



CHILD CARE AND PROTECTION BILL 2013

SAMOA

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2013 No.

A BILL

FOR AN ACT

INTITULED

CHILD CARE AND PROTECTION BILL 2013

AN ACT to provide for the care and protection of children in Samoa and for the recognition and enforcement of the rights of children in a manner which reflects Samoan culture, traditions and values and is consistent with international conventions and standards, and for related purposes.

BE IT ENACTED by the Legislative Assembly of Samoa in Parliament assembled as follows:

**PART I
PRELIMINARY**

1. Short title and commencement – (1) This Act may be cited as the Child Care and Protection Act 2013.

(2) The Minister may by Order published in the Savali, specify a commencement date for this Act, and may nominate different dates for certain sections or Parts of this Act to take effect.

2. Interpretation – In this Act, unless the context otherwise requires –

“**Authorised Officer**” means any person lawfully appointed or acting as an authorised officer in accordance with section 8;

“**Child**” or “**Children**” means every human being below the age of 18 years;

“**Chief Executive Officer**” means the Chief Executive Officer of the Ministry, and includes any of the following –

(a) any person lawfully acting in that position;

- (b) any person lawfully delegated authority to exercise the powers of the Chief Executive Officer;
- “**CRC**” means the United Nations Convention on the Rights of the Child;
- “**Judge**” means a judge of the Supreme Court or the District Court;
- “**Long Term Guardian**” means any person lawfully acting as the guardian of a child in accordance with law, and includes any relative of a child who has assumed the role of the child’s parent in the absence of the child’s natural parents;
- “**Ministry**” means the Ministry responsible for children and child welfare;
- “**public place**” means any place that is open to or accessible by the general public, but does not include any licensed shop or retail premises.

3. Act binds the Government – This Act binds the Government.

4. Guiding Principles – (1) The core principle for administering this Act is that the safety, wellbeing and best interests of a child are paramount.

(2) This Act must be applied, implemented and enforced in accordance with Samoan tradition, culture and community values, except where such matters conflict with the rights of children as provided for in this Act.

(3) When interpreting or applying any provision of this Act, and when exercising any prescribed power, duty or function, all persons must act in accordance with the following principles -

- (a) a child has a right to be protected from harm or risk of harm;
- (b) a child’s family has the primary responsibility for the child’s upbringing, protection and development;
- (c) the preferred way of ensuring a child’s safety and wellbeing is through supporting the child’s family;
- (d) if a child does not have a parent who is able and willing to protect the child, the Government is responsible for protecting the child;

- (e) in protecting a child, the Government should only take action that is warranted in the circumstances;
- (f) if a child is removed from the child's family, support should be given to the child and the child's family for the purpose of allowing the child to return to the child's family, if the return is in the child's best interests;
- (g) if a child does not have a parent able and willing to give the child ongoing protection in the foreseeable future, the child should have long-term alternative care;
- (h) if a child is removed from the child's family, consideration should be given to placing the child, as a first option, in the care of relatives;
- (i) if a child is removed from the child's family, the child should be placed with the child's siblings, to the extent that is possible;
- (j) a child should only be placed in the care of a parent or other person who has the capacity and is willing to care for the child (including a parent or other person with capacity to care for the child with assistance or support);
- (k) a child should have stable living arrangements, including arrangements that provide -
 - (i) for a stable connection with the child's family and community, to the extent that is in the child's best interests; and
 - (ii) for the child's developmental, educational, emotional, health, intellectual and physical needs to be met;
- (l) a child should be able to maintain relationships with the child's parents and relatives, if it is appropriate for the child;
- (m) a child should be able to know, explore and maintain the child's identity and values, including their cultural, ethnic and religious identity and values;
- (n) a delay in making a decision in relation to a child should be avoided, unless appropriate for the child.

5. Application of this Act in relation to other laws – (1) Any law which relates to the rights of children, or which provides for processes relevant to dealing with children in any context, must be read and applied subject to the provisions of this Act, and in the event of any inconsistency between the provisions of this Act and of any other law, the provisions of this Act prevail.

