approved carers, and ensure that they comply with approved standards of care; 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; ensure that investigations or judicial proceeding involving a child are conducted in a manner that observes and applies the special procedures applicable to them; take any action necessary to ensure that confidentiality of information is observed and applied in accordance with the requirements of this Act; and 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.
- (iii) The Director is authorised and empowered to: supervise and give directions to authorised officers; provide support to committees and boards; take all action necessary to protect children under threat of harm; monitor approved carers and ensure that they comply with approved standards of care; 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; monitor investigations and judicial proceeding involving a child; and take any action necessary to ensure that confidentiality of information is observed and applied in accordance with the requirements of this Act.

Clause 9 provides for the appointment of authorised officers to implement and enforce this Act. It authorises both the Secretary and Director to exercise all of the powers of an authorised officer under this Act. Additionally, it provides that all persons employed in the Ministry in positions designated as child protection officers are authorised to exercise all of the powers of an authorised officer.

Clause 10 permits the Minister to establish and empower advisory and regulatory committees or boards to assist in the implementation and enforcement of this Act.

Clause 11 permits the Minister and Secretary to delegate their powers under this Act. It allows the Minister and the Secretary to 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.

Clause 12 provides for the powers of authorised officers to:

- enter upon any land or premises;
- take photographs and measurements, and
- otherwise collect any necessary evidence relating to any issue involving the care or welfare of a child;
- require any person apparently having custody or care of any child to state his or her full name and usual place of residence;
- require the production of records and information held by any person relating to a child in care or under any protection order made under this Act;
- order that any act, matter or thing which may affect the welfare of a child cease or be removed.

Part 3 – Arrangements for the Protection of Children

Clause 13 provides for the investigation of alleged harm to a child. It provides further that if the Director becomes aware of alleged harm or alleged risk of harm to a child, and reasonably suspects the child is in need of protection, the Director must immediately either:

- arrange for an authorised officer to investigate the allegation and assess the child’s need for protection; or
- take other any other action that the Director considers appropriate.

Clause 14 requires information to be given to a child’s parents and a long term guardian when action is taken under this Part. It applies if an authorised officer or police officer:

- investigates an allegation of harm or risk of harm to a child; or
- assesses a child’s need of protection because of an allegation of harm or risk of harm to the child.

Clause 15 authorises an officer to have contact with child who is at immediate risk of harm. This applies if:

- an authorised officer or police officer is investigating an allegation of harm, or risk of harm, to a child;
- 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

- the officer reasonably suspects the child
 - is at immediate risk of harm; or
 - is likely to leave or be taken from a place and suffer harm if the officer does not take immediate action etc.

Clause 16 authorises an officer to have contact with children at a school or other care service premises.

Clause 17 allows a child at immediate risk to be taken into the Minister’s custody by an authorised officer or police officer if either officer reasonably believes a child is at risk of harm if not taken immediately into custody.

Clause 18 clarifies the situation when a child who is already under a court order is taken into custody after it is determined that the child is at risk.

Clause 19 prescribes the obligations of an authorized officer or police officer if either officer takes a child into the Minister’s custody. This includes either officer telling at least one of the child’s parents that the child has been taken into custody and the reasons for the action; and, telling the child about being taken into custody. It also discusses what happens when the child does not have a long term guardian.

Clause 20 authorises the removal of a child at risk to a safe place and arrangements to be made for the child’s care at the place. The moving of the child does not prevent the child’s parents or family members resuming or assuming care of the child.

Clause 21 provides for the protection of unborn children. The purpose of this clause is to reduce the likelihood that the child will need protection after he or she is born.

Clause 22 provides protection from liability for persons giving information about alleged harm or risk of harm. It applies if a person, acting honestly - notifies the Minister, Secretary, Director, a police officer or any officer of the Ministry that the person suspects:

- a child has been, is being or is likely to be harmed; or
- an unborn child may be at risk of harm after he or she is born;

Clause 23 requires that preference be given to placing children with relatives when they are removed from the care of his or her parents unless reasons relating to the safety or welfare of the children require alternative arrangements to be made.

Clause 24 prescribes the general processes relating to applications for child protection orders. It gives the Director the power to apply to a Magistrate for protection order for a child..

Clause 25 permits hearing of applications by a court in the absence of the child’s parents in certain circumstances such as: the parents failing to attend a

hearing even after being given notice of the hearing; and, if the Magistrate is satisfied that it was not practicable to give the parents notice of the hearing.

