

2023/01/24

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**BARBADOS**

A Bill entitled

An Act to make provision for the reform of the law on the care and protection of children.

ENACTED by the Parliament of Barbados as follows:

PART I

PRELIMINARY

**Short title**

1. This Act may be cited as the *Child Protection Act, 2023*.

**Interpretation**

2. In this Act,

“abuse” includes

- (a) child labour;
- (b) cyber-abuse;
- (c) emotional abuse;
- (d) financial abuse;
- (e) physical abuse;
- (f) sexual abuse;
- (g) verbal abuse;

“attorney-at-law” has the meaning assigned to it under section 2 of the *Legal Profession Act, Cap. 370A*;

“assessment” means an assessment performed pursuant to a child assessment order made under section 35;

“assessment order” means an order made under section 35;

“Authority” means the Child Protection Authority established by section 8;

“best interest” means the best interest of the child as described under section 3(2);

“Board” means the Child Protection Board established by section 10;

“care application” means an application for a care order made under section 37;

“care order” means an order made under section 37;

“care plan” means a plan made by the Director under section 38(2);

“care responsibility” means the authority of the Authority to

- (a) consent to the medical treatment not involving surgery for the child on the advice of a medical practitioner;
- (b) consent to the medical treatment involving surgery that a medical practitioner certifies in writing needs to be carried out as a matter of urgency and in the best interest of the child;
- (c) determine the educational needs of the child, including the school or educational institution that the child attends;
- (d) approve travel outside of Barbados;
- (e) correct and manage the behaviour of the child;
- (f) give permission for the child to participate in activities;
- (g) make alternative visiting or contact arrangements that are not provided for in an existing care plan; and
- (h) make any other decisions that are required to be made with respect to the day-to-day care of the child;

“child” means a person who is under the age of 18 years;

“Child Care Board” means the Board established by section 3 of the former Act;

“child care centre”

- (a) means a place
  - (i) where a child is cared for; or
  - (ii) approved by the Minister to provide for the care of a child; and

(b) includes

- (i) an assessment centre;
- (ii) a foster home;
- (iii) a children's home;
- (iv) a residential care centre;
- (v) a secure residential treatment centre;
- (vi) a training centre;
- (vii) such other centre;

“child in need of care and protection” means a child referred to in section 5;

“child labour” means any work undertaken by a child which harms or exploits the child whether physically, mentally, morally or prevents him from obtaining academic education or vocational training;

“compulsory assistance order” means an order made under section 44;

“contact order” means an order made under section 47;

“counselling or treatment order” means an order made under section 46;

“court” means

- (a) the Family Division of the High Court; and
- (b) the Magistrate's Courts having jurisdiction to hear an application;

“cyber-abuse” includes cyber-bullying, cyber-harrassment and exposure to harmful images by electronic means;

“danger” means physical, sexual, verbal or emotional harm;

“delegated care responsibility” means the authority delegated to a child care centre by the court pursuant to section 39 to

- (a) consent to medical treatment not involving surgery for the child on the advice of a medical practitioner;

- (b) correct and manage the behaviour of the child;
- (c) give permission for the child to participate in activities; and
- (d) make any other decisions that are required to be made with respect to the day-to-day care of the child;

“Director” means the Director of Child Protection appointed in accordance with section 12;

“emergency protection order” means an order made under section 34;

“emotional abuse”

- (a) means any act by a perpetrator which causes psychological pain or injury to a child or is likely to cause significant harm to the welfare or development of the child; and
- (b) includes harassment, the use of threatening words or behaviour;

“financial abuse” means the exercise of control by a perpetrator over a child’s access to financial resources through coercion, deception or intimidation, the effect of which is to hinder the ability to maintain a child and includes withholding the financial support necessary to maintain a child;

“former Act” means the *Child Care Board Act*, Cap. 381 repealed by section 68;

“guardian” means a person who assumes or has the legal responsibility and authority for making decisions with respect to a child;

“Minister” means the Minister with responsibility for the care, protection and welfare of children;

“neglect of a child” means

- (a) the failure of a parent of a child to provide the child with adequate care and guidance; or
- (b) any other act or omission by the parent with respect to a child that is inappropriate for the child or likely to be harmful to the child;

“order to accept undertakings” means an order made under section 48;

“parent”

(a) means any person at law liable to maintain a child or entitled to his custody and includes

(i) a child’s birth parent where the child has not been adopted;

(ii) a child’s adoptive parent where the child has been adopted; and

(iii) a child’s guardian;

(b) does not include a person acting as care giver on behalf of the Director or the Director;

“parental responsibility”

(a) means the rights, duties, powers, responsibilities and obligations that by law a parent has in relation to a child; and

(b) does not include the right to consent or withhold consent to the making of an order under the *Adoption Act*, Cap. 212;

“perpetrator” means a person who commits an act of abuse;

“physical abuse” means any act or omission by a perpetrator which causes pain or injury to the body of a child and includes bullying;

“police officer” means a member of the Barbados Police Service;

“recovery order” means an order made under section 43;

“relative” in relation to a child means a grandparent, brother, sister, uncle or aunt of the child, whether the relationship is by blood, affinity or adoption;

“removal” means the taking of a child and placing the child in the care and protection of the Director in accordance with this Act;

“residential protection and treatment centre” means a centre where a child may be placed to reside pursuant to section 33;

“residential protection and treatment centre order” means an order made under section 33;

“sexual abuse”

- (a) means the performance by a perpetrator of a sexual act on a child by the use of force, threats, fear, manipulation or guile;
- (b) includes
  - (i) grooming for the purpose of sexual exploitation, pornography, sexting or cyber abuse;
  - (ii) sexual harassment;
  - (iii) the actual or attempted commission of any of the offences stated in Part I of the *Sexual Offences Act*, Cap. 154;

“sexual harassment” has the meaning assigned to it under section 3(1) of the *Employment Sexual Harassment (Prevention) Act, 2017* (Act 2017-21);

“social inquiry report” means the report to be produced pursuant to section 36;

“supervision order” means an order made under section 40;

“support services order” means an order made under section 45;

“verbal abuse”

- (a) means the use of derogatory or negative language or communication to harm, manipulate or control another person, whether communicated by silence, damaging gossip, and other passive-aggressive behaviours; and
- (b) includes shouting, insulting, intimidating, threatening, shaming, demeaning, or name calling.

**Purpose**

**3.(1)** The purpose of this Act shall be to

- (a) ensure compliance with
  - (i) the United Nations Convention on the Rights of the Child;
  - (ii) the Universal Declaration of Human Rights; and
  - (iii) all other international instruments to which Barbados is a party with special regards to those which afford a child the necessary protection and assistance so that he can assume his eventual responsibilities within the community and for the full and harmonious development of his personality and to grow up in a family environment imbued with happiness, love and understanding;
- (b) promote the welfare of a child;
- (c) provide care and protection for a child;
- (d) protect a child from abuse and neglect; and
- (e) ensure that the best interest of the child is given paramount consideration in all matters.

(2) In determining what is in the best interest of the child, the following matters shall be taken into account:

- (a) the safety of the child;
- (b) the capacity of a parent to properly discharge his parental responsibility;
- (c) the physical, mental, emotional or psychological needs and development of the child;
- (d) the appropriate care or treatment required to meet the needs or development of the child;



- (e) where appropriate, the views of the child;
- (f) a secure place for the child;
- (g) the positive development of the child as a member of a family;
- (h) the love affection and ties between the child and other persons in the life of the child;
- (i) the capacity of persons, other than a parent, to exercise custody rights and duties in relation to the child; and
- (j) the continuity of the care for the child and the possible effect of disruption of that care on the child.

**Principles to be applied in the administration of the Act**

**4.** The following principles shall be applied in the administration of this Act:

- (a) the safety and welfare of a child shall be given paramount consideration in all actions and decisions in relation to the child;
- (b) the safety and welfare of a child who has been removed from his parent shall be paramount to the rights of the parent;
- (c) where a child is able to form his own views on a matter concerning his safety or welfare
  - (i) he shall be afforded an opportunity to freely express his views; and
  - (ii) his views are to be given due weight in accordance with his developmental capacity and the circumstances;
- (d) the least intrusive intervention in the life of a child and his family shall be taken in order to
  - (i) protect the child from harm; and
  - (ii) promote the development of the child;

- (e) where a child is temporarily or permanently deprived of his family environment or cannot be allowed to remain in that environment in his best interest
  - (i) the child shall be entitled to special protection and assistance from the Government of Barbados; and
  - (ii) his name and identity shall, where practicable, be kept confidential;
- (f) where a child is removed from the home of his parent under this Act, whether temporarily or permanently,
  - (i) he shall be entitled to a safe, nurturing, stable and secure environment; and
  - (ii) the child may retain relationships with people significant to the child, including his parents, relatives, peers, family friends and community, unless it is contrary to his best interest; and
- (g) where a child is placed in an approved child care centre, arrangements shall be made in a timely manner to ensure the provision of a safe, nurturing, stable and secure environment.

