



**CHILD AND FAMILY WELFARE ACT 2017**

**(NO. 3 OF 2017)**



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(NO. 3 OF 2017)

*PASSED* by the National Parliament this twentieth day of February 2017.

*(This printed impression has been carefully compared by me with the Bill passed by Parliament and found by me to be a true copy of the Bill)*

Clezy Rore  
*Clerk to National Parliament*

*ASSENTED* to in Her Majesty's name and on Her Majesty's behalf this seventeenth day of March 2017.

Mr. Ajilon Jasper Nasiu  
*Acting Governor-General*

*Date of Commencement: see section 1.*

AN ACT TO PROVIDE FOR THE WELFARE AND PROTECTION OF CHILDREN AND, IN PARTICULAR, TO STRENGTHEN FAMILIES AND PROMOTE THE WELLBEING OF CHILDREN; TO ENSURE THAT FAMILIES AND COMMUNITIES RECEIVE ADVICE AND SUPPORT IN CARING FOR THEIR CHILDREN; TO PROVIDE FOR CHILDREN WHO ARE IN NEED OF CARE AND PROTECTION AND TO GIVE CERTAIN POWERS TO SOCIAL WELFARE OFFICERS IN THEIR ROLE TO PROVIDE FOR THE WELFARE OF FAMILIES, AND FOR RELATED MATTERS

ENACTED BY THE NATIONAL PARLIAMENT OF SOLOMON ISLANDS.

# CHILD AND FAMILY WELFARE ACT 2017

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# CHILD AND FAMILY WELFARE ACT 2017

## PART 1 PRELIMINARY MATTERS

### 1 Citation

- (1) This Act may be cited as the *Child and Family Welfare Act 2016*.
- (2) This Act commences on the day appointed by the Minister by notice in the *Gazette*.

### 2 Definitions

In this Act, unless context otherwise requires:

**“agreed care and protection plan”** means a plan developed in accordance with section 27;

**“authorised justice”** has the meaning set out in section 3;

**“care and protection order”** means an interim or final care and protection order;

**“caregiver”**, of a child, means a person, whether or not related to a child, with whom the child resides and who takes primary responsibility for meeting the daily care needs of the child;

**“child”** means a person who is under the age of 18 years, but does not include a child who is or has been married;

**“child in need of care and protection”** has the meaning set out in section 5;

**“Court”** means a Principal Magistrates’ Court established by the *Magistrates’ Courts Act* (Cap.20);

**“Director”** means the person appointed as head of the Division;

**“Division”** means the Government division responsible for social welfare matters;

**“faith-based organisation”** means:



- (a) a religious organisation incorporated under the *Charitable Trusts Act* (Cap. 55); or
- (b) an organisation affiliated with a religious organisation mentioned in paragraph (a) that is incorporated under the *Charitable Trusts Act* (Cap. 55);

**“family member”**, of a child, has the meaning set out in section 4;

**“final care and protection order”** means an order made under section 46;

**“Government agency”** includes any of the following:

- (a) a Government ministry;
- (b) a department, division or unit in a Government ministry;
- (c) a statutory body established for a specific purpose by the Government;
- (d) a State-owned enterprise;
- (e) any other entity with a Government function whose daily operation is funded by the Consolidated Fund;

**“guardian”**, of a child, means a person appointed by a court of competent jurisdiction to be the guardian of the child or a person who has the right to custody of the child in custom;

**“interim care and protection order”** means an order made under section 40;

**“Minister”** means the Minister responsible for social welfare matters;

**“neglect”**, in relation to a child, means a failure in the exercise of parental responsibility to provide for the child’s basic physical, intellectual, emotional or social needs, including any special needs of the child;

**“parent”**, of a child, means any of the following:

- (a) the biological mother or adoptive mother of the child;

- (b) the biological father or adoptive father of the child;
- (c) a guardian or a person to whom custody of the child has been granted by an agreement approved by a court;
- (d) a caregiver who stands in place of the child's biological mother or father;

**“party”**, in relation to proceedings for a care and protection order, means each of the following:

- (a) the applicant for the order;
- (b) if the applicant is not the Director, the Director;
- (c) the child;
- (d) each parent of the child;
- (e) any other person who is a caregiver for the child;

**“registered service provider”** means a person, including that person's employee, agent or representative, who is registered under section 60 to provide services to a child in need of care and protection;

**“social welfare officer”** means a social welfare officer of the Division, and includes the Director, the Deputy Director of the division and any Senior Social Welfare Officer;

**“temporary safe place”** means a shelter, health care facility, private home or any other place approved by the Director to receive and temporarily care for a child;

**“wellbeing”**, in relation to a child, includes the care, development, health and safety of the child.

### 3 **Meaning of “authorised justice”**

An **“authorised justice”** is a person prescribed to be an authorised justice by regulation or a person belonging to a class of persons prescribed to be authorised justices by regulation.

4            **Meaning of “family member”**

- (1) A **“family member”**, of a child, is a member of the child’s family, whether related by blood, adoption, marriage or custom.
- (2) Without limiting subsection (1), each of the following is a member of a child’s family:
  - (a) the child’s parent, grandparent, step-parent or parent-in-law;
  - (b) the child’s sibling, half-sibling, step-sibling or sibling in-law;
  - (c) the child’s uncle or aunt or uncle-in-law or aunt-in-law;
  - (d) the child’s nephew or niece;
  - (e) the child’s cousin;
  - (f) the child’s primary caregiver;
  - (g) any other person who is treated by the child as a member of the child’s family or a member of the person’s household;
  - (h) any other person with whom the child has developed a significant relationship based on psychological or emotional attachment, which significantly resembles a family relationship.