(2) The following provisions apply to all laws which make provision in relation to children, and such laws are deemed to be amended in accordance with this section –

- (a) the use of terms such as “infant”, “young person” and any other expression referable to a child is to be read as a reference to “child” or “children”, as the case may be;
- (b) the definition of child or children (whether stated as “infant”, “young person” and any other expression referable to a child) shall be as provided for in section 2.

PART II ADMINISTRATIVE ARRANGEMENTS

6. Functions and powers of the Ministry relating to child protection and welfare – (1) The functions of the Ministry relating to children include responsibilities relating to all of the following -

- (a) to implement and enforce this Act in accordance with the Guiding Principles stated in section 3, and the provisions of the CRC;
- (b) to promote awareness and understanding of issues concerning the rights, welfare and protection of children, and of the application of the CRC in Samoa;
- (c) to ensure that Samoan customs, traditions and community values relating to children are promoted and applied, subject to the requirement that they meet accepted standards and accord with the rights of children under the CRC;
- (d) to work in collaboration with other Ministries and Village Councils to promote the protection and welfare of children;
- (e) to involve and empower non-government organisations in the implementation of this

Act and the application of the CRC throughout Samoa;

- (f) to promote, apply and enforce bilateral and multilateral measures to protect children from sexual abuse and sexual exploitation, so as to facilitate the extraterritorial application and enforcement of criminal laws relating to the abuse, exploitation and trafficking of children;
 - (g) to ensure that only licensed care services providers and approved carers are given responsibilities for the care and protection of children in accordance with the procedures provided for in this Act;
 - (h) to ensure that all licensed care services providers and approved carers comply with approved standards when performing their functions and responsibilities as carers of children under this Act;
 - (i) to review the laws of Samoa and make recommendations for any amendments and modifications to ensure that the CRC is complied with;
 - (j) to promote the application and implementation of special processes for investigations and judicial proceedings which involve children;
 - (k) to ensure that information gained, obtained and used for the purposes of this Act is kept confidential, and that the rights of children and person who provide information concerning any threat to a child are protected in accordance with Part VII.
- (2) The Ministry has all powers necessary for, or incidental to, any of its functions under this section.

7. Responsibilities and powers of the Chief Executive Officer – (1) The Chief Executive Officer has the power to perform all of the functions provided by this Act and any applicable law, and may exercise any power and take any action that is necessary for or incidental to the performance of the functions of the Ministry under this Act and any applicable law

(2) Without limiting the generality of subsection (1), the Chief Executive Officer is authorised and empowered to do all of the following -

- (a) to ensure that authorised officers are appointed under section 8, and that they are properly directed, supervised, trained and resourced to effectively implement and enforce this Act;
- (b) to provide support to committees and boards appointed and empowered under section 9;
- (c) to delegate powers in accordance with section 10, and to give directions to persons holding delegated powers;
- (d) to take all action necessary to protect children under threat of harm;
- (e) to regulate licensed care services providers and approved carers, and ensure that they comply with approved standards of care;
- (f) to take any action necessary for the application and enforcement of the rights of children under this Act and the CRC;
- (g) to intervene in relation to any investigation or judicial proceeding involving a child to ensure that the special procedures applicable to them are observed and applied;
- (h) to take any action necessary to ensure that confidentiality of information is observed and applied in accordance with Part VII;
- (i) otherwise take any action necessary to effectively implement and enforce this Act and the CRC.

8. Authorised officers – (1) The Chief Executive Officer is authorised to exercise all of the powers of an authorised officer under this Act.

(2) All persons employed in the Ministry in positions designated as a child welfare officer are authorised to all of the powers of an authorised officer under this Act.

(3) The Chief Executive Officer may, from time to time and with the approval of the Minister, appoint any employee of the Ministry to be an authorised officer for the purposes of this Act and may revoke any appointment.