### **Child in need of care and protection**

**5.(1)** A child is in need of care and protection where the child

- (a) does not have a parent;
- (b) does not have a parent who is fit to exercise care or guardianship owing to
  - (i) mental or bodily disease;
  - (ii) infirmity or other incapacity; or
  - (iii) any other circumstances,providing for his up-bringing, and there is no available person or persons capable, fit or willing to undertake the care of such child;

- (c) has suffered harm caused by
  - (i) neglect of a child; or
  - (ii) the failure of a parent to
    - (A) supervise or protect the child; or
    - (B) adequately supervise or protect the child;
- (d) is a victim of abuse or exploitation, has been exposed to abuse or is likely to suffer abuse or exploitation;
- (e) has been abandoned or deserted by his parent;
- (f) has been exposed to danger, moral or otherwise;
- (g) has suffered physical, emotional or psychological harm caused by being exposed to domestic violence by or towards a parent or other person residing with the child;
- (h) suffers from a mental, emotional, physical or developmental condition that requires treatment to cure, prevent or ameliorate the effects of the condition or harm suffered and the parent
  - (i) does not, or refuses to, obtain treatment; or
  - (ii) is unable or unavailable to consent to services or treatment to remedy or ameliorate the effects of the condition or harm suffered by the child;
- (i) is in the custody of the Director or another person and the parent of the child refuses or is unable to resume custody of the child;
- (j) is a child beyond the control of his parent;
- (k) is a child who is a threat to himself or to others;
- (l) is less than 12 years old and has committed acts which would ordinarily constitute an offence as listed in the *Second Schedule* or the *Third Schedule* to the *Child Justice Act, 2023* (Act 2023- ); or

(m) has been determined by the court to be in need of care and protection pursuant to section 39 of the *Child Justice Act, 2023* (Act 2023- ).

(2) A child in need of care or protection may seek assistance from the Director.

### **Request for services from other agencies**

6.(1) In promoting or ensuring the safety or welfare of a child, the Director may request a service to a child or the family of a child from the following:

- (a) a government department;
- (b) an agency in receipt of government funding;
- (c) a non-governmental organization; or
- (d) any other person that promotes the care and protection of children.

(2) A government department, an agency, organization or any person to which a request is made under subsection (1), shall use their best endeavours to comply with the request where

- (a) the request is consistent with their own responsibilities; and
- (b) does not prejudice the discharge of their functions.

### **Participation of a child**

7.(1) A child shall be entitled to participate in a decision that is likely to have a significant impact on his life.

(2) In order to ensure that a child is able to participate in a decision that is likely to have a significant impact on his life, the Director shall provide the child with the following:

- (a) adequate information in a manner and language that he can understand including
  - (i) the decision to be made;

- (ii) the reasons for the intervention by the Director;
  - (iii) the ways in which the child may participate in the decision making process; and
  - (iv) any relevant complaint mechanisms;
- (b) the opportunity to freely express his views according to his abilities, age, maturity and developmental capacity;
  - (c) any assistance that is necessary for the child to express his views;
  - (d) information as to how the views of the child will be recorded and taken into account;
  - (e) information with respect to the outcome of any decision concerning the child and an explanation of the reasons for the decision; and
  - (f) an opportunity to respond to a decision made concerning the child.
- (3) For the purposes of this section, a decision that is likely to have a significant impact on the life of a child shall include:
- (a) any plan for emergency or ongoing care;
  - (b) the development or review of a care plan in relation to the child;
  - (c) any care application in relation to the child;
  - (d) the provision of counselling or treatment services; or
  - (e) any contact with a parent, relative or other persons connected with the child.
- (4) A child shall be entitled to legal representation by an attorney-at-law in any proceedings or hearings in relation to the child.
- (5) Where the views of the child differ from the position of the Director, the child may, within 30 days of the notification of the position, appeal to a Judge in chambers.

PART II

ADMINISTRATION

**Establishment of Authority**

**8.(1)** There is established an Authority to be known as the Child Protection Authority.

(2) The Authority is a body corporate to which section 21 of the *Interpretation Act*, Cap. 1 applies.

**Powers and duties of the Authority**

**9.(1)** The Authority shall

- (a) provide care, protection and rehabilitation of a child;
- (b) investigate a complaint or report made in relation to a child or the mistreatment of a child;
- (c) remove a child from his home, child care centre or environment where it is shown that the child is in danger;
- (d) monitor the operation of a child care centre and conduct reviews to determine its compliance with any statutory provision;
- (e) issue guidelines to child care centres;
- (f) establish, with the approval of the Minister, policies and procedures respecting all aspects of child care centres;
- (g) provide consultation and direction to relevant authorities respecting child care centres in accordance with this Act;
- (h) provide services and promote the development, adoption and evaluation of policies and procedures that accord with the purposes of this Act;
- (i) promote and safeguard the safety and welfare of a child;

- (j) assess and investigate a complaint or report and provide an assessment of any such complaint or report;
- (k) act as an advocate to promote the rights of children;
- (l) take all necessary steps to prevent children from suffering abuse or neglect;
- (m) promote and facilitate contact between a child and his parent, relative, friend or other person connected with him unless it is not in the best interest of the child or where it is not reasonably practicable;
- (n) inspect a place or premises where a child resides;
- (o) approve any programme or service in relation to the development, rehabilitation or welfare of a child;
- (p) establish procedures for the delegation of its duties and to establish policies respecting the direction and supervision of such delegation;
- (q) exercise such powers as are conferred on it by this Act and as may be necessary with respect to any child so as to serve the best interests of that child;
- (r) make use of such facilities and services available for children that are provided by other agencies or institutions, as appears reasonably necessary to the Authority;
- (s) advise the Minister and other persons on matters relating to child care centres, programmes, facilities and resources necessary to carry out the requirements under this Act;
- (t) report to the Minister
  - (i) the operation and administration of this Act; and
  - (ii) whether or not the purpose and the principles of this Act are being achieved;

- (u) perform such other functions as may be necessary to carry out the provisions of this Act or as may be determined by the Minister; and
  - (v) do all such things as may be necessary or expedient for the proper performance of its duties.
- (2) In the course of exercising its powers under subsection (1), the Authority may provide the following services to a child:
  - (a) advice, guidance and counselling;
  - (b) occupational, social, cultural or recreational activities; and
  - (c) any other service as may be required for the care and protection of a child.
- (3) In determining what is in the best interest of a child, the Authority shall, in addition to the principles set out in section 3(2), take into consideration the following:
  - (a) the love, affection, and other emotional ties existing between the parties involved and the child;
  - (b) the capacity and disposition of the parties involved to
    - (i) give the child love, affection and guidance and to continue the education and raising of the child in his or her religion, if any; and
    - (ii) provide the child with food, clothing, medical care or other remedial care;
  - (c) the length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining the status quo;
  - (d) where appropriate, preserving the family unit and reuniting the child with his relatives at the earliest opportunity;
  - (e) the right of the child to the enjoyment of family life;
  - (f) the right of the child to be heard;
  - (g) the right of the child to representation and a fair hearing;



- (h) any other relevant support necessary for the well being of the child;
- (i) the permanence of the family unit;
- (j) the home, school and community record of the child;
- (k) the willingness and ability of each parent to facilitate and encourage a close parent-child relationship between the child and the other parent or the child and the parents;
- (l) the willingness and ability of relatives to facilitate and encourage familial relationships between the child and other family members;
- (m) any other form of abuse, regardless of whether it was directed against or witnessed by the child;
- (n) the reasonable preference of the child, if the Authority considers the child to be of an age and maturity to express such preference; and
- (o) any other factor that the Authority may consider relevant to the particular child.

#### **Establishment of Board**

**10.(1)** There is established a Board, to be known as the Child Protection Board, which shall be responsible for the formulation of the policy of the Authority and for the general administration of the Authority.