5            **Meaning of “child in need of care and protection”**

- (1) A **“child in need of care and protection”** is a child who:
  - (a) has been orphaned, abandoned or is without parental care and appropriate arrangements have not been made for his or her care; or
  - (b) lives in an unsafe environment which may harm his or her physical wellbeing and development; or
  - (c) has been displaced, traumatized or separated from his or her family as a result of an emergency, natural disaster or conflict; or
  - (d) has been, or is at risk of:

- (i) physical abuse; or
- (ii) sexual abuse or sexual exploitation; or
- (iii) emotional abuse; or
- (iv) neglect; or
- (v) hazardous or exploitive labour.

(2) In this section:

**“emotional abuse”** means a single act or omission or a series of acts or omissions causing or likely to cause mental or emotional suffering, including patterns of belittling, denigrating, threatening, scaring, ridiculing, or other non-physical forms of degrading or rejecting treatment;

**“hazardous or exploitive labour”**, in relation to a child, includes any work that:

- (a) is inappropriate for the child's age; or
- (b) is hazardous to the child's physical or mental health; or
- (c) impairs the child's education and moral development;

**“physical abuse”** means any act, or series of acts, of violence or maltreatment that results in physical wounds or bodily injury;

**“sexual abuse”**, of a child, means conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of the child;

**“sexual exploitation”**, of a child, includes:

- (a) the involvement of the child in sexual activity that he or she:
  - (i) does not fully comprehend; or
  - (ii) is unable to give informed consent to; or
  - (iii) is not developmentally prepared for and cannot give consent to; and

- (b) the inducement or coercion of the child to engage in any unlawful sexual activity; and
- (c) the involvement of the child in prostitution; and
- (d) the use of the child in pornographic performances or the production of pornographic materials.

**6 Forms**

A reference in this Act to a Form by number is a reference to the Form of that number in the Schedule to this Act.

**PART 2 OBJECTS AND PRINCIPLES OF ACT**

**7 Object of Act**

The objects of this Act are to promote the wellbeing and protection of children by:

- (a) acknowledging the primary role of parents, families and communities in the wellbeing and protection of children, and encouraging and supporting them in carrying out that role; and
- (b) strengthening positive traditional practices that promote and provide care and protection for children; and
- (c) promoting caring attitudes and responses towards children so that risks to their wellbeing are quickly identified, and any necessary care, support and protection is promptly provided; and
- (d) strengthening community mechanisms that can assist in providing care and protection for children; and
- (e) making provision for the care and protection of children in circumstances where their parents, families and communities are unable to do so.

**8 Recognition of principles in administration of Act**

Every person must exercise the powers and functions conferred on them by this Act in recognition of the principles in sections 9, 10 and 11 for the care and protection of children and the responsibility

of parents in their protection.

## 9 **Principles for care and protection of children**

Children require care, guidance and support to ensure their full development as responsible members of the community and should, as far as possible, grow up in an environment that:

- (a) is nurturing, safe and stable; and
- (b) fosters positive relationships with their parents, family members and community; and
- (c) promotes their healthy growth and development; and
- (d) ensures access to education and skills training; and
- (e) provides opportunities for recreation and play; and
- (f) promotes pride in and respect for positive culture, traditions and religious and spiritual values; and
- (g) fosters the development of a sense of responsibility towards family and community; and
- (h) is free from discrimination, abuse, neglect and exploitation.

## 10 **Responsibility of parents**

The parents of a child, with the support of family members, have the primary role in protecting and promoting the wellbeing of the child, and in particular to:

- (a) safeguard and promote the child's health, development and welfare; and
- (b) ensure that the child's basic needs are met, including adequate diet, clothing, and shelter; and
- (c) ensure that the child receives medical care; and
- (d) provide education and guidance in a manner appropriate to the child's stage of development; and
- (e) ensure that the child is registered at birth; and

- (f) instil knowledge of and respect for positive customs, traditions, and religious and spiritual values; and
- (g) promote responsible behaviour towards others and their own bodies; and
- (h) encourage the child to be industrious, creative, and a good citizen; and
- (i) protect the child from discrimination, abuse, neglect, and exploitation; and
- (j) ensure that in the temporary absence of a parent, the child is cared for by a known and trusted person.

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### **Decision-making principles**

In making an order or taking any action in relation to a child under this Act, a person must consider the following principles:

- (a) every child should be cared for and protected from harm;
- (b) the preferred environment for the care and upbringing of a child is their own family;
- (c) families and communities should be assisted and supported in taking action to respond to concerns about the wellbeing and protection of a child, and the intervention of the court should be used only in circumstances where the family is unable to appropriately care for and protect the child;
- (d) the child and all relevant family and community members, except if their participation would be detrimental to the best interest of the child, should participate fully in deciding what action should be taken to promote the wellbeing and protection of a child;
- (e) decisions relating to a child should be reached by collaboration and consensus, wherever practicable;
- (f) decisions relating to a child should be made and implemented in a timely manner;
- (g) every child that is of such an age, maturity and stage of

development as to be able to participate in any decision concerning that child has the right to participate in an appropriate way, and views expressed by the child must be given due consideration;

- (h) decisions relating to a child must be appropriate to the age of the child, the child's gender, any disability the child has, and the circumstances, religion and cultural background of the child;
- (i) the wellbeing and best interests of the child must be a primary consideration;
- (j) the rights of the child under the Convention on the Rights of the Child should be promoted and respected to the extent possible.

## **PART 3                    ADMINISTRATION**

### **12                    Duties of Director**

The Director is responsible for promoting the development of policies, procedures and services that accord with the objects and principles of this Act, including:

- (a) encouraging a collaborative approach between Government agencies, non-government organisations, faith-based organisations, community elders and families in the development of child and family welfare services; and
- (b) providing assistance and advice to families and communities to promote the wellbeing of children and prevent abuse, neglect and exploitation; and
- (c) responding to suspected cases of children in need of care and protection and taking any action reasonably necessary for the purpose of protecting or promoting the wellbeing of such children; and
- (d) formulating policies, guidelines, plans and standards for child and family welfare services; and
- (e) monitoring and assessing the services provided under this Act by the Division and by other organisations, groups, and



individuals; and

- (f) maintaining an information management system on children in need of care and protection, their family members and guardians; and
- (g) encouraging research, education and training on child and family welfare issues; and
- (h) leading the on-going development of an integrated child and family welfare service system.