(4) The Minister may appoint any public servant or other person who is not an employee of the Ministry, to be an authorised officer for the purpose of this Act, but any

such person is not to be regarded as an employee of the Ministry by reason of such an appointment.

(5) The Chief Executive Officer may, with the approval of the Minister, designate any office within the Ministry so that any person holding that office from time to time is an authorised officer for the purposes of this Act.

(6) All inspectors and enforcement officers appointed under this section, whether officers of the Ministry or not, must act in accordance with any direction given by the Chief Executive Officer, and if they are full time officers or employees of the Public Service they are not entitled to any additional remuneration in respect of their appointment under this section.

9. Advisory and regulatory committees – (1)

The Minister may, by written Order, appoint any technical, regulatory or advisory committee or board that the Minister considers necessary to assist in carrying out any function under this Act or any applicable law, and may do all of the following -

- (a) authorise a committee or board established under this section to make enquiries, conduct research or make reports that the Minister considers will assist the Minister or the Ministry to efficiently administer this Act;
- (b) delegate powers and functions to a committee or board, and prescribe the procedures in relation to any matter concerning any committee or board established under this section;
- (c) appoint or dismiss any member of a committee or board established under this section;
- (d) by written Order, dissolve any committee or board established under this section.

(2) The Minister must consider the nature of the community interest and the matters to be addressed by a committee or board when determining its membership.

(3) An Order establishing a committee or board under this section must specify -

- (a) the name of the committee or board;
- (b) the purpose for establishing the committee or board, and its functions, roles, responsibilities and powers;
- (c) the membership of the committee or board.

(4) Members of committees and boards established under this section are entitled to receive such sitting and other allowances as are approved from time to time by Cabinet for members of government committees and boards.

10. Delegation of powers – (1) The Minister and the Chief Executive Officer may delegate to any person, or any committee or board established under this Part, any of the functions and powers which are conferred by this Act.

(2) A delegation made under this section must be made in writing.

(3) The delegation of a function or power under this Act does not prevent the Minister or Chief Executive Officer (as the case may be) from exercising that function or power.

(4) A delegation made under this section may be revoked at will by the Minister or Chief Executive Officer (as the case may be).

(5) A delegation made under this section by a Minister or Chief Executive Officer who subsequently ceases to hold office continues in force as if made by that person's successor in office, until such delegation is revoked.

11. Powers of enforcement – (1) For the purposes of implementing and enforcing the provisions of this Act, and for any purpose related to the protection of children, authorised officers have authority to exercise any of the following powers -

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

(2) A person who refuses or fails to comply with a requirement or order made or given under subsection (1) commits an offence and is liable upon conviction to a fine not exceeding 100 penalty units or imprisonment not exceeding 6 months, or both.

**PART III
ARRANGEMENTS FOR THE PROTECTION OF
CHILDREN**

*Division 1
Children at Risk of Harm*

12. Investigation of alleged harm to a child -

(1) If the Chief Executive Officer becomes aware (whether because of notification given to the Chief Executive Officer or otherwise) of alleged harm or alleged risk of harm to a child, and reasonably suspects the child is in need of protection, the Chief Executive Officer must immediately -

- (a) have an authorised officer investigate the allegation and assess the child's need of protection; or
- (b) take other action the Chief Executive Officer considers appropriate.

(2) If the Chief Executive Officer reasonably believes alleged harm to a child may involve the commission of a criminal offence relating to the child, the Chief Executive Officer must immediately give details of the alleged harm to the Police Commissioner.

(3) Subsection (2) applies whether or not the Chief Executive Officer suspects the child is in need of protection.

13. Information to be given to child's parents and long-term guardians - (1) This section applies if an authorised officer or police officer -

- (a) investigates an allegation of harm or risk of harm to a child; or
- (b) assesses a child's need of protection because of an allegation of harm or risk of harm to the child.