(2) The *First Schedule* has effect with respect to the constitution of the Board and otherwise in relation thereto.

#### **Remuneration**

**11.** The Directors of the Board are entitled to such remuneration and allowances as the Minister determines.

#### **Director of Child Protection**

**12.(1)** The Board may with the approval of the Minister, appoint a person to be the Director of Child Protection, who shall be an employee of the Authority

at such remuneration and on such terms and conditions as the Minister approves in writing.

(2) The Director is subject to the directions of the Board and is responsible to the Board for the execution and management of the affairs of the Authority.

(3) Notwithstanding the generality of subsection (2) the Director shall have the following duties:

- (a) to promote and safeguard the safety, welfare and well-being of a child;
- (b) to intervene, investigate or prepare reports pursuant to Part III;
- (c) to oversee the operation of child care centres and the delivery of child care services;
- (d) to establish, with the approval of the Minister, policies and procedures respecting all aspects of child care services;
- (e) to provide consultation and direction to relevant authorities respecting child care services in accordance with this Act;
- (f) to establish procedures for the delegation of his duties and to establish policies respecting the direction and supervision of such delegation;
- (g) to make arrangements for and in relation to the placement of a child;
- (h) to take appropriate measures to ensure confidentiality of the records of a child and the parent of a child;
- (i) to issue guidelines to child care services in giving effect to this Act; and
- (j) to perform such other functions as may be necessary to carry out the provisions of this Act.

(4) The Director may delegate to a member of staff or to any other person his functions other than his power of delegation under this Act.

**Staff**

**13.(1)** Subject to subsections (2) and (3), the Board may appoint and employ such officers, agents and servants as it considers necessary for the proper carrying into effect of the provisions of this Act, at such remuneration and on such terms and conditions as the Minister approves in writing.

(2) Notwithstanding subsection (1), no post shall be established and no salary in excess of such amount as the Minister may determine.

(3) Subject to this Act and to the *Statutory Boards (Pensions) Act*, Cap. 384 no provision shall be made for the payment of any pension, gratuity or other like benefit to any person employed by the Authority without the prior approval in writing of the Minister.

**Pension rights and service with Authority**

**14.(1)** Where a public officer is seconded or temporarily transferred from a pensionable office within the meaning of section 2(1) of the *Pensions Act*, Cap. 25 to perform any service with the Authority, his service with the Authority shall, unless the President otherwise decides, count for pension under that Act as if the officer had not been so seconded or transferred.

(2) Where the services of a person employed by the Authority are on loan to the Government that person is entitled to such benefits and terms of employment as are applicable to the post which he occupies, and the service with the Authority shall be taken into account as continuous service with the Government and the *Pensions Act* and *Pensions Regulations, 1947* shall apply to him as if his service with the Authority were service within the meaning of that Act.

(3) Where a public officer is transferred to the service of the Authority in accordance with subsection (2), the Authority shall refund to the Consolidated Fund all moneys payable as pension in respect of the service of that officer with the Authority.

### **Savings of pension etc.**

**15.** Where a public officer who has pensionable service is transferred to or becomes employed in the service of the Authority, his service with the Authority shall, whether or not there was a break in service, be aggregated with his service in the public service and his pension shall be calculated in accordance with the *Pensions Act, Cap. 25* and *Pensions Regulations, 1947* as if all of his service was service in the public service.

### **Role of the Minister**

**16.(1)** The Minister shall promote a partnership approach with families, the government, non-governmental agencies, organisations, corporations, business agencies and the community in taking responsibility for and dealing with a child who is in need of care and protection.

(2) In giving effect to subsection (1), the Minister shall

- (a) promote the care of children;
- (b) promote the development of procedures and protocols with families, government, non-governmental agencies, organisations, corporations, business agencies and the community; and
- (c) ensure that these procedures and protocols are implemented and reviewed regularly.

(3) The objects of the procedures and protocols referred to in subsection (2) shall be for the

- (a) care and protection of children;
- (b) provision of support services directed towards strengthening and supporting families; and
- (c) promotion and the development of co-ordinated strategies.

(4) The Minister shall have the power to give the Board directions with respect to a policy.

### **Child Protection Report**

**17.(1)** The Authority shall, in respect of every calendar year, submit a report of its proceedings in respect of child care and protection to the Minister.

(2) The Minister shall cause the report referred to in subsection (1) to be laid before Parliament with any comments he thinks fit.

(3) The report referred to in subsection (1) shall be published by the Authority after consultation with the Minister.

### **Funds of the Authority**

**18.** The funds of the Authority shall comprise

- (a) such amounts as may be voted for the purpose by Parliament;
- (b) all amounts payable to or vested in the Authority; and
- (c) gifts to the Authority from any person, organisation or body.

### **Application of funds**

**19.** The Authority shall apply its moneys for

- (a) the payment of its officers and employees;
- (b) the maintenance of its child care centres;
- (c) the making of grants to private child care centres; and
- (d) such other purposes as are necessary for the performance of its functions under this Act.

### **Accounts**

**20.** The Authority shall keep proper books of account of its revenues, expenditures, assets and liabilities and implement International Accounting Standards and practices in accordance with the accounting standards and standing

instructions issued by the Accountant-General under the *Public Finance Management Act, 2019* (Act 2019-1).

### **Financial reports**

**21.** The Authority shall submit such reports and information as required by Part IX of the *Public Finance Management Act, 2019* (Act 2019-1).

## **PART III**

### **INTERVENTIONS, REPORTS AND INVESTIGATIONS**

#### **Intervention**

**22.(1)** The Director may intervene where

- (a) a request for assistance in relation to a child is made to the Director;
- (b) he receives a report that a child is a child in need of care and protection;  
or
- (c) it appears to the Director that a child is in need of care and protection.

(2) In determining the appropriate response to a request for assistance or to a report concerning a child, the Director shall have regard to the following:

- (a) the immediate safety and welfare of the child and any other child in the usual residential setting of the child;
- (b) the age or maturity of the child;
- (c) any disability of the child; and
- (d) the existing circumstances of the family.

(3) The removal of a child from his parents shall only occur where it is necessary to protect the child from the risk of serious harm or danger.

**Request for intervention**

**23.(1)** A person may seek assistance in the form of an intervention from the Director where

- (a) there is a serious or persistent conflict between a child and a parent of a child of such nature that the safety or welfare of the child is in jeopardy; or
  - (b) a parent is unable to provide adequate care, supervision or protection for a child to such an extent that the safety or welfare of the child is in jeopardy.
- (2) In responding to a request made under subsection (1), the Director shall consider the appropriateness of providing or arranging such assistance as is necessary to
- (a) enable the child and parent of the child to resolve the conflict without recourse to legal proceedings;
  - (b) ensure that the child is adequately cared for, supervised or protected; or
  - (c) enable the child and his parent to have access to appropriate services.
- (3) In making provision for the receipt of any assistance under subsection (2), the Director shall ensure that the child, if sufficiently mature, has
- (a) been counselled about the assistance necessary to resolve the conflict with his parent; and
  - (b) given consent to such assistance.
- (4) The Director shall cause a child to be brought before the court where he is of the opinion that, despite the assistance provided under subsection (2), the safety or welfare of the child continues to be in jeopardy.
- (5) The Director may apply to the court for any order under this Act.

- (6) On an application by the Director, the court may make a care order vesting care responsibility in the Director where the court is satisfied that
- (a) the child refuses to adhere to the guidance and control of a parent;
  - (b) it is in the best interests of the child; and
  - (c) the parent understands the results which will follow from the making of the order.
- (7) Notwithstanding subsection (5), the court may make any order it thinks fit having regard to the circumstances in relation to the child.

### **Mandatory reporting**

**24.(1)** This section shall apply to

- (a) a parent;
- (b) a medical practitioner, a health practitioner, a dental practitioner, a nurse or mental health practitioner;
- (c) an administrator of a hospital or medical facility;
- (d) a school principal, teacher or other teaching professional;
- (e) a social worker or other social service professional;
- (f) a law enforcement officer;
- (g) an internet provider, film technician, computer technician or telecommunications technician;
- (h) any person who provides health care, welfare, education, religious, child care or law enforcement services, wholly or partly to a child; and
- (i) any other person who by virtue of the nature of their work, owes a duty of care to a child.