### **13 Delegation of Director's powers and functions**

The Director may delegate any of his or her powers and functions under this Act to an appropriately qualified officer or employee of the Division.

### **14 Agency agreements**

- (1) The Director may enter into an agreement with an organisation designated by the Minister or with any other person, for the provision by such organisation or person of any service that may or must be provided under this Act.
- (2) The Director may delegate to such organisation or person such powers and duties under this Act as may be required for the proper performance of the service.

### **15 Requests for services from other agencies**

- (1) In deciding what action should be taken to protect and promote the wellbeing of a child, the Director may request any Government agency to provide services to the child or to his or her family.
- (2) The Government agency must use its best endeavours to comply with the request if it is consistent with its own responsibilities and does not unduly prejudice the discharge of its functions.

## **PART 4 CARE AND PROTECTION OF CHILDREN**

### **Division 1 Strengthening families and community practices**

#### **16 Prevention programmes**

- (1) The Director must lead and coordinate the development of programmes and services to support families and children, in partnership with non-government organisations, faith-based organisations and community leaders.
- (2) Programmes and services must:
  - (a) promote community discussion and awareness of issues relating to the wellbeing and protection of children; and
  - (b) reinforce positive cultural values, traditions and practices that encourage caring attitudes and behaviours towards children; and
  - (c) build the capacity of parents to fulfil their parental responsibilities and to safeguard the wellbeing and best interests of their children; and
  - (d) strengthen community mechanisms for providing care and protection of children; and
  - (e) strengthen the capacity of families and community leaders to make decisions about the wellbeing, care and protection of children that are in the best interests of children; and
  - (f) encourage families and communities to seek assistance from social welfare officers when family problems cannot be resolved by the community; and
  - (g) monitor and review concerns about the wellbeing, care and protection of children and assist families and community leaders in addressing them.

### **Division 2 Reports and requests for assistance**

#### **17 Requests for assistance**

Where a parent of a child is having difficulty meeting his or her

responsibilities under section 10, the parent or child may request assistance from a social welfare officer.

**18 Reporting concerns about a child's welfare**

- (1) Any person who has reasonable grounds to suspect that a child may be in need of care and protection may report the matter to a social welfare officer or a police officer.
- (2) The report may be made anonymously.

**19 Protection of person reporting**

- (1) Where a person makes a report or discloses information concerning a child under this Act in good faith, the report or disclosure:
  - (a) does not give rise to civil, criminal or disciplinary proceedings against that person; and
  - (b) does not constitute a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct.
- (2) Subsection (1) applies despite any law that obliges the person to maintain secrecy in relation to, or not to disclose, any matter, and a disclosure referred to that subsection is not a breach of the relevant obligation of secrecy or non-disclosure.

**20 Referrals and coordination**

The Director is responsible for establishing ways to ensure timely referrals, information sharing and coordination between all service providers in relation to:

- (a) identifying and assessing particular cases of children who may be in need of care and protection; and
- (b) taking action to ensure a child's care and protection.

**21 Police to notify Director of report**

- (1) A police officer to whom a report has been made under section 18 or who becomes aware of a child in need of care and protection must:

- (a) ensure the safety and wellbeing of the child concerned if the child's safety or wellbeing is at risk; and
  - (b) as soon as possible notify the Director or a social welfare officer.
- (2) On receiving notice from a police officer under subsection (1)(b), the Director must assess the matter under Division 3.
- (3) If the Director determines that it is necessary to ensure the wellbeing or protection of a child, he or she may take whatever action is appropriate under section 25.

**22 Referral of child by court**

- (1) If it appears to any court in the course of proceedings that a child involved in or affected by those proceedings is in need of care and protection, the court must order that the question of whether the child is in need of care and protection be referred to the Director for an assessment under Division 3.
- (2) A court issuing an order under subsection (1) may also order that the child be placed in a temporary safe place if it appears to the court that this is necessary for the safety and wellbeing of the child.

**23 Director may request information**

- (1) The Director may request information from any person or organisation relating to any child where that information is required:
- (a) for the purposes of determining whether that child is a child in need of care and protection; or
  - (b) for the purposes of any proceedings under this Act.
- (2) The person or organisation must supply such information required under subsection (1) as it has in its possession relating to any child.
- (3) A person who fails, without reasonable excuse, to provide information requested under this section is guilty of an offence.

Maximum penalty: 50,000 penalty units or 5 years imprisonment, or both.

- (4) Subsection (1) applies despite any law that obliges the person to maintain secrecy in relation to, or not to disclose, any matter, and any compliance with this section is not a breach of the relevant obligation of secrecy or non-disclosure.

### **Division 3      Assessment and intervention by Director**

#### **24      Director may inquire into child's welfare**

- (1) Where the Director receives a report or request for assistance under Division 2 that raises concerns about a child's wellbeing, the Director may inquire or cause any inquiry to be made that he or she considers reasonably necessary for the purpose of assessing whether action under section 25 is necessary in the best interests of the child.
- (2) Without limiting subsection (1), the Director may take, or cause to be taken, reasonable steps to assess the circumstances of the child and his or her home environment, including any of the following:
- (a) visiting the child's home;
  - (b) interviewing the child, the child's parents, and any other person with an interest in, or knowledge of, the care, wellbeing or development of the child;
  - (c) making inquiries about the child and his or her circumstances;
  - (d) requesting information from any person or Government agency.
- (3) Where the person who has custody of the child refuses to allow the Director access to the child, the Director may exercise his or her authority as a social welfare officer under Division 4.