Clause 26 prescribes general matters relevant to the making of child protection orders. It provides that a Magistrate may make a child protection order if he or she is satisfied that the child is a child in need of protection, and the order is appropriate and desirable for the child's protection.

Clause 27 clarifies that orders may be made by a Magistrate even if the actions that justify the order occurred wholly or partly outside Nauru.

Clause 28 clarifies the types of child protection orders that can be made by a court. It provides that orders made by the Magistrate include:

- an order directing a parent of the child to do or refrain from doing something directly related to the child's protection;
- an order directing a parent not to have contact, direct or indirect –
 - with the child; or
 - with the child other than when a stated person or a person of a stated category is present;
- an order requiring the Director to supervise the child's protection in relation to the matters stated in the order;
- an order granting custody of the child to
 - a suitable person, other than a parent of the child, who is a member of the child's family; or
 - the Minister;
- an order granting short-term guardianship of the child to the Minister;
- an order granting a long term guardianship of the child to
 - a suitable person, other than a parent of the child, who is a member of the child's family; or
 - another suitable person, other than a member of the child's family, nominated by the Director etc.

Clause 29 provides for the duration of child protection orders. A child protection order for a child must state the time when it ends. The stated time for the order

- if it does not grant custody or guardianship of the child - must not be more than 1 year after the day it is made; or
- if it grants custody or short-term guardianship of the child - must not be more than 2 years after the day it is made; or
- if it grants a long term guardianship of the child - must be the end of the day before the child turns 18 years.

Clause 30 prescribes the Director's obligations after the making of a child protection order. It requires the Director to give the parties to the application for the order:

- a copy of the order; and
- a written notice –
 - explaining the terms and effect of the order; and

- stating that a party may appeal against the decision to make the order within 28 days after the order is made; and
- stating how to appeal.

Clause 31 provides for the extension of certain child protection orders. The Director may apply to a Magistrate for an order to extend a child protection order for a child other than an order granting long term guardianship of a child. The application must be made before the order ends.

Clause 32 provides for the variation and revocation of child protection orders. The Director, a child's parent or the child can apply to a Magistrate for an order to either:

- vary or revoke a child protection order for the child;
- revoke a child protection order for the child and make another child protection order in its place.

Additionally, it provides that a child's parent cannot:

- 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
- 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.

Clause 33 provides for the making of interim protection orders. The Magistrate may make any 1 or more of the following orders:

- 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;
- an interim order directing a parent of the child not to have contact (direct or indirect) :
 - with the child; or
 - with the child other than when a stated person or a person of a stated category is present;
- an interim order authorising an authorised officer or police officer to have contact with the child.

Clause 34 provides for procedures to be followed before an officer enters a place to enforce an interim protection order. Before entering the place, the officer must do or make a reasonable attempt to do the following things:

- identify himself or herself to a person present at the place who is an occupier of the place;
- give the person a copy of the order so far as it relates to the entry and searching of the place;
- tell the person the officer is permitted by the order to enter and search the place to find the child;
- give the person an opportunity to allow the officer immediate entry to the place without using force.

Clause 35 prescribes the Court's other powers on adjournment of proceedings for child protection orders. The Magistrate can also make 1 or more of the following orders:

- an order requiring a written social assessment report about the child and the child's family be prepared and filed in the court;
- 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;
- an order about the child's contact with the child's family during the adjournment;
- an order requiring the Director –
 - to convene a family group meeting to develop or revise a case plan and file the plan in the court; or
 - 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;
- 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;
- an order that the child be separately legally represented.

Part 4 – Approval of Carers and Care Service Providers

Clause 36 prescribes standards to be applied by all approved carers. All approved carers and care service providers must take reasonable steps to ensure a child placed in their care is cared for in a way that meets all of the following standards in that the:

- child's dignity and rights will be respected at all times;
- child's needs for physical care will be met, including adequate food, clothing and shelter;
- 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;
- child's religious upbringing will be respected and continued;
- child's culture, traditions and values will be respected and promoted;
- child's material needs relating to his or her schooling, physical and mental stimulation, recreation and general living will be met;
- child will receive education, training or employment opportunities relevant to the child's age and ability;
- child will receive positive guidance when necessary to help him or her to change inappropriate behavior;
- child will receive dental, medical and other health support and services necessary to meet his or her needs;

- child will be given the opportunity to participate in positive social and recreational activities appropriate to his or her developmental level and age;
- child will be encouraged to maintain family and other significant personal relationships;
- if the child has a disability - the child will receive care and help appropriate to the child's special needs.