(2) If the child does not have long-term guardians, the officer must -

- (a) give details of the alleged harm or risk of harm to at least 1 of the child's parents; and

- (b) as soon as practicable after completing the investigation -
 - (i) tell at least 1 of the child's parents about the outcome of the investigation; and
 - (ii) if asked by the parent, give the information about the outcome of the investigation to the parent in writing.
- (3) If the child has long-term guardians, the officer must -
 - (a) take, or make a reasonable attempt to take, the actions stated in subsection (2)(a) and (b), but only if the officer is satisfied it would be in the child's best interests to do so, having regard to -
 - (i) the nature and extent of the child's connection with the child's parents; and
 - (ii) the evidence in support of the allegation of harm or risk of harm; and
 - (iii) any other relevant matter; and
 - (b) take the actions stated in subsection (2)(a) and (b) in relation to the long-term guardians.
- (4) However, if the officer reasonably believes -
 - (a) someone may be charged with a criminal offence for the harm to the child and the officer's compliance with subsection (2) or (3) may jeopardise an investigation into the offence; or
 - (b) compliance with subsection (2) or (3) may expose the child to harm -

the officer need only comply with the subsection to the extent the officer considers is reasonable and appropriate in the particular circumstances.
- (5) If, under subsection (3)(a), the officer does not take the actions stated in subsection (2)(a) and (b) but makes a reasonable attempt to take the actions, the officer must document full details about the actions taken by the officer in making the attempt.

14. Contact with child at immediate risk of harm – (1) This section applies if -

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

- (b) the officer has been denied contact with the child or can not reasonably gain entry to the place where the officer reasonably believes the child is; and
 - (c) the officer reasonably suspects the child -
 - (i) is at immediate risk of harm; or
 - (ii) is likely to leave or be taken from a place and suffer harm if the officer does not take immediate action.
- (2) The officer may exercise the following powers -
- (a) enter the place;
 - (b) search the place to find the child;
 - (c) remain in the place, and have contact with the child for as long as the officer reasonably considers necessary for investigating the allegation.
- (3) The officer may exercise a power under subsection (2) using such assistance and force as is reasonable in the circumstances.
- (4) At the first reasonable opportunity, the officer must record, in a register kept for the purpose by the Ministry or the Police Service, full details about the exercise of the powers and other actions taken by the officer.

15. Contact with children in school or other care service premises – (1) This section applies if all of the following apply -

- (a) an authorised officer or police officer is investigating an allegation of harm, or risk of harm, to a child;
- (b) the officer reasonably believes -
 - (i) it is in the child’s best interests that the officer has contact with the child before the child’s parents or long-term guardians are told about the investigation; and
 - (ii) the child’s parents or long-term guardians knowing in advance about the proposed contact with the child is likely to adversely affect or otherwise prevent the proper and effective conduct of the investigation;
- (c) the child is at a school, or place where education and care or child care is provided,

when the officer is to have contact with the child;

(d) the officer has lawfully entered, and is lawfully remaining at, the school or place.

(2) The officer may have contact with the child for as long as the officer reasonably considers necessary for investigating the allegation.

(3) Before exercising a power under subsection (2), the officer must notify the principal or other person in charge of the school or place of the intention to exercise the power.

(4) As soon as practicable after the officer has had contact with the child, the officer must -

(a) if the child has long-term guardians, tell at least 1 of the long-term guardians that the officer has had contact with the child and the reasons for the contact; or

(b) in all other cases - tell at least 1 of the child's parents that the officer has had contact with the child and the reasons for the contact.

(5) The officer's obligation under subsection (4) to give reasons for the contact with the child is limited to the extent the officer considers is reasonable and appropriate in particular circumstances if the officer reasonably believes -

(a) someone may be charged with a criminal offence for harm to the child and the officer's compliance with the subsection may jeopardise an investigation into the offence; or

(b) compliance with the subsection may expose the child to harm.

(6) Also, at the first reasonable opportunity, the officer must record, in a register kept for the purpose by the Ministry or the Police Service, full details about the exercise of the powers and other actions taken by the officer.