#### **25      Action by the Director**

- (1) If the Director determines that action is necessary to ensure the wellbeing or protection of a child, the Director may do any one or more of the following:
- (a) provide, or arrange for the provision of, advice or support services for the child and his or her family;

- (b) develop, in consultation with the parents, the child, and where appropriate, family and community members, an agreed care and protection plan for the child;
  - (c) exercise the Director's emergency protection powers as a social welfare officer under Division 4;
  - (d) refer the matter to a police officer if it appears that a criminal offence has been committed in relation to the child;
  - (e) apply for an appropriate care and protection order.
- (2) In deciding what action to take under subsection (1), the Director must, to the extent possible, ensure that:
- (a) the child and any relevant family members participate in the decision-making process as specified in section 26; and
  - (b) decisions are reached by collaboration and consensus, and in accordance with community decision-making processes.
- (3) The preferred course of action under subsection (1) should be the development of an agreed care and protection plan for the child unless this would be contrary to the best interests of the child.
- (4) The Director may decide to take no action if the Director considers that proper arrangements have been made for the care and protection of the child and the circumstances that led to the report or request for assistance have been or are being adequately dealt with.

**26 Family meetings**

- (1) In determining what action should be taken under section 25, the Director must, unless it would be contrary to the best interests of the child, arrange or cause to be arranged a family meeting to consider the child's care and protection needs.
- (2) Depending on the nature of the matter and the child's best interests, the Director may involve any of the following persons in the family meeting:
- (a) the child;

- (b) the child's parents;
  - (c) other family members of the child;
  - (d) community or faith-based leaders;
  - (e) relevant service providers;
  - (f) any other person whose involvement, in the opinion of the Director, would be of assistance.
- (3) If a child does not take part in the family meeting, the Director must take reasonable steps to:
- (a) find out the views and wishes of the child; and
  - (b) make the views and wishes of the child known to the persons taking part in the meeting; and
  - (c) ensure that the views and wishes of the child are considered in deciding what action to take under section 25.

## 27 **Agreed care and protection plans**

- (1) An agreed care and protection plan for a child may include any provisions considered appropriate to ensure the wellbeing and protection of the child, including provisions about one or more of the following:
- (a) advice, encouragement and counselling for the child;
  - (b) family counselling or parenting advice for the parents of the child;
  - (c) regular monitoring and supervision of the child by a social welfare officer or other specified person;
  - (d) attendance of a parent for counselling or treatment for alcohol, drug or other substance abuse;
  - (e) agreement that a specified person, including a parent, will not enter the place where the child lives or have any contact with the child;
  - (f) agreement that the child is to live in the home of a family

member or other fit and proper person approved by the Director.

- (2) Where appropriate, an agreed care and protection plan for a child must engage the child's family members and community, including family elders, faith-based leaders, community leaders, any faith-based organisation, and other service providers, in the provision of support to the child and his or her parents.
- (3) Any agreed care and protection plan must:
  - (a) be in writing; and
  - (b) be approved by the Director; and
  - (c) include provision for how progress and compliance with the plan will be monitored.

**28            When Director may apply for care and protection order**

The Director may apply for a care and protection order if the Director has reasonable grounds to believe that a child may be in need of care and protection and:

- (a) no agreement can be reached on a care and protection plan for the child; or
- (b) a proposed care and protection plan is not, in the opinion of the Director, adequate to ensure the care and protection of the child; or
- (c) the provisions of an agreed care and protection plan have not been complied with; or
- (d) it is not in the best interests of the child to develop an agreed care and protection plan for the child.

**Division 4            Emergency protection powers**

**29            Removal of child with warrant**

- (1) The Court may issue a warrant authorising a social welfare officer or police officer to remove a child to a temporary safe place if the Court is satisfied on the basis of a sworn statement from a social



welfare officer or police officer that there are reasonable grounds to believe that:

- (a) the child is in need of immediate care and protection; and
  - (b) a less restrictive course of action is not available or will not adequately protect the child.
- (2) A social welfare officer or police officer authorised by warrant under this section may at any time enter any premises or vehicle or board any vessel or aircraft specified in the warrant, by force if necessary, and may search for and remove the child.

### **30 Removal of child without warrant**

- (1) A social welfare officer or police officer may, without a warrant, remove a child to a temporary safe place if the social welfare officer or the police officer believes on reasonable grounds that:
- (a) the child's health or safety is in immediate danger; and
  - (b) there would be a substantial risk to the child's health or safety during the time necessary to obtain a warrant under section 29.
- (2) A person exercising authority under this section may enter any premises or vehicle or board any vessel or aircraft where it is reasonably believed that the child may be, by force if necessary, and may search for and remove the child.
- (3) A police officer exercising authority under this section must, within 24 hours or as soon as possible, whichever is sooner, notify the Director or a social welfare officer.
- (4) The notification must either be in writing (whether or not electronically communicated) or orally (either in person or by telephone, radio transmission or any other medium of verbal communication), or both.

### **31 Police assistance**

A social welfare officer exercising authority under this Division may call for the assistance of a police officer.

**32 Duration and location of temporary care of child**

- (1) Where a child has been taken to a temporary safe place under this Division, the Director must keep the child under his or her care until:
  - (a) the Director withdraws his or her application for a care and protection order in relation to the child under section 36; or
  - (b) the Court makes a care and protection order in relation to the child.
- (2) Unless it would be contrary to the child's best interests, the temporary safe place to which the child is taken should be the home of a family member or any other person from the child's community considered by the Director as fit and proper to look after the child.

**33 Requirement to apply for temporary care and protection order**

Where a child has been taken to a temporary safe place under this Division, the Director or any other social welfare officer designated by the Director in writing, must, as soon as practicable, apply to the Court or an authorised justice for an interim care and protection order in relation to the child.