Clause 37 clarifies that the purpose of the provisions of this Division of the Act is to apply a system for approving individuals to provide care for children. This is to ensure the care of children in the Minister's custody or guardianship meets the standards of care in itemized .

Clause 38 generally provides for the approval of foster carers and kinship carers to look after children who are affected by orders made under this Act. The Minister may give approval for the issue of a certificate of approval as an approved foster carer (a foster carer certificate), or a certificate of approval as an approved kinship carer (a kinship carer certificate).

Clause 39 prescribes the general requirements for people to be certified as carers. It states that two or more individuals may hold a certificate jointly. A person living with his or her spouse may only hold a certificate jointly with the spouse. A person may hold more than 1 kinship carer certificate.

Clause 40 prescribes the processes for the initial issue of a carer's certificate. A person may apply to the Director to be issued with a certificate. An applicant must give full disclosure of each of the following:

- criminal history and any domestic violence history;
- the members of the applicant's household;
- 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.

Clause 41 prescribes the process for renewing a carer's certificate. Before a certificate ceases to be valid, the holder may apply to the Director to renew the certificate. The application must be in the form approved by the Director. 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:

- the applicant's criminal history or domestic violence history;
- the membership of the applicant's household;
- 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.

Clause 42 imposes restrictions on the issue of a carer's certificate. The Director must 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:

- for a foster carer certificate
 - the applicant is a suitable person to be an approved foster carer;
 - all members of the applicant's household are suitable persons to associate on a daily basis with children;
 - the applicant is able to meet the standards of care;
 - the applicant is able to help in appropriate ways towards achieving plans for the protection of a child placed in the carer's care;
- for a kinship carer certificate –
 - the applicant is a relative to the child to whom the approval relates;
 - the applicant is a suitable person to be an approved kinship carer for the child;
 - all members of the applicant's household are suitable persons to associate on a daily basis with the child;
 - the applicant is able to meet the standards of care;
 - the applicant is able to help in appropriate ways towards achieving plans for the child's protection.

Clause 43 permits the grant of a provisional carer's certificate. The Director may give limited approval to a person to care for a particular child in circumstances if :

- the person has been provisionally assessed as suitable to care for the child; and
- 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.

In addition, the Director may issue a person with a provisional certificate relating to the care of a particular child if all of the following apply:

- the Director proposes to place the child in care under this Act;
- the person has applied for a certificate of approval as either
 - an approved foster carer; or
 - an approved kinship carer for the child;
- the application has not yet been decided; and
- the person agrees to being issued with a provisional certificate of approval as a provisionally approved carer for the child;
- the Director is satisfied of all of the following matters :
 - the person is a suitable person to be a provisionally approved carer for the child;
 - all members of the person's household are suitable persons to associate on a daily basis with the child;

- the person is able to meet the standards of care required.

Clause 44 provides for the issue of a provisional carer's certificate. If the Director approves the grant of a provisional certificate, the Director must issue a certificate and give it to the applicant. The certificate must relate only to the care of 1 child. The matters stated in the certificate must include the following

- the approved carer's name;
- that it is a certificate of approval as a provisionally approved carer;
- the name of the child for whom the carer is approved;
- any conditions of the certificate;
- the day of its issue;
- the day on which it is due to expire (the expiry day).

Clause 45 permits a carer's certificate to be amended. The Director may amend a certificate issued under this Part at any time:

- the holder agrees to the amendment; or
- the Director considers it is necessary or desirable for any of the following reasons –
 - the holder is not meeting the standards required under the certificate or a condition applying to the certificate;
 - the holder has contravened a provision of this Act;
 - the certificate was issued because of a materially false or misleading representation or declaration (made either orally or in writing);
 - there are other circumstance which the Director considers to be affecting the welfare of the child

Clause 46 permits action to be taken to suspend or cancel a carer's certificate. The Minister and the Director both have authority to suspend or cancel a certificate on the following grounds:

- in the case of a certificate of approval as an approved foster carer –
 - the holder of the certificate is not a suitable person to be an approved foster carer; or
 - a member of the holder's household is not a suitable person to associate on a daily basis with children;
- in the case of a certificate of approval as an approved kinship carer:
 - 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
 - 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;
- in the case of a certificate of approval as a provisionally approved carer:
 - the holder is not a suitable person to be a provisionally approved carer for the child to whom the approval relates; or

- 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; or
- the holder is not meeting the standards required under the certificate or another condition of the certificate;
- the holder has contravened a provision of this Act;
- the authority was issued because of a materially false or misleading representation or declaration (made either orally or in writing);
- any other circumstance prescribed under by regulations

Clause 47 applies to procedures for the suspension or cancellation of a carer's certificate. If the Minister, Secretary or Director considers that a ground exists to suspend or cancel a certificate, written notice must be given to the holder stating all of the following:

- the proposed action;
- the grounds for the proposed action;
- the facts and circumstances forming the basis for the grounds;
- if the proposed action is suspension of the certificate - the proposed suspension period;
- 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.