(2) A person listed under subsection (1) who has knowledge or has reasonable grounds to suspect that a child is in need of care and protection shall be under a duty to

(a) immediately report or cause to be reported the circumstances to the Director or a police officer; and

(b) provide the Director or a police officer with such additional information as is known or available to the person.

(3) Where a person makes a report to a police officer under subsection (2)(a), the police officer shall transmit the report to the Director within 24 hours.

(4) Subsection (2) shall apply notwithstanding the confidential nature of the information on which the report is based.

(5) Nothing in this section abrogates any attorney-client privilege.

(6) A report made under subsection (2) may be made anonymously.

(7) A person who fails to comply with subsection (2) is guilty of an offence and is liable on summary conviction to a fine of \$20 000 or to a term of imprisonment of 2 years or to both.

(8) A person who makes a report in good faith shall not be liable for prosecution.

(9) A person who intentionally makes a false report or provides false or misleading information is guilty of an offence and is liable on summary conviction to a fine of \$10 000 or imprisonment for one year or to both.

### **Investigation of report**

**25.** Where a report is made under section 24, the Director shall immediately conduct an investigation to determine whether the child is a child in need of care and protection.

**Records of reports and subsequent action**

- 26.(1)** The Director shall keep a record of
- (a) all reports made to or by the Director;
  - (b) any action taken in response to a report received under section 24; and
  - (c) any disposition of and dealings with a child to whom the report and action referred to in paragraph (b) relate.
- (2) The record of reports shall be kept
- (a) in physical or digital format; and
  - (b) in accordance with any relevant enactment.

**Protection of persons who make reports**

- 27.(1)** Where a person makes a report under section 24
- (a) the making of the report shall not constitute a breach of any professional etiquette or ethics or a departure from any accepted standards of professional conduct;
  - (b) no liability shall be incurred for defamation as a consequence of the report;
  - (c) the making of the report shall not constitute a ground for civil proceedings for malicious prosecution or for conspiracy;
  - (d) the report, or evidence of its contents, is not admissible in any proceedings, other than in proceedings relating to the care and protection of a child in the court;
  - (e) he shall not be compelled in any proceedings to
    - (i) produce the report, a copy of the report or an extract from the report; or
    - (ii) disclose or give evidence of any of contents of the report; and

- (f)* the identity of the person who made the report or information from which the identity of that person may be deduced shall not be disclosed to any person without
    - (i)* the consent of the person who made the report; or
    - (ii)* the leave of the court.
- (2) Where consent is not granted under subsection (1)(*f*), a party or witness in any such proceedings shall not be asked or required to answer any question that cannot be answered without disclosing the identity or leading to the identification of that person.
- (3) A report made under section 24 shall be admissible in any proceedings relating to the care and protection of a child where the report is certified by the Director.
- (4) The court shall not grant leave under subsection (1)(*f*)(*ii*) unless the court is satisfied that
  - (a)* the report is of critical importance in the proceedings; and
  - (b)* failure to admit the report would
    - (i)* prejudice the proper administration of justice; or
    - (ii)* prevent the proper investigation of the report.
- (5) Where leave is granted under subsection (1)(*f*)(*ii*), the court shall
  - (a)* state the reasons; and
  - (b)* inform the Director that the identity of the person who made the report will be disclosed.

### **Investigation and assessment**

- 28.(1)** The Director shall conduct an investigation and assessment of the circumstances relating to a child where
- (a)* a request for intervention is made under section 23(1)(*a*);

- (b)* a report is made under section 24; or
  - (c)* where it appears to the Director that a child is a child in need of care and protection.
- (2) Where an investigation and assessment have been undertaken under subsection (1), the Director may determine that
  - (a)* no further action is necessary;
  - (b)* a further investigation is necessary;
  - (c)* the removal of the child is necessary; or
  - (d)* a care application is to be made.
- (3) An investigation by the Director may include an analysis of the following matters in relation to a child:
  - (a)* medical;
  - (b)* health;
  - (c)* social;
  - (d)* residential;
  - (e)* educational;
  - (f)* economic; and
  - (g)* any other factors affecting the life of the child.
- (4) In conducting an investigation under this section, the Director may
  - (a)* visit the residence of the child and other places frequented by the child;
  - (b)* transport the child to a place considered by the Director to be appropriate;
  - (c)* interview
    - (i)* the child;
    - (ii)* a parent or relative of the child;

- (iii) any person who cares for the child or any person who has had an opportunity to observe the child; or
    - (iv) any person who provides health, social, educational and other services to the child or a parent of the child;
  - (d) cause an examination to be made of the physical, mental and emotional health and development of the child by a medical practitioner or other medical professional;
  - (e) require information to be provided to the Authority from medical, social, educational and other service records concerning the child, a parent of the child or both;
  - (f) request that a parent of a child undergo a physical, mental or psychological examination or any other assessment; or
  - (g) consult with such other persons and gather such other evidence as may be necessary to complete the investigation.
- (5) In conducting an investigation or assessment under this section, the Director shall have regard to any wish of the child taking into account
- (a) the age and maturity of the child; and
  - (b) the extent to which the child appears to be in need of care and protection.
- (6) The Director may apply to the court for an order requiring any person to
- (a) provide such information under subsection (5) to the Director;
  - (b) allow the Director access to a person, place or record; or
  - (c) cooperate with any investigation by the Director.
- (7) Subject to subsection (9), the Director shall provide a report of the results of an investigation to
- (a) the parent of the child or any person who is the subject of the investigation; and

- (b) the child where he is
    - (i) no less than 12 years; and
    - (ii) capable of understanding the circumstances of the investigation.
- (8) A report shall not be provided under subsection (7) unless
  - (a) the Director has reasonable grounds to believe that the report will endanger the safety of the child or any other person; or
  - (b) a criminal investigation related to the matter has been initiated or is likely to occur.
- (9) A person who intimidates, threatens or obstructs the Director in the exercise of his functions under this section is guilty of an offence and is liable on summary conviction to a fine of \$10 000 or to a term of imprisonment of one year or to both.

**Action taken by Director**

**29.(1)** Where after an investigation or assessment the Director is of the opinion that a child is in need of care and protection, the Director shall take whatever action is necessary to safeguard or promote the safety and welfare of the child.

- (2) Without limiting subsection (1), the Director may take the following actions:
  - (a) provide or arrange for the provision of support services for the child, his family or both;
  - (b) develop, in consultation with the parents of the child, whether jointly or separately, a care plan to meet the needs of the child or his family which does not involve taking the matter before the court;
  - (c) ensure the protection of the child by removing the child from his parents;

- (d) ensure the protection of the child by removing the child from any place or premises where he is resident;
  - (e) seek an alternative dispute resolution procedure; or
  - (f) seek an appropriate order from the court.
- (3) The Director shall consider the appropriateness of using an alternative dispute resolution procedure prior to applying to the court for an order under subsection (2)(f).
- (4) The Director shall consider the appropriateness of an alternative dispute resolution procedure that is designed to
  - (a) ensure intervention so as to resolve problems which may exist at an early stage;
  - (b) develop a care plan;
  - (c) reduce the likelihood that an application for an order will need to be made;
  - (d) reduce the incidence of breakdown in relationships between a child and his parent; and
  - (e) work towards the making of decisions that are in the best interests of the child concerned where an application for a care order is made.
- (5) The participation by a child or a parent of a child in any form of alternative dispute resolution procedure shall be voluntary.
- (6) Where a care plan is developed pursuant to subsection (2)(b) that care shall be signed by the parent of the child who is the subject of the care plan.

**Decision against taking action**

- 30.(1)** The Director may decide against taking any action where he considers that
- (a) proper arrangements exist for the care and protection of the child; and

(b) the circumstances which led to the investigation or assessment have been or are being adequately addressed.

(2) Where the Director decides not to take any action, it shall make a record of the reasons for its decision.

**Removal of child by Director**

**31.(1)** Where the Director has reasonable grounds to believe that

(a) the health or safety of the child is in immediate or imminent jeopardy; and

(b) there is not enough time to apply to the Court for an order under section 32

the Director may, if necessary with the assistance of a police officer, and without the need for any further authority other than that conferred on him by this subsection, enter any place or premises where the child is believed to be present or to reside, and search for, locate and take the child into custody.

(2) Where a child is removed from a place or premises pursuant to subsection (1) and the care responsibility of the child is assumed by the Director, he shall, within 24 hours after the child has been removed,

(a) apply to the court for order specified in section 32; and

(b) inform the parent.