**Division 5 Care and protection orders**

**Subdivision 1 – Care and protection orders generally**

**34 Jurisdiction to make care and protection orders**

- (1) The Court has jurisdiction to:
  - (a) make a care and protection order; and
  - (b) vary or revoke a care and protection order.
- (2) An authorised justice has jurisdiction to:
  - (a) make an interim care and protection order; and
  - (b) vary or revoke an interim care and protection order.

**35 Application for care and protection order**

- (1) An application to the Court or an authorised justice for an interim care and protection order may be made by:
  - (a) the Director or a social welfare officer designated in writing by the Director; or
  - (b) with the leave of the Court or authorised justice, any other person.
- (2) An application to the Court for a final care and protection order may be made by:
  - (a) the Director or a social welfare officer designated in writing by the Director; or
  - (b) with the leave of the Court, any other person.
- (3) An application for a care and protection order must be:
  - (a) made on Form 1; and
  - (b) served on each party to the proceedings other than the applicant in accordance with section 62, along with a notice to attend on Form 6.

**36 Withdrawal of application for care and protection order**

- (1) The Director may withdraw an application for a care and protection order made by the Director or a social welfare officer if the Director:
  - (a) approves an agreed care and protection plan for the child; or
  - (b) considers that circumstances have changed so that the child is no longer in need of care and protection.
- (2) Another person who has applied for a care and protection order may apply to the Court or authorised justice to withdraw the application.
- (3) The Court or authorised justice must be satisfied that an application under subsection (2):
  - (a) is made freely and voluntarily; and

- (b) will not adversely affect the child.
- (4) Notice of a withdrawal of an application for a care and protection order must be:
  - (a) made on Form 7; and
  - (b) served on each party to the proceedings other than the applicant in accordance with section 62.

**37 Requirement to expedite proceedings**

An application for a care and protection order must be heard by the Court or authorised justice as soon as practicable after it is made.

**38 Conduct of proceedings before Court**

- (1) A hearing of an application for a care and protection order made to the Court is civil in nature and must:
  - (a) be conducted with as little formality and legal technicality as the circumstances of the case permit; and
  - (b) be conducted in a manner conducive to the active participation of all persons involved in the proceedings; and
  - (c) be held in private and attended only by persons directly involved in the proceedings; and
  - (d) be held, as far as is practicable:
    - (i) at a different time or at a different place from the usual time or place for sittings of the Court relating to criminal matters; and
    - (ii) in a room that is furnished and designed in a manner aimed at putting children at ease.
- (2) The Court is not bound by the rules of evidence and may inform itself in any way it thinks appropriate.
- (3) The Chief Justice may from time to time make rules of court for regulating practice and procedure in proceedings for care and protection orders.

- (4) Subject to this Act and the rules of Court, any other written law that regulates procedure in civil cases has effect in relation to proceedings for care and protection orders.

**39 Form and service of care and protection order**

A care and protection order must be:

- (a) made on Form 2; and
- (b) served on each party to the proceedings who is not before the Court or authorised justice when the order is made, in accordance with section 62.

**Subdivision 2 – Interim care and protection orders**

**40 When interim care and protection order may be made**

- (1) The Court or an authorised justice may make an interim care and protection order if satisfied that:
  - (a) there are reasonable grounds to believe the child is in need of immediate care and protection; and
  - (b) the order is necessary to ensure the care and protection of the child.
- (2) Despite section 35(3)(b), an interim care and protection order may be made:
  - (a) even if a party to the proceedings has not been served with the application for the order; or
  - (b) in the absence of a party; or
  - (c) outside ordinary sitting or business hours.
- (3) An interim care and protection order need only be supported by the evidence that the Court or authorised justice considers sufficient and appropriate having regard to the temporary nature of the order.

**41 Filing of interim care and protection order made by authorised justice**

- (1) This section applies if an authorised justice makes an interim protection order.
- (2) After receiving them from the authorised justice, a police officer must file the following with the Court:
  - (a) the application for the order;
  - (b) the order.

**42 Duration of interim care and protection order**

An interim care and protection order comes into force as soon as it is served on each party to the proceedings and remains in force until the earliest of the following:

- (a) a final care and protection order is made by the Court;
- (b) it is revoked under section 53;
- (c) it is revoked on appeal under section 54;
- (d) the date specified in the order, which must not be more than 3 months after it is made;
- (e) the child reaches the age of 18 years or marries.

**Subdivision 3 – Final care and protection orders**

**43 Interim order on adjournment**

Where a hearing of part of an application for a final care and protection order for a child is adjourned, the Court may make an interim care and protection order in relation to the child until the Court completes the hearing.

**44 Report from social welfare officer**

- (1) The Court must, before making a final care and protection order for a child, obtain and consider a plan for the care and protection of the child prepared in writing by a social welfare officer.

(2) A plan prepared under subsection (1) must include the following:

- (a) the results of any attempts to develop an agreed care and protection plan to address the child's care and protection needs;
- (b) a description of the proposed arrangements for the care, custody or supervision of the child;
- (c) a description of the services to be provided to remedy the condition or situation on the basis of which the child was found in need of care and protection;
- (d) an estimate of the time required to achieve the purpose of the Director's intervention;
- (e) where the Director proposes to temporarily remove the child from a person's care:
  - (i) an explanation of why the child cannot be adequately protected while in the person's care, and a description of any past efforts to do so; and
  - (ii) a statement of what efforts, if any, are planned to maintain the child's contact with the person;
- (f) where the Director proposes to remove the child from a person's custody permanently, a description of the arrangements made or being made for the child's long-term stable placement.

45

### **Views of the child**

- (1) The Court must, before making a final care and protection order in relation to a child, take such measures as are reasonably practicable to ensure that the child has the opportunity to express his or her views.
- (2) The Court must give the views of the child due consideration, having regard to the age, ability and understanding of the child.
- (3) Where the Court is of the opinion that it would be in the best interests of the child to have independent legal representation, the Court must refer the matter to the Public Solicitor's Office for the

appointment of counsel.