16. Child at immediate risk may be taken into custody – (1) This section applies if an authorised officer or police officer reasonably believes a child is at risk of harm and the child is likely to suffer harm if the officer does not immediately take the child into custody.

(2) The officer may take the child into the Chief Executive Officer's custody.

(3) For the purposes of subsection (2), the officer may exercise the following powers -

- (a) enter the place where the officer reasonably believes the child is;
- (b) search the place to find the child;
- (c) remain in the place for as long as the officer reasonably considers is necessary to find the child.

(4) The officer may exercise a power under subsection (2) or (3) with the help, and using the force, that is reasonable in the circumstances.

(5) The officer must ensure that an application of made for a child protection order for the child as soon as practicable.

(6) The officer may arrange a medical examination of, or for medical treatment for, the child that is reasonable in the circumstances.

(7) The Chief Executive Officer's custody of the child ends on the earlier of the following to happen -

- (a) the application for the child protection order for the child is finalised;
- (b) 48 hours elapses after the child is taken into custody, unless the court orders otherwise.

17. Effect of taking child into custody on existing order – (1) This section applies if -

- (a) an authorised officer or police officer takes a child into the Chief Executive Officer's custody; and
- (b) a child protection order granting custody or guardianship of the child to someone other than the Chief Executive Officer is in force.

(2) The order, so far as it relates to the child's custody or guardianship, ceases to have effect while the Chief Executive Officer's custody of the child continues.

18. Officer's obligations on taking child into custody – (1) This section applies if an authorised officer or police officer takes a child into the Chief Executive Officer's custody.

(2) If the child does not have long-term guardians, the officer must, as soon as practicable -

- (a) take reasonable steps to tell at least 1 of the child's parents -
 - (i) that the child has been taken into custody and the reasons for the action;
- and

- (ii) when the Chief Executive Officer's custody ceases; and
 - (b) tell the child about their being taken into the Chief Executive Officer's custody; and
 - (c) tell the Chief Executive Officer the child has been taken into the Chief Executive Officer's custody, the reasons for the action and where the child has been taken.
- (3) If the child has long-term guardians, the officer must, as soon as practicable -
- (a) comply with subsection (2)(a) to (c) as if the reference in subsection (2)(a) to parents were a reference to long-term guardians; and
 - (b) comply, or make a reasonable attempt to comply, with subsection (2)(a).
- (4) Subsections (2) and (3) do not require the officer to tell the child's parents or long-term guardians in whose care the child has been placed.
- (5) The officer's obligation under subsection (2)(a)(i) or (3) to give reasons for taking the child into custody is limited to the extent the officer considers is reasonable and appropriate in particular circumstances if the officer reasonably believes -
- (a) someone may be charged with a criminal offence for harm to the child and the officer's compliance with the provision may jeopardise an investigation into the offence; or
 - (b) compliance with the provision may expose the child to harm.
- (6) If, under subsection (3)(b), the officer does not comply with subsection (2)(a) but makes a reasonable attempt to comply, the officer must document full details about the actions taken by the officer in making the attempt.

19. Moving a child to a safe place – (1) This section applies if -

- (a) an authorised officer or police officer reasonably believes a child who is under 12 years is at risk of harm but does not consider it necessary to take the child into the Chief Executive Officer's custody to ensure the child's protection; and
- (b) a parent or other member of the child's family is not present at the place where the

child is, and, after reasonable inquiries, the officer can not contact a parent or other member of the child's family.

(2) The officer may, with the help that is reasonable in the circumstances, move the child to a safe place and make arrangements for the child's care at the place.

(3) As soon as practicable after moving the child, the officer must -

(a) take reasonable steps to tell at least 1 of the child's parents or a family member of the child's whereabouts; and

(b) if the officer is a police officer—tell the Chief Executive Officer the child has been moved to a safe place and where the child has been moved.

(4) The child may be cared for at the place under the arrangements until the child's parents or family members resume or assume the child's care.

(5) The moving of the child does not -

(a) prevent the child's parents or family members resuming or assuming care of the child; or

(b) affect existing parental rights for the child.