(3) The Director may place the child referred to in subsection (1) in a child care centre and the child care centre shall have delegated care responsibility in relation to a child as delegated to that child care centre by the Director.



## PART IV

## CARE AND PROTECTION ORDERS

**Court orders where child in need of care and protection**

**32.** Where the court is satisfied that a child brought before it by the Director is a child in need of care and protection, the court may make the following orders:

- (a) a care order;
- (b) a child assessment order;
- (c) a compulsory assistance order;
- (d) a contact order;
- (e) a counselling or treatment order;
- (f) a custody care order;
- (g) an emergency protection order;
- (h) a recovery order;
- (i) a residential protection and treatment centre order;
- (j) a supervision order;
- (k) a support services order;
- (l) an order to accept undertakings; or
- (m) any other order the court thinks fit.

### **Residential protection and treatment centre order**

- 33.(1)** Where the court is satisfied that a child brought before it is
- (a) less than 12 years old and has committed acts which would ordinarily constitute an offence as listed in the *Second Schedule* or the *Third Schedule* to the *Child Justice Act, 2023* (Act 2023- );
  - (b) a significant threat to themselves or others; or
  - (c) in need of care and protection pursuant to section 39 of the *Child Justice Act, 2023* (Act 2023- )

the court may make a residential protection and treatment centre order to have such a child reside in a residential protection and treatment centre for a period not exceeding 3 years.

- (2) Pursuant to subsection (1), the court may make such orders as are necessary to assist in determining the period of residence for a child in a residential protection and treatment centre.
- (3) A residential protection and treatment centre order made under subsection (1) shall be reviewed by the court every 3 months or where the period of residence ordered by the court is less than 3 months, at such interval as the court determines.

### **Emergency protection order**

- 34.(1)** The court shall make an emergency protection order where it is satisfied, on the basis of an *ex parte* application by the Director, that
- (a) the child is suffering or is likely to suffer physical, emotional, mental or psychological harm and is in urgent need of care and protection; or
  - (b) enquiries as to whether the child is suffering or is likely to suffer physical, emotional, mental or psychological harm are being frustrated by access to the child being unreasonably refused and the applicant has reason to believe that access to the child is required as a matter of urgency.

- (2) An emergency protection order may
- (a) direct a person named in the order and who is in *de facto* control of the child or who is in a position to do so, to produce the child to the applicant;
  - (b) authorise the removal of a child from any place at any time;
  - (c) prohibit the removal of the child from any place at which he was being accommodated immediately before the order was made;
  - (d) give the applicant parental responsibility for the child;
  - (e) limit the applicant to the exercise only of those powers which are specified in the order;
  - (f) determine the contact which is or is not allowed with any named person; and
  - (g) require the medical, psychiatric and psychological examination of the child.
- (3) An order made under this section shall have effect for a period not exceeding 14 days, unless the order is extended in accordance with subsection (4).
- (4) An order made under this section may, while the order remains in force, be extended once for a period not exceeding 14 days.

### **Assessment order**

**35.(1)** A child assessment order shall be made for the purpose of assessing the following:

- (a) a child's state of health;
- (b) a child's development; or
- (c) the manner in which the child has been treated.

- (2) The court may make a child assessment order where it is satisfied that
  - (a) the applicant has reasonable cause to suspect that the child is suffering or is likely to suffer physical, emotional, mental or psychological harm;
  - (b) such an assessment is required to enable the applicant to determine whether or not the child is suffering or is likely to suffer harm; and
  - (c) it will be unlikely that an assessment will be made or be satisfactory in the absence of the order.
- (3) A child assessment order
  - (a) shall specify the period of assessment and the date on which the assessment is to begin;
  - (b) may require the medical, psychiatric and psychological examination of the child; and
  - (c) shall require the person conducting the assessment to
    - (i) do so in accordance with the terms of the order;
    - (ii) prepare a report of the assessment; and
    - (iii) submit the report to the court.
- (4) The carrying out of a medical examination under an assessment order may include the taking and analysis of samples and the use of any machine or device that enables or assists in the examination of a person.
- (5) The court may, for the purposes of an assessment order, appoint a person to assess the capacity of a person having parental responsibility, or who is seeking parental responsibility for a child, to carry out that responsibility.
- (6) The assessment to be carried out under subsection (5), must be carried out only with the consent of the person whose capacity is to be assessed.
- (7) Where a child assessment order states that a child is to be kept away from his home, it shall specify the conditions under which the child may be so kept,

including the degree of contact with other persons that he may be allowed during that period.

(8) Where the court makes a child assessment order, the person who is in *de facto* control of the child or who is in a position to produce the child, shall comply with any direction in the order and produce the child to the person named in the order.

(9) A child shall be informed about the reasons for the assessment in a language and a manner that he understands, having regard to his age, maturity and circumstances.

### **Social inquiry report**

**36.(1)** The court shall require a written social inquiry report in respect of a child before it makes an order under this Part.

(2) The Director shall prepare a social inquiry report and he shall comply with the request of the court whenever required to produce a social inquiry report.

(3) The Director shall make a home visit to interview the parent of the child concerned and carry out his or her investigations concerning the child before making a social inquiry report.

(4) Where the child in respect of whom the social inquiry report is made is considered by the Director to be of sufficient age and understanding, he shall be interviewed by the Director.

(5) A social inquiry report shall contain matters relating to the welfare of the child and recommendations as to any action to be taken by the court.

(6) The court shall take the information contained in the social inquiry report into account in so far as it is relevant to the order being made.

(7) Where the court is not satisfied with any recommendation made by the Director in the social inquiry report, the court shall state and record its reasons for not complying with the recommendation.

**Care order**

- 37.(1)** A care order shall be made for the purpose of removing a child who is in need of care and protection and placing such child in the care of the Director.
- (2) The court may make a care order where it is satisfied that a child is a child in need of care and protection.
- (3) The court may, on the application of the Director, make an order placing a child in the care of the Director.
- (4) Where a Director makes an application to the court for a care order pursuant to subsection (3) he shall furnish the court with details on the following:
- (a) the support and assistance provided for the safety, welfare and well-being of the child; and
  - (b) any alternative action to a care order that were considered, prior to the making of the application for the care order and the reasons why the alternative action was rejected.
- (5) An application for a care order shall be accompanied by a care plan.
- (6) The Director shall make all reasonable efforts to notify
- (a) the parents of a child of the making of a care application in relation to the child; and
  - (b) the child who is the subject of a care application of the making of the application in a language and in a manner that the child can understand having regard to his development and the circumstances.
- (7) The Director shall, within 7 days, after a care application is made in relation to a child, cause a copy of the application, together with copies of all supporting affidavits and other documentary evidence, to be served on the parent of the child.
- (8) A care order may be made as an interim order or a final order.

- (9) A care order shall, depending on the age of the child, be for a period not exceeding 3 years or until the child attains the age of 18 years, whichever is the earlier.
- (10) A care order shall be reviewed at least once every 90 days by the Director or a person designated by the Director who may make recommendations as to any action to be taken having regard to the outcome of the review.
- (11) The court may, upon an application, vary a care order.

### **Care plan**

**38.(1)** The court shall not make a final order for the removal of a child from the care and protection of his parent or allocation of parental responsibility in respect of the child unless the court has considered a care plan.

- (2) A care plan shall be made by the Director and submitted to the court.
- (3) A care plan shall provide for the following:
- (a) the allocation of parental responsibility for the duration of the period for which the child is removed from the care of his parent;
  - (b) the kind of placement proposed to be sought for the child including
    - (i) any interim arrangement that is proposed for the child pending permanent placement; and
    - (ii) the timetable proposed for achieving a permanent placement;
  - (c) residential arrangements for the child;
  - (d) supervision of the child;
  - (e) the child care centre designated to supervise the placement of the child;
  - (f) the contact arrangements between the child and his parent, relatives, friends and other persons connected with the child;
  - (g) education and training for the child;
  - (h) medical care for the child;

- (i) the services that need to be provided to the child; and
  - (j) any other relevant matter.
- (4) A care plan shall be made as far as possible with
  - (a) the agreement of the parent of the child concerned; and
  - (b) the child concerned pursuant to section 7.

**Care responsibilities and duties under care order**

**39.(1)** The child care centre where a child is placed under a care order has delegated care responsibility in relation to a child as delegated to it by the court pursuant to section 37.