**46 When final care and protection order may be made**

The Court may make a final care and protection order for a child if the Court is satisfied that:

- (a) the child is in need of care and protection; and
- (b) the order is necessary to ensure the care and protection of the child; and
- (c) the order is in the best interests of the child.

**47 Hearing of application in absence of party**

(1) This section applies if:

- (a) a party to proceedings for a final care and protection order fails to appear before the Court for the hearing of the application; and
- (b) the Court is satisfied that the party has been served with a copy of the application.

(2) The Court may:

- (a) hear and decide the application in the absence of the party; or
- (b) adjourn the proceedings.

**48 Duration of final care and protection order**

A final care and protection order comes into force as soon as it is served on each party to the proceedings and remains in force until the earliest of the following:

- (a) the date specified in the order;
- (b) it is revoked under section 53;
- (c) it is revoked on appeal under section 54;
- (d) the child reaches the age of 18 years or marries.



## **Subdivision 4 – Directions under care and protection orders**

### **49 Directions that may be imposed**

Subject to this Subdivision, a care and protection order may include any conditions or directions the Court or authorised justice making the order considers necessary in the best interests of the child, including any of the following:

- (a) directions about how the child is to be cared for;
- (b) directions requiring the parent of a child to be supervised in relation to the care of the child by a social welfare officer or other person designated by the Court or authorised justice;
- (c) directions that a specified person be given temporary custody of the child;
- (d) in the case of a final care and protection order – directions that a specified person be given permanent custody of the child;
- (e) directions that a child undergo a medical examination;
- (f) directions about the maintenance of the child.

### **50 Directions about custody**

- (1) This section applies to a care and protection order that includes directions about the temporary or permanent custody of a child.
- (2) A Court or authorised justice must not make a direction that has the effect of removing a child from the care of his or her parent unless satisfied that less disruptive alternatives would be inadequate to protect the child.
- (3) In addition, a Court must not make a direction that a person other than a parent of a child is given permanent custody of the child unless:
  - (a) the identity or location of the parents of the child has not been found, and is not likely to be found in the foreseeable future; or
  - (b) a parent is, and will continue to be for the foreseeable future, unable, unwilling or unfit to have custody of the child.

- (4) A Court or authorised justice may only direct that a child is placed in the custody of a person who is:
  - (a) a person the Court or authorised justice considers to be a fit and proper person to care for the child; and
  - (b) either:
    - (i) a family member; or
    - (ii) a person approved by the Director.
- (5) In approving a person other than a family member to have custody of a child for subsection (4)(b)(ii), the Director must have regard to the principle that the child should remain within the child's community, unless that would be contrary to the child's best interests.
- (6) A Court or authorised justice may impose reasonable conditions in relation to the care and wellbeing of the child who is placed in the custody of a person, including:
  - (a) access by a parent to the child, unless the Court or authorised justice is satisfied that continued contact with the parent would not be in the best interests of the child; and
  - (b) the guidance, support and assistance to be provided to the child by the Director or any other person or organisation; and
  - (c) the guidance, support and assistance to be made available to the child's parent to address the condition or situation that necessitated the child's removal from their custody.
- (7) When a direction is made placing a child in the permanent custody of a person:
  - (a) that person becomes the sole guardian of the child; and
  - (b) the order does not affect the child's rights in respect of inheritance or succession to property.
- (8) If a child is placed in the permanent custody of the Director, the Director:

- (a) must make appropriate arrangements for the care of the child; and
  - (b) may consent to the child's adoption under the *Adoption Act 2004* as the guardian of the child; and
  - (c) must make provision to support the child's transition to independent living upon reaching the age of 18 years.
- (9) A Court or authorised justice may only direct that a child is placed in the temporary custody of a person:
- (a) for a period not exceeding 12 months; and
  - (b) if the direction is made under an interim order – for a period not exceeding the duration of the order.
- (10) A direction that a child is placed in the permanent custody of a person expires if the child is adopted.

**51 Directions about supervision**

- (1) This section applies to a care and protection order that includes directions requiring the parent of a child to be supervised in relation to the care of the child by a social welfare officer or other person designated by the Court or authorised justice.
- (2) The Court may impose reasonable conditions in relation to the care and supervision of the child, including in relation to any of the following:
- (a) the guidance, support and assistance to be provided to the parent and the child by the Director or any other person or organisation;
  - (b) the participation of the parent in counselling or a specified treatment or rehabilitation programme, where this is necessary for the wellbeing or protection of the child;
  - (c) the right of a social welfare officer or other designated person to visit, assist and advise the child.

**52            Directions about maintenance**

- (1) This section applies to a care and protection order that includes directions placing a child in the care or custody of the Director or any other person.
- (2) The Court or authorised justice may order a parent of the child to pay the Director or other person caring for the child an amount the Court or authorised justice considers reasonable for the maintenance of the child.
- (3) In deciding the amount to be paid, the Court or authorised justice must take the following into account:
  - (a) the needs, means, capacity and economic circumstances of the parent;
  - (b) the needs, means and circumstances of the child;
  - (c) any other circumstance the Court or authorised justice considers relevant.
- (4) If the parent is not able to make a payment of the amount directed to be paid, the parent may make payment in the form of goods or services or other customary means of payment which is reasonable to sufficiently provide for the maintenance of the child.