20. Protection of unborn children – (1) This section applies if, before the birth of a child, the Chief Executive Officer reasonably suspects the child may be in need of protection after he or she is born.

(2) The Chief Executive Officer must take the action the Chief Executive Officer considers appropriate including, including -

(a) having an authorised officer investigate the circumstances and assess the likelihood that the child will need protection after he or she is born; or

(b) offering help and support to the pregnant woman.

(3) The purpose of this section is to reduce the likelihood that the child will need protection after he or she is born (as opposed to interfering with the pregnant woman's rights or liberties).

21. Protection from liability for persons giving information about alleged harm or risk of harm – (1)

This section applies if a person, acting honestly -

- (a) notifies the Chief Executive Officer, a police officer or any officer of the Ministry that the person suspects -
 - (i) a child has been, is being or is likely to be harmed; or
 - (ii) an unborn child may be at risk of harm after he or she is born; or
 - (b) gives the Chief Executive Officer, an authorised officer or a police officer -
 - (i) information about alleged harm or alleged risk of harm to a child; or
 - (ii) information, relating to an unborn child, about a suspected risk of harm to the child after he or she is born.
- (2) The person is not liable, civilly or criminally, for giving the notification or information.
- (3) Also, merely because the person gives the notification or information, the person cannot be held to have -
- (a) breached any code of professional etiquette or ethics; or
 - (b) departed from accepted standards of professional conduct.
- (4) Without limiting subsections (2) and (3) -
- (a) in a proceeding for defamation, the person has a defence of absolute privilege for publishing the information; and
 - (b) if the person would otherwise be required to maintain confidentiality about the information under an Act, oath or rule of law or practice, the person -
 - (i) does not contravene the Act, oath or rule of law or practice by giving the information; and
 - (ii) is not liable to disciplinary action for giving the information.

Division 2
Protection Orders

22. Preference to be given to placing children with relatives – (1) Whenever a child is removed from the

care of his or her parents, the child must be placed in the care and protection of members of his or her extended family, unless reasons relating to the safety or welfare of the child require alternative arrangements to be made.

(2) The Ministry must take all necessary steps to confirm that the care which will be provided by a child's extended family is appropriate, adequate and in the child's interests.

(3) The Chief Executive Officer has authority to develop, approve and apply any necessary procedure, standard or code of practice to be applied in the assessment and confirmation of the proposed arrangements involving the care of a child by members of his or her extended family.

(4) Authorised officers are empowered to take any necessary action to investigate and confirm that the arrangements for the care of a child by his or her extended family are adequate and in the child's interests, and that any approved procedure, standard or code of practice is being complied with.

23. Application for child protection order – (1)

An authorised officer may apply to a Judge for a child protection order for a child.

(2) The application must -

- (a) state the grounds on which it is made; and
- (b) state the nature of the order sought; and
- (c) comply with applicable rules of court; and
- (d) be filed in the court.

(3) When the application is filed, the Registrar of the Court must immediately fix the time and place for hearing the application having regard to the principle that it is in the best interests of the child for the application to be heard as early as possible.

(4) Subject to subsection (5), as soon as practicable after the application is filed, the applicant must -

- (a) personally serve a copy of it on each of the child's parents; and
- (b) tell the child about the application.

(5) If it is not practicable to serve the copy personally, a copy of the application may be served on a parent by leaving it at, or by sending it by post to, the parent's residential address last known to the applicant.

(6) The copy of the application served under this section must state -

- (a) when and where the application is to be heard; and
 - (b) the application may be heard and decided even though the parent does not appear in court.
- (7) The child's parents are respondents to the application.

24. Hearing of application in absence of parents – (1) The Judge may hear and decide the application in the absence of the child's parents only if -

- (a) the parents have been given reasonable notice of the hearing and fail to attend or continue to attend the hearing; or
 - (b) it is satisfied it was not practicable to give the parents notice of the hearing.
- (2) Subsection (1) does not limit the jurisdiction of the court to exclude a person from a proceeding.