(2) The contact of the child with his parent, relatives and friends while he is in a child care service shall be encouraged unless it is not in the best interests of the child.

(3) The child care centre shall ensure that the development of the child while in their care, particularly his health and education, is given paramount attention.

(4) The Director shall work with the parent of the child before and after the termination of the care order, so that the child can be returned to his family or community after the termination of the care order.

(5) The Director shall be responsible for

- (a) providing and encouraging family and child counselling, before, during and after the return of the child; and
- (b) seeking the assistance of persons in the family or community who can, as far as practicable, help the process of resolving the problems which caused the care order to be made.

(6) Where a child is placed with a foster family, the Director shall inform the parent of the progress of the child and to arrange a trial period for the child to be reunited with the parent.



**Supervision order**

**40.(1)** The court may, on the application of the Director, make an order for the supervision of a child by the Director or a person recommended by the Director to perform the duties of a supervisor.

(2) The court may make a supervision order where it is satisfied that a child is in need of care and protection.

(3) A supervision order may require a child, his parent or the child and his parent

(a) to report to the supervisor at a place and at intervals stated by the supervisor; and

(b) to take part in discussions with the supervisor in relation to the welfare, safety and well-being of the child, in particular whether the child should be engaged in some form of educational, vocational or recreational activity or other activity.

(4) The court may require the submission of a report by the supervisor detailing

(a) the progress or outcome of the supervision;

(b) whether the purpose of the supervision has been achieved; and

(c) whether any other order should be made for the care and protection of the child.

(5) A supervision order shall be for a period not exceeding one year.

(6) A supervision order made under this section may, while the order remains in force, be extended once for a period not exceeding one year.

**Duties of supervisor**

**41.** A supervisor shall

(a) mentor, advise and assist the child;

- (b) advise the parent of the child;
- (c) make plans for the future of the child in consultation with the child and his parent; or
- (d) take such other reasonable steps as may be necessary to reduce any harm to the child.

**Custody care order**

**42.(1)** Where the Director assesses that

- (a) there is not a realistic possibility of restoring a child to the custody of a parent pursuant to the provisions of this Act;
- (b) it is in the best interest of the child that he no longer live with his parent; and
- (c) a least restrictive option is not available;

the Director shall make an application to the court for a custody care order.

(2) An application under subsection (1) shall be accompanied by a permanency plan which does not involve restoration and shall be submitted to the Court for its consideration.

(3) In preparing the permanency plan under subsection (2), the Director shall determine the type of placement which shall be suitable for the child.

(4) Where the court upon examination of the application and permanency plan made pursuant to this Part finds that the grounds upon which the application is made has been substantiated and it is necessary to provide the best interest of the child, the court shall grant the custody care order.

(5) A custody care order places a child in the custody of the Authority.

(6) Where a child is placed in the custody of the Authority, the Authority shall have the rights and responsibilities of a parent for the purposes of the care of the child and those duties shall be assessed and performed by any person caring for

the child until the custody care order is terminated by any action which results in the permanent placement of the child.

(7) For the purposes of this section “permanency plan” means a plan that aims to provide a child with a stable placement which offers long term security and that

- (a) has regard, in particular, to
  - (i) the environment of the placement being safe, nurturing, stable and secure;
  - (ii) the best interests of the child; and
  - (iii) the wishes of the child, this may include the retention by the child of relationships with people significant to the child, including his or her birth or adoptive parents, siblings, extended family, peers, family, friends and community;
- (b) meets the needs of the child; and
- (c) avoids the instability and uncertainty arising through a succession of different placements.

### **Recovery order**

**43.(1)** A recovery order shall be made where it appears to the court that there is reason to believe that a child

- (a) has been unlawfully taken or is being unlawfully taken away from the person who has care responsibility for the child;
- (b) has run away or is staying away from the person who has care responsibility for him; or
- (c) is missing.

- (2) A recovery order shall
- (a) direct any person, who is in a position to do so, to produce the child to any of the following persons:
    - (i) any person specified in the order;
    - (ii) a police officer; or
    - (iii) the Director;
  - (b) authorise the removal of the child by any of the persons under paragraph (a), or
  - (c) authorise a police officer to enter premises specified in the order to search for the child.

#### **Compulsory assistance order**

**44.(1)** A compulsory assistance order shall be made for the purpose of providing assistance in the form of intensive care and support that is necessary to protect the child from suicide or any other life threatening or serious self destructive behaviour.

- (2) The court shall make a compulsory assistance order where
- (a) the child will receive treatment, therapy or other services that will assist the child to deal with the problems that have led the child to be a danger to himself;
  - (b) the programme offered to the child is likely to lead to a significant improvement in his circumstances; and
  - (c) the necessary resources have been allocated by the person who will be required to provide intensive supervision of the child.
- (3) A compulsory assistance order shall provide for the following matters:
- (a) the person who is to be responsible under the order for the child;
  - (b) the place at which the child is to reside;

- (c) a description of the therapeutic programme and other support to be provided to the child;
- (d) the maintenance of 24 hour supervision of the child;
- (e) the duration of the order; and
- (f) such other matters as the court may determine.

### **Support services order**

**45.(1)** The court may make an order directing a person or child care centre named in the order to provide support for a child.

- (2) The court shall not make an order under subsection (1) unless
  - (a) it gives notice of its intention to consider making the order to the person or child care centre who would be required to provide support under the order;
  - (b) the person or child care centre is given an opportunity to appear and be heard by the court before the court makes that order;
  - (c) the person or child care centre consents to the making of the order; and
  - (d) the views of the child in relation to the proposed order have been taken into account having regard to the age and maturity of the child.
- (3) The court may require the submission of a report by such person or child care centre detailing
  - (a) the progress or outcome of the supervision; and
  - (b) whether the purpose of the supervision has been achieved.

### **Counselling or treatment order**

**46.(1)** A counselling or treatment order shall be made for the purpose of providing counselling, therapy or any form of treatment necessary for the well-being of the child.

- (2) The court may make an order requiring
  - (a) a child to attend counselling, a therapeutic or treatment programme relating to an abusive behaviour; and
  - (b) the parent of the child to take whatever steps are necessary to enable the child to participate in counselling, a therapeutic or treatment programme.
- (3) The court shall not make an order under this section
  - (a) if the child is or has been the subject of criminal proceedings arising from the same abusive behaviour; or
  - (b) unless the court has been presented with and has considered the provisions of a plan that outlines the therapeutic programme proposed for the child.

### **Contact order**

**47.** Where a child is the subject of proceedings before a court, the court may, on an application made by any party to the proceedings, make an order for the following:

- (a) stipulating minimum requirements concerning the frequency and duration of contact between the child and his parent, relatives or other persons of significance to the child;
- (b) requiring that contact with a specified person be supervised;
- (c) denying contact with a specified person if contact with that person is not in the best interest of the child;
- (d) requiring that contact be supervised by the Director.

### **Order to accept undertakings**

**48.(1)** Where parents make or agree to an undertaking in relation to the proper care and guardianship of a child, the court may make an order to accept such undertaking.

- (2) An undertaking shall be in writing and signed by the person who gives the undertaking.
- (3) The Director may, at any time, discharge a child from its care with or without an undertaking being given by the parent of the child.
- (4) In determining whether or not to exercise the power under subsection (3), the Director shall have regard to the following:
  - (a) any views expressed by the child as to whether he wishes the power to be exercised;
  - (b) any views expressed by the child as to whether he intends to return to the care and under the protection of his parents; and
  - (c) whether the exercise by the Director of that power is likely to protect the safety, welfare and well-being of the child.

#### **Provision of accommodation**

- 49.(1)** The Authority may support, provide, equip and maintain a child care centre for the accommodation of children in its care.
- (2) The Authority may discharge its functions under this section by making arrangements with private bodies for the accommodation of children in its care.

#### **Maintenance of children**

- 50.(1)** The Director may arrange with the parents of a child for a contribution according to their means towards the maintenance of the child who is in the care of the Authority.
- (2) Where an agreement cannot be reached in relation to subsection (1), the Director may apply to the court for an order for the maintenance of the child, having regard to the means of the parent.
  - (3) Where a person, other than the parent is liable to maintain a child, an order under this section may be made against that person.

- (4) The court may direct that any amount payable under this section is paid to the Director.
- (5) An order made under this section shall remain in force as long as the child is in the care of the Authority.
- (6) A person may, at any time, apply to the court to vary or discharge an order made under this section.