**Subdivision 5 – Variation and revocation of orders and appeals**

**53            Court may vary or revoke order on application**

- (1) A person who is a party to the initial proceedings for a care and protection order may apply for a variation or revocation of the order to:
  - (a) in the case of an interim care and protection order – the Court or an authorised justice; or
  - (b) in the case of a final care and protection order – the Court.
- (2) The application must be:
  - (a) made on Form 3; and

- (b) served on each party to the initial proceedings for the order other than the applicant in accordance with section 62, along with a notice to attend on Form 6.
- (3) The Court or authorised justice may, if satisfied that it is in the best interests of the child to do so:
- (a) confirm the order; or
  - (b) vary the order or any direction or condition of the order; or
  - (c) revoke the order; or
  - (d) revoke the order and make another care and protection order in respect of the child.
- (4) A notice that an order has been varied or revoked must be:
- (a) made on Form 4; and
  - (b) served on each party to the initial proceedings for the order who is not before the Court or authorised justice when the order is varied or revoked in accordance with section 62.
- (5) If the Court or authorised justice makes, revokes or varies a care and protection order, any other application for a care and protection order in relation to the child is taken to be withdrawn.

54

### **Appeals**

- (1) A party to proceedings for a care and protection order may appeal to the High Court against:
- (a) the making of the order; or
  - (b) any direction or condition of the order; or
  - (c) the refusal to make the order.
- (2) The appeal may be on the merits of the decision appealed against or on a point of law.
- (3) The procedure for the conduct of an appeal must be, subject to any reasonable modifications directed by the High Court, in accordance with the rules of court relating to an appeal.

## **PART 5            GENERAL OFFENCES**

### **55            Contravention of care and protection order**

A person who contravenes a care and protection order without reasonable excuse commits an offence.

Maximum penalty:        60,000 penalty units or 6 years imprisonment, or both.

### **56            Identifying child**

A person who publishes or makes public information that has the effect of identifying a child who is the subject of a proceeding under this Act commits an offence.

Maximum penalty:        50,000 penalty units or 5 years imprisonment, or both.

### **57            Obstruction of Director or other social welfare officer**

A person who obstructs, threatens or intimidates the Director or any other social welfare officer in the execution of his or her duties under this Act or any other written law commits an offence.

Maximum penalty:        10,000 penalty units or 1 year imprisonment, or both.

### **58            Obstruction of registered service provider**

A person who obstructs, threatens or intimidates a registered service provider in the course of providing services to a child commits an offence.

Maximum penalty:        10,000 penalty units or 1 year imprisonment, or both.

## **PART 6            MISCELLANEOUS MATTERS**

### **59            Register of service providers**

The Director must establish a register and publish guidelines for the registration of individuals and organisations providing prescribed services to children in need of care or protection, including

information about:

- (a) the categories of services that must be registered with the Director; and
- (b) the form of the application; and
- (c) the criteria for approval; and
- (d) the inspection, monitoring and evaluation of service providers; and
- (e) the suspension or cancellation of registration of a service provider.

**60 Requirement for registration**

- (1) An individual or organisation providing prescribed services to children in need of care or protection must:
  - (a) register with the Division in accordance with the regulations; and
  - (b) comply with this Act and the conditions of its registration; and
  - (c) comply with any regulations, standards or guidelines made under this Act in relation to the provision of the service.
- (2) A person who contravenes subsection (1) commits an offence.

Maximum penalty: 1,000 penalty units.

**61 Time for giving and serving documents**

- (1) This section applies if:
  - (a) a court, authorised justice or police officer is required to give, serve or file a document under this Act; and
  - (b) no time is specified for doing so.
- (2) The court, authorised justice or police officer must give, serve or file the document as soon as practicable.

**62 Method for service**

- (1) This section applies if an application, notice or order received or made by a Court or authorised justice is required to be served on a person under this Act.
- (2) The Court or authorised justice must the give the application, notice or order to the officer in command of the police station nearest to where the person lives or was last known to live.
- (3) A police officer must:
  - (a) personally serve the application, notice or order on the person; and
  - (b) complete and file with the Court an affidavit of service on Form 5.

**63 Protection from liability**

A person is not civilly or criminally liable for:

- (a) applying in good faith for a care and protection order; or
- (b) exercising his or her powers or functions under this Act in good faith.

**64 Regulations**

- (1) The Minister may make regulations generally for the purposes of carrying out the provisions of this Act, including regulations providing for the following matters:
  - (a) the qualifications, appointment and duties of the Director and social welfare officers;
  - (b) procedures for reporting, assessing and taking action under Part 4, Division 3;
  - (c) the services that require the service provider to be registered under section 60, the requirements and procedures for registration and the minimum standards for those services;
  - (d) criteria for determining if a person is fit and proper to be granted custody of a child under this Act.



- (2) Without limiting subsection (1)(c), services that may be prescribed include the following:
- (a) counselling services;
  - (b) accommodation;
  - (c) health care services;
  - (d) education services.

## **PART 7                    CONSEQUENTIAL AMENDMENTS TO THE ADOPTION ACT 2004**

### **65                    Act amended**

This Part amends the *Adoption Act 2004* (the “*principal Act*”).

### **66                    References to “infant” amended**

The principal Act is amended by deleting each reference to “infant” or “infants”, wherever they appear, and substituting “child” and “children” respectively and making the necessary grammatical changes.

### **67                    Section 6 amended**

Section 6 of the principal Act is amended:

- (a) in subsection in (1) by:
  - (i) deleting the full-stop at the end of paragraph (b) and substituting “; and”; and
  - (ii) inserting the following paragraph after paragraph (b):
- “(c) in the case of a child who is 12 years of age or older, except with the consent of the child.”; and
- (b) by inserting the following after subsection (2):
- “(3) A person cannot give consent under subsection (1) until the person has had an opportunity to obtain counselling and independent legal advice in relation to giving the consent.”.

**68 Section 7 amended**

Section 7 of the principal Act is amended by inserting the following after subsection (4):

- “(5) The court may dispense with any consent of a child required by section 6(1)(c) if the court is satisfied that the child’s physical or mental condition is such that he or she is not capable of giving consent.”.