Part 5 – Protecting the Rights of Children under the law

Clause 48 prohibits a court from imposing a death or life imprisonment sentence on a child, and requires that imprisonment be the sentence of last resort when children are punished for a criminal offence.

Clause 49 makes 18 years the minimum age for children to be permitted to marry. This includes marriage under the law or in custom.

Clause 50 imposes the duty to report abuse, neglect and exploitation of children. It applies to all persons who holds a position of authority; or is employed in any position or capacity which involves the provision of care, supervision or protection of children 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.

Clause 51 imposes a clear prohibition on the sale of children. It states that no child in Nauru 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.

Additionally, this section provides that a person who:

- enters in to any arrangement for the sale or purchase of a child in Nauru;

- offers any money or valuable consideration to the parent or guardian of a child in Nauru in order to purchase the child, or to obtain or assume any parental status or authority over the child;
- facilitates the sale or purchase of a child in Nauru in any way - commits an offence and is liable to a fine

Clause 52 requires that children are not to be used for research purposes (including medical or scientific experimentation), unless all of the following apply –

- appropriate consents have been obtained from the child and his or her parents or legal guardians;
- the research is conducted in a manner which protects the health and welfare of the child to the fullest extent possible;
- the purpose and effect of the research is demonstrably beneficial to the child's health or well-being.

Clause 53 requires a child's employer to provide proof of child's age, and proof that a parent of the child authorized the contract of employment for the child.

Part 6 – Investigations and Court Procedures where Children are involved

Clause 54 applies special requirements when investigations and inquiries are conducted involving children. It provides for matters that need to be applied 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 law. Some of the matters to be applied include:

- having the best interests of the child be the primary consideration;
- the matter must be promptly notified and referred to other relevant agencies to promote the protection and welfare of the child;
- child friendly interview environment and techniques must be applied;
- 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; and
- investigations must be conducted expeditiously, and must be followed by expedited court proceedings;

Clause 55 applies special requirements to court proceedings involving children. The following requirements must be considered:

- expedited hearings;
- closed court proceedings;
- having a parent or guardian or legal representative present with the child during court proceedings;
- alternative arrangements for giving testimony such as use of screens, videotaped evidence and closed circuit television;
- social and legal counselling is to be provided where appropriate;
- children must 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;

- no corroboration of a child's evidence in criminal proceedings for sexual assault is to be required;
- police officers, prosecutors, lawyers and court officers are to receive specialised training in dealing with cases involving children;

Part 7 – Confidentiality Requirements

Clause 56 guarantees confidentiality for people who provide notification of harm or risk of harm to a child. It applies if a person (the notifier) notifies the Minister, Secretary, Director an authorised officer or a police officer that the notifier suspects:

- a child has been, is being or is likely to be, harmed; or
- an unborn child may be at risk of harm after he or she is born.

Additionally, the person who receives the notification, or a person who becomes aware of the identity of the notifier, must not disclose the identity of the notifier to another person unless the disclosure is made –

- in the course of performing functions or exercising powers under this Act; or
- to a person for the purpose of that person performing functions or exercising powers under this Act; or
- by way of evidence given in a legal proceeding .

Furthermore, the court or tribunal must not grant leave unless:

- it is satisfied the evidence is of critical importance in the proceeding, and there is compelling reason in the public interest for disclosure; or
- the notifier agrees to the evidence being given in the proceeding.

In deciding whether to grant leave, the court or tribunal must take into account:

- the possible effects of disclosure on the safety or wellbeing of the notifier and the notifier's family; and
- the public interest in maintaining confidentiality of notifiers.

Clause 57 makes provision for the confidentiality of information obtained by persons involved in the administration of this Act. It applies to a person who is or has been a public servant or a police officer, who performs functions or exercises powers under or in relation to the administration of this Act; or any other person who has been authorised to perform functions or exercise powers under this Act; or an approved carer or other person in whose care a child has been anyone else.