## PART V

### CHILD CARE CENTRES

#### **Principles guiding the operation of child care centres**

**51.** A decision made under this Part shall be made in accordance with the following principles:

- (a) the best interests of the child shall be of paramount consideration;
- (b) a child care centre shall provide care that is safe, positive and nurturing;
- (c) a child care centre shall promote the educational, social and developmental well being of a child; and
- (d) a child shall receive services that meet his individual needs, including the needs of a child with a disability, and enhance his or her physical, emotional, cognitive, social and cultural development.

#### **Foster care**

**52.(1)** Where an order made by a court under this Act, the Director may place the child with a person who is willing to undertake the care and protection of the child.

(2) An application to foster a child shall be made to the Director in the prescribed form.



- (3) Foster care placements shall be made in accordance with such regulations as may be prescribed.
- (4) A foster parent shall have care responsibility for the child.
- (5) Where a foster child
  - (a) leaves a foster home; or
  - (b) is unlawfully taken from a foster home,the foster parent shall immediately notify the Director.
- (6) A person shall not induce or attempt to induce a child to
  - (a) leave a foster home; or
  - (b) remain away from or not return to a foster home.
- (7) A person who contravenes subsection (2), (3), (5) or (6) is guilty of an offence and is liable on summary conviction of \$25 000 or to imprisonment for a term of 5 years or to both.

**Approved child care centres**

**53.** The Minister may grant approval for child cares in accordance with such regulations as may be prescribed.

**Purpose of approved child care centre**

**54.(1)** An approved child care centre shall provide substitute family care for a child until such time as

- (a) the parent is able to provide adequate care to meet the basic needs of the child; or
  - (b) the child can be reunited with his family or arrangements are made for the custody or other permanent placement of the child.
- (2) The staff of the approved child care service and the Director shall assist the child to become reunited with his parent.

(3) Where a child has been returned from an approved child care centre, the Director shall keep in regular contact with the child and his family until the completion of any order made under this Act or until the discharge of that order.

**Delegated care responsibility at approved child care service**

**55.** Where a child has been placed in an approved child care centre pursuant to the provisions of this Act, the child care centre shall have delegated care responsibility for the child.

**Contact with parents and relatives**

**56.(1)** The approved child care centre and the Director shall maintain contact

(a) with the parent or relatives of the child in the approved child care centre; and

(b) between the child and the parent or relatives of the child.

(2) A person shall not remove a child from an approved child care centre without the consent of the manager of the centre.

(3) A person shall not induce or attempt to induce a child to

(a) leave a child care centre; or

(b) remain away from, or not return to a child care centre.

(4) Where a child

(a) leaves an approved child care centre; or

(b) is unlawfully taken from a approved child care centre,

the manager of the centre shall immediately notify the Director.

(5) A person who contravenes subsection (2), (3) or (4) is guilty of an offence and is liable on summary conviction of \$25 000 or to imprisonment for a term of 5 years or to both.

**Application for a recovery order**

**57.(1)** Where a child

- (a) leaves a foster home or a child care centre; or
- (b) is unlawfully taken from a foster home or a child care centre,

the Director, the foster parent or the manager of a child care centre may apply for a recovery order under section 43.

- (2) Where a child leaves a foster home or a child care centre, the court shall
  - (a) order the Director to conduct an investigation into the reasons for the child leaving the foster home and a child care centre; and
  - (b) pending the investigation under paragraph (a) place the child into a place of safety to be determined by the Director.
- (3) The findings of the investigation conducted by the Director pursuant to subsection (2)(a) shall be submitted to the court within 2 months of the order made under subsection (2)(a).
- (4) Upon receipt of the findings of the Director from the investigation conducted pursuant to subsection (3) the court shall make the order or make the decision required in the circumstances.

**Order to contribute**

**58.(1)** The court may order a parent of a child placed in a child care centre to contribute towards the maintenance of the child.

- (2) The amount contributed pursuant to subsection (1) shall be reasonable and within the means of the parent and may be varied by the court if there is a change in the circumstances of the
  - (a) parent; or
  - (b) child.

(3) An order for contribution made under subsection (1) shall remain in force as long as the child is in the child care centre, but a parent contributing may, at any time, apply to the court for the order to be varied or discharged on the ground that the circumstances have changed since the order was made.

### **Corporal punishment in child care centres**

**59.**(1) Corporal punishment, severe or frightening measures shall not be inflicted on a child placed in a child care centre in accordance with the provisions of this Act.

(2) A person who imposes corporal punishment, severe or frightening measures on a child placed in a child care centre is guilty of an offence and is liable on summary conviction of \$10 000 or to imprisonment for a term of 2 years or to both.

## **PART VI**

### **OFFENCES**

#### **Unsupervised or unattended child**

**60.**(1) Any person having the care, custody or control of a child under 12 years of age who leaves the child unsupervised or unattended for an unreasonable period of time without making reasonable provision for the supervision and safety of the child is guilty of an offence and liable on summary conviction to a fine of \$25 000 or to imprisonment for a term of 5 years or to both.

(2) For the purpose of this section, “unsupervised or unattended” refers to a situation where a child is engaged in behaviour or activity which may be considered potentially dangerous to himself or others in a setting where no evidence of adult supervision exists.

### **Cruelty to children**

**61.** A parent or any person over the age of 18 years who having the custody, charge or care of any child

- (a) abuses or exposes a child to abuse;
- (b) exposes a child to danger;
- (c) fails to protect a child from abuse;
- (d) abandons or deserts a child;
- (e) neglects a child;
- (f) mistreats a child; or
- (g) causes, whether by act or omission, a child to be in need of protection,

is guilty of an offence and is liable on summary conviction to a fine of \$100 000 or to imprisonment for a term of 10 years or to both.

### **Personation**

**62.** A person who personates a member of the Board, the Director or a member of the staff of the Authority is guilty of an offence and is liable on summary conviction to a fine of \$10 000 or to imprisonment for a term of 2 years or to both.

### **Obstruction**

**63.** A person who obstructs or threatens the Director or a member of staff of the Authority while executing his duty under this Act is guilty of an offence and is liable on summary conviction to a fine of \$25 000 or to imprisonment for a term of 5 years or to both.

PART VII

MISCELLANEOUS

**Exemption from duties and taxes**

**64.** Notwithstanding any other enactment, the Authority is exempt from the payment of

- (a) customs duties and any other duties or taxes on goods imported for its own use;
- (b) any tax in respect of lands owned by the Authority;
- (c) stamp duty on its documents; and
- (d) income tax and any other tax imposed on income or profits of persons.

**Regulations**

**65.** The Minister may make Regulations generally for the purposes of giving effect to this Act.

**Amendment of Schedule**

**66.** The Minister may by order amend the *First Schedule*.

**Savings and transitional**

**67.(1)** With effect from the commencement of this Act

- (a) any contract entered into, by or on behalf of the Child Care Board, shall be deemed to have been entered into, by or on behalf of the Authority;
- (b) any right, privilege, duty or obligation conferred or imposed on the Child Care Board, and existing immediately before the commencement of this Act, shall be deemed to be conferred or imposed on the Authority;

- (c) the services of a person who immediately before the commencement of this Act was employed by the Child Care Board, and who is employed by the Authority, shall be treated as continuous for purposes of calculating pensionable service;
  - (d) all assets and liabilities of the Child Care Board are deemed to be transferred to the Authority; and
  - (e) any powers and remedies as to the taking and resisting of legal proceedings for the ascertaining, perfecting or enforcing of all rights or liabilities vested in the Child Care Board before the commencement of this Act shall be deemed to be conferred or imposed on the Authority.
- (2) Subject to this Act, the officers and other employees who, immediately before the commencement of this Act, were members of the staff of the Child Care Board established by the former Act shall upon that date comprise the staff of the Authority.
- (3) The officers and employees referred to in subsection (2) shall retain all rights in respect of pension, gratuity or other like benefit accruing to them immediately before the commencement of this Act.
- (4) Private child care centres registered under the former Act shall continue to function as if they were registered under this Act.