**69 New section 8A**

The principal Act is amended by inserting the following after section 8:

**“8A Report of social welfare officer required**

- (1) Before the court makes an adoption order, it must require a social welfare officer to provide a report on the application and the child.
- (2) The report must include the following:
- (a) any views expressed by the child in relation to the proposed adoption;
  - (b) an assessment of the applicant’s suitability to be an adoptive parent of the child;
  - (c) an assessment of whether the adoption would be in the best interests of the child;
  - (d) a recommendation that the adoption order should or should not be made.
- (3) This section does not apply in any case where the applicant or one of the applicants is an existing parent of the child, whether his natural parent or his adoptive parent under any previous adoption.”.

**70 Section 9 amended**

Section 9 of the principal Act is amended:

- (a) in subsection (1) by:
- (i) inserting “and” at the end of paragraph (a); and

(ii) deleting "for the welfare" in paragraph (b) and substituting "in the best interests"; and

(iii) deleting the full-stop at the end of paragraph (c) and substituting "; and"; and

(iv) inserting the following paragraph after paragraph (c):

"(d) that the applicant:

(i) is a fit and proper person to be entrusted with the care of the child; and

(ii) is willing and able to undertake, exercise and maintain the responsibilities of such care; and

(iii) has the capacity to provide an environment that is conducive to the child's growth and development; and

(iv) has been properly assessed by a social welfare officer for compliance with paragraphs (i), (ii) and (iii)."; and

(b) by repealing subsection (2) and substituting the following:

"(2) Without limiting the matters the court must consider in determining whether an adoption order will be in the best interests of the child, the court must consider:

(a) the wishes of the child, having regard to the child's age and understanding; and

(b) the health of the applicant, as evidenced in such cases as may be prescribed, by the certificate of a fully registered medical practitioner; and

(c) the report and recommendations made by a social welfare officer in accordance with section 8A."

**SCHEDULE FORMS**

**FORM 1**

**APPLICATION FOR CARE AND PROTECTION ORDER**

Section 35

**Applicant**

*[name and address for service]*



**Other parties**

*[name and address for service]*



**Name of child in relation to whom order is sought**

**Type of Order sought**

- Interim care and protection order
- Final care and protection order

**Grounds for application**



**Directions and conditions sought to be imposed under order**



**List and attach existing family law orders or care and protection orders**

**Date of application**

**Signature of applicant**

**\*Court seal/Signature of authorised justice**

\*delete whichever does not apply

**FORM 2**

**CARE AND PROTECTION ORDER**

Section 39

**Name of child to whom order applies**

**Name of each person required to comply with order**

**Directions and conditions of order**

**Duration of order**

This order remains in force until [*date or event*].

**Effect of order**

It is an offence to breach any direction or condition of this order. The maximum penalty for the offence is 60,000 penalty units or imprisonment for 6 years, or both.

**Date of order**

**\*Court seal/Signature of authorised justice**

\*delete whichever does not apply

**FORM 3**

**APPLICATION FOR VARIATION OR REVOCATION OF CARE AND  
PROTECTION ORDER**

Section 53

**Applicant**

*[name and address for service]*

**Other parties**

*[name and address for service]*

**Details of order to be \*varied or \*revoked—**

**Grounds for application—**

**\*Details of variation sought—**

**Date of application**

**Signature of applicant**

**\*Court seal/Signature of authorised justice**

**\*delete whichever does not apply**

---

**FORM 4**

**NOTICE OF \*VARIATION/REVOCAION OF CARE AND PROTECTION ORDER**

Section 53

**Parties**

[*name and address for service*]

The care and protection order made on [*insert date*] \*has been revoked/has been varied as follows—  
[*describe variation*]

\*It is an offence to breach the order as varied. The maximum penalty for the offence is 60,000 penalty units or imprisonment for 6 years, or both.

**Date of notice**

**\*Court seal/Signature of authorised justice**

\*delete whichever does not apply

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**FORM 5**

**AFFIDAVIT OF SERVICE**

Section 62

I, [*name of police officer*] of [*police station*] \*state on oath/solemnly and sincerely affirm and declare—

1. At [*time*] on [*date*] at [*place of service*] I served [*name of person served*] with the following documents—

\*application for care and protection order

\*notice to attend

\*interim care and protection order

\*final care and protection order

\*application for variation or revocation of care and protection order

\*notice of variation or revocation of care and protection order

2. I served the document by [*state method of service e.g. personally handed to person*].

3. I identified the person by [*state method of identification*].

4. Exhibit A to this affidavit is a copy of the document served.

\*Sworn/Affirmed by [*name*] on [*date*] at [*place*]

**Signature of deponent**

**Before me**

**Signature of witness**

\*Judge/Magistrate/justice of the peace/Registrar of the High Court/Clerk of the Magistrates' Court/Commissioner for Oaths/officer in command

\*delete whichever does not apply

**FORM 6**  
**NOTICE TO ATTEND**

Sections 35 and 53

**Applicant**

[*name and address for service*]

**Other parties**

[*name and address for service*]

To [*name*] of [*address*]—

The attached application—

\*for a care and protection order

\*to vary a care and protection order

\*to revoke a care and protection order

was made on [*date*]

You are required to attend [*place*] on [*date*] at [*time*] for the hearing of the application.

If you fail to attend at that time, the application may be heard in your absence.

**Date**

**\*Court seal/Signature of authorised justice**

\*delete whichever does not apply

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**FORM 7**

**WITHDRAWAL OF APPLICATION FOR CARE AND PROTECTION ORDER**  
Section 36

**Applicant**

*(name and address for service)*

**Other parties**

*(name and address for service)*

I [*name of applicant*] withdraw my application for a care and protection order made on [*date*].

**Signature of applicant**

**Date**

**Court seal** (if application made to Court)

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Honiara, Solomon Islands  
Printed under the authority of the  
Solomon Islands Government

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Printed by Pacific Printers Limited