Clause 58 makes provision for the confidentiality of information given by persons involved in the administration of this Act. The receiver must not use or disclose the information or the document, or give access to the document, to any other person.

Clause 59 authorises police officers to use information that is otherwise confidential under this Part. This section applies if a police officer acquires information during the course of performing a function or exercising a power under this Act. The police officer, and any other police officer to whom the information is disclosed, may use the information to the extent necessary in the performance of professional duties.

Clause 60 requires certain information to be provided to a child's family group when action is taken under this Act. 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. Before disclosing information, the Minister, Secretary, Director or the authorised officer must:

- 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; and
- consider whether the disclosure is likely to adversely affect the child's relationship with members of the child's family group; and
- consider whether the disclosure is likely to have adverse effects for anyone else, including a risk to anyone's safety; and
- have regard to –
 - any views expressed by the child's parents; and
 - the relationship between the child and the person to whom it is proposed to disclose the information, and any views expressed by that person.

Clause 61 provides for a prohibition on publication of information leading to the identity of children who are under care in accordance with this Act. This states that a person must not, without the Minister's written approval, publish information that identifies, or is likely to lead to the identification of, a child as:

- a child who is or has been the subject of an investigation under this Act of an allegation of harm or risk of harm; or
- a child in the Minister's custody or guardianship under this Act; or
- a child for whom an order under this Act is in force.

Additionally, it also states that a person must not, without the Minister's written approval, publish information that identifies, or is likely to lead to the identification of, a child living in Nauru as a child who –

- has been harmed or allegedly harmed by a parent or step-parent of the child or another member of the child's family; or
- 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
- 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 the Act

- Clause 62** provides for a general offence and penalty for any breach of this Act, for which no other penalty is provided for. This states that a person who breaches any requirement of this Act for which no offence is prescribed, commits an offence and is liable upon conviction to a fine or to a term of imprisonment of up to 1 month, or both.
- Clause 63** makes it an offence to obstruct authorised officers. A person who does any of the following –
- impedes, hinders or obstructs an authorised officer or police officer who is lawfully discharging a function or exercising a power under this Act;
 - fails to provide any information relating to a child when requested to do so by an authorised officer;
 - impersonates an authorised officer,
- commits an offence and is liable upon conviction to a fine to a term of imprisonment of up to 6 months, or both.
- Clause 64** makes it an offence to remove a child from a carer who has responsibility for the child under this Act. This applies if a child is in the Minister's custody or guardianship or as a result of the exercise of any power provided for in this Act.
- Clause 65** makes it an offence to remove a child from custody or guardianship under this Act. A person who does any of the following :
- unlawfully removes the child from the first person's custody or guardianship;
 - if the child has been unlawfully removed from the first person's custody or guardianship - keep the child;
 - 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 –
- commits an offence and is liable upon conviction to a fine to a term of imprisonment of up to 12 months, or both.
- Clause 66** makes it an offence to refuse contact by an authorised officer with a child under care or guardianship. This applies to a child who is under the Minister's custody or guardianship. This provides that a person who refuses the authorised officer's request without a reasonable excuse commits an offence and is liable upon conviction to a fine or to a term of imprisonment of up to 1 month, or both.
- Clause 67** makes it an offence to take a child out of Nauru to defeat an order made under this Act. This applies to a person who takes a child who is under the custody or guardianship of the Minister 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 or to a term of imprisonment of up to 5 years, or both.

Clause 68 requires a child's parents to comply with orders made under this Act. This 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. This provides that a child's parent who knowingly contravenes an order directing the parent not to have contact (direct or indirect) –

- with the child; or
- with the child other than when a stated person or a person of a stated category is present,

commits an offence and is liable upon conviction to a fine or to a term of imprisonment of up to 12 months, or both.

Clause 69 ensures that all persons who lawfully perform functions and exercise powers under this Act cannot be sued or prosecuted for their lawful acts. This section states that any person who lawfully exercises any power or 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.

Clause 70 provides power to make regulations relating to any matter provided for under this Act. Any Regulation made under this Act may

- prescribe offences;
- prescribe penalties of fines or imprisonment for terms not exceeding 6 months, or both a fine and a term of imprisonment.

Additionally Cabinet may make Regulations not inconsistent with this Act, prescribing all matters which are required or permitted to carrying out or giving effect to this Act or applying its guiding principles.