### **Repeal and savings**

- 68.(1) The following Acts are repealed:
- (a) the *Child Care Board Act*, Cap. 381;
  - (b) the *Prevention of Cruelty Act*, Cap. 145;
  - (c) the *Protection of Children Act*, Cap. 146A; and
  - (d) the *Young Persons Protection Act*, Cap. 193.
- (2) The
- (a) *Child Care Board Regulations, 1985* (S.I. 1985 No. 39); and

(b) *Child Care Board (Private Child Care Centres) Regulations, 1986*  
(S.I. 1986 No. 69)

shall remain in force as if made under this Act in so far as they are not inconsistent with this Act, until revoked by any regulation made under this Act.

**Consequential amendments**

**69.** The enactments set out in Column 1 of the *Second Schedule* are amended in the manner specified in Column 2 of the *Second Schedule*.

**Commencement**

**70.** This Act shall come into operation on a date to be fixed by proclamation.



## **FIRST SCHEDULE**

*(Section 10)*

### *Constitution and Procedure of the Child Protection Board*

#### **Constitution of Board**

- 1.** The Board shall comprise
  - (a)* a Chairman and Deputy Chairman; and
  - (b)* such other members as the Minister may appoint by instrument in writing.

#### **Temporary appointment of Board**

- 2.** The Minister may, in accordance with paragraph 1(*b*), appoint any person to act temporarily in the place of any director who is absent from Barbados or is unable to act.

#### **Tenure**

- 3.(1)** A director holds office for such period as the Minister determines unless he resigns or his appointment is revoked before the end of that period.
- (2)** Every director is, on the expiration of the period of his appointment, eligible for re-appointment for a further period.
- (3)** Where a vacancy is created by the death, resignation or removal from office of a director, a person may be appointed in accordance with paragraph 1(*b*) to fill that vacancy.

#### **Resignation of Chairman and Deputy Chairman**

- 4.** The Chairman or Deputy Chairman may at any time resign his office by instrument in writing addressed to the Minister and, upon the receipt by the Minister of the instrument, the Chairman or Deputy Chairman ceases to be

Chairman or Deputy Chairman and, if the instrument so specifies, also ceases to be a director.

### **Resignation of Director**

5. A director, other than the Chairman or Deputy Chairman may at any time resign his office by instrument in writing addressed to the Minister and transmit the instrument through the Chairman and, from the date of the receipt by the Minister of the instrument, the director ceases to be a director.

### **Automatic termination of membership**

6. Any director who fails, without reasonable excuse, to attend 3 consecutive meetings of the Board ceases to be a director and is not eligible for appointment to the Board until the expiry of 3 years from the date when he ceased to be a director.

### **Revocation of membership**

7. The Minister may at any time by instrument in writing revoke the appointment of any director.

### **Notice in *Official Gazette***

8. The appointment and the cessation of appointment of a director shall be notified in the *Official Gazette*.

### **Seal**

9.(1) The seal of the Board shall be kept in the custody of the Chairman or Deputy Chairman, or such officer of the Board as the Board approves, and may be affixed to documents or instruments pursuant to a resolution of the Authority in the presence of the Chairman or Deputy Chairman and the Secretary.

(2) The seal of the Board shall be authenticated by the signature of the Chairman and the Secretary.

(3) All documents or instruments, other than those required by law to be under seal, and all decisions of the Authority may be signified under the hand of the Chairman or Deputy Chairman.

### **Meetings**

**10.** The Board shall meet at least once a month and at such other times as may be necessary or expedient for the transaction of its business.

### **Special meetings**

**11.** The Chairman or, in the event of his absence from Barbados or inability to act as such, the Deputy Chairman may at any time call a meeting of the Board and shall call a meeting within 7 days of

- (a) the receipt by him of a request for that purpose addressed to him in writing and signed by 3 other directors;
- (b) receiving a direction to that effect addressed to him in writing and signed by the Minister.

### **Presiding at meetings**

**12.** The Chairman or, in his absence, the Deputy Chairman shall preside at all meetings of the Board and, in the case of the absence of both, the directors present and constituting a quorum shall elect a temporary Chairman from among their number who shall preside at the meeting.

### **Quorum**

**13.** The majority of the directors shall constitute a quorum.

### **Decisions**

**14.** The decisions of the Board shall be by a majority of votes and, in any case in which the voting is equal, the Chairman, the Deputy Chairman or temporary Chairman presiding at the meeting has, in addition to an original vote, a second or casting vote.

### **Minutes**

**15.(1)** Minutes in proper form of each meeting shall be kept by the Secretary or such officer as the Board appoints for the purpose and shall be confirmed in writing at the next meeting by the Chairman or Deputy Chairman.

(2) Confirmed minutes of meetings shall be submitted to the Minister within one month of the date of the meeting at which they were confirmed.

### **Attendance of non-members at meetings**

**16.(1)** The Chairman may invite any person to attend a meeting of the Board where the Board considers it necessary to do so.

(2) A person referred to in subparagraph (1) may take part in the deliberations of the Board but shall not vote on any matter.

### **Appointment of committees**

**17.(1)** The Board may appoint committees to assist with the proper discharge of its functions subject to such conditions or restrictions as the Board imposes.

(2) The number of members of a committee appointed by the Board and the terms of office of the members shall be fixed by the Board.

(3) A committee appointed by the Board under this paragraph may include persons who are not directors but such persons shall not comprise more than one third of the membership of the committee.

### **Remuneration**

**18.** Where a person other than a director is appointed to a committee under paragraph 17, the Board may, with the approval of the Minister, determine the remuneration and allowances to be paid to that person.

**Validity of decisions of the Board**

**19.** Any act done or proceeding taken by the Board under this Act or any regulations made thereunder may not be questioned on the ground of

- (a) the existence of any vacancy in the membership of or of any defect in the constitution of the Board;
- (b) any omission, defect or irregularity that does not affect the merits of the case.

**SECOND SCHEDULE**

*(Section 69)*

CONSEQUENTIAL AMENDMENTS

Column 1	Column 2
<i>Enactments</i>	<i>Amendments</i>
1. <i>Adoption Act, Cap. 212</i>	1. Section 2 is amended by inserting the following in the appropriate alphabetical order: <p style="margin-left: 40px;">"Director" means the Director of Child Protection appointed in accordance with section 12 of the <i>Child Protection Act, 2023 (Act 2023- )</i>;"</p> 2. All references to the words "Child Care Board" are deleted and the word "Director" is substituted.           3. Section 12 is deleted.
2. <i>Education Act, Cap. 41</i>	Insert immediately after section 53: <p style="margin-left: 40px;"><b>"Day Nurseries</b></p> <p style="margin-left: 40px;"><b>53A.(1)</b> All day nurseries shall be under the control and management of the Minister.</p> <p style="margin-left: 40px;">(2) All day nurseries shall be maintained out of moneys voted by Parliament.</p> <p style="margin-left: 40px;">(3) Corporal punishment, severe or punishing measures shall not be inflicted on a child attending a day nursery.</p>

*Second Schedule - (Concl'd)*CONSEQUENTIAL AMENDMENTS - *(Concl'd)*

Column 1	Column 2
<i>Enactments</i>	<i>Amendments</i>
2. <i>Education Act, Cap. 41 - (Concl'd)</i>	<p>(4) A person who contravenes subsection (3) is guilty of an offence and is liable on summary conviction to a fine of \$10 000 or to a term of imprisonment for 2 years or to both.</p> <p>(5) The Minister may make regulations in respect of the control and management of day nurseries.</p> <p>(6) For the purposes of this section "day nursery" means an establishment or place providing temporary care, training or guidance for a child between the ages of 3 months to 5 years.</p> <p>(7) This section shall come into operation on a date to be fixed by Proclamation."</p>
3. <i>Public Finance Management Act (Act 2019-1)</i>	<p>The <i>First Schedule</i> is amended by deleting paragraph 9 and substituting the following:</p> <p style="padding-left: 40px;">"9. Child Protection Authority".</p>
4. <i>Statutory Boards (Pensions) Act, Cap. 384</i>	<p>1. The <i>First Schedule</i> is amended in paragraph 7 by deleting the words "Child Care Board" and substituting the words "Child Protection Authority".</p> <p>2. The <i>Second Schedule</i> is amended by deleting paragraph 7 and substituting the following:</p> <p style="padding-left: 40px;">"The Child Protection Authority established by the <i>Child Protection Act, 2023</i> (Act 2023- ).".</p>

Read three times and passed the House of Assembly this  
day of \_\_\_\_\_, 2023.

**Speaker**

Read three times and passed the Senate this \_\_\_\_\_ day of  
\_\_\_\_\_, 2023.

**President**