25. Making of child protection orders – (1) A Judge may make a child protection order if he or she is satisfied that all of the following apply -

- (a) the child is a child in need of protection and the order is appropriate and desirable for the child's protection;
 - (b) appropriate arrangements have been made for the care of the child;
 - (c) the child's wishes or views, if able to be ascertained, have been made known to the court;
 - (d) any other procedural requirements applying under regulations of court rules have been complied with.
- (2) Before making a child protection order, the court may have regard to any contravention of this Act or of an order made under this Act.
- (3) Before making a child protection order granting custody or guardianship of a child to a person other than the Chief Executive Officer, the Judge must have regard to any report given, or recommendation made, to the court by the Chief Executive Officer about the person, including a report about the person's criminal history and domestic violence history.

(4) Before making a child protection order granting long-term guardianship of a child, the court must be satisfied -

- (a) there is no parent able and willing to protect the child within the foreseeable future; or
- (b) the child's need for emotional security will be best met in the long term by making the order.

(5) The Judge must not grant long-term guardianship of a child to -

- (a) a person who is not a member of the child's family unless the child is already in custody or guardianship under a child protection order; or
- (b) the Chief Executive Officer, if the court can properly grant guardianship to another suitable person.

(6) Before the court extends or makes a further child protection order granting custody or short-term guardianship of the child, the court must have regard to the child's need for emotional security and stability.

(7) This section does not apply to the making of an interim order under section 32.

26. Extraterritoriality – To remove doubt, it is declared a Judge may make a child protection order even if the events causing the child to be a child in need of protection happened outside Samoa, or partly in Samoa and partly outside Samoa.

27. Types of child protection orders – (1) A Judge may make any 1 or more of the following child protection orders that the Judge considers to be appropriate in the circumstances -

- (a) an order directing a parent of the child to do or refrain from doing something directly related to the child's protection;
- (b) an order directing a parent not to have contact, direct or indirect -
 - (i) with the child; or
 - (ii) with the child other than when a stated person or a person of a stated category is present;

- (c) an order requiring the Chief Executive Officer to supervise the child's protection in relation to the matters stated in the order;
- (d) an order granting custody of the child to -
 - (i) a suitable person, other than a parent of the child, who is a member of the child's family; or
 - (ii) the Chief Executive Officer;
- (e) an order granting short-term guardianship of the child to the Chief Executive Officer;
- (f) an order granting long-term guardianship of the child to -
 - (i) a suitable person, other than a parent of the child, who is a member of the child's family; or
 - (ii) another suitable person, other than a member of the child's family, nominated by the Chief Executive Officer; or
 - (iii) the Chief Executive Officer.

28. Duration of child protection orders – (1) A child protection order for a child must state the time when it ends.

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

29. Chief Executives Officer's obligations after making of child protection order – As soon as practicable after a child protection order for a child is made, the Chief Executive Officer must give to the parties to the application for the order -

- (a) a copy of the order; and

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

30. Extension of certain child protection orders – (1) An authorised officer may apply to a Judge for an order to extend a child protection order for a child other than an order granting long-term guardianship of a child.

(2) The application must be made before the order ends.

(3) This Division applies, with all necessary changes, to the application as if it were an application for a child protection order.

31. Variation and revocation of child protection orders – (1) An authorised officer, a child's parent or the child may apply to a Judge for an order to either-

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

(2) A child's parent cannot -

- (a) apply for an order to revoke a child protection order for the child and make another child protection order in its place that grants guardianship of the child; or
- (b) without the leave of the court, apply for an order to vary or revoke a child protection order for the child if another application for an order by a parent of the child to vary or revoke the child protection order has been decided by the court.

(3) For subsection (2)(b), the Judge may grant leave only if the Judge is satisfied the child's parent has new evidence to give to the court.

(4) This Division applies, with the changes prescribed in subsection (5) and all other necessary changes, to the application as if it were an application for a child protection order for the child.

(5) If the application is made by the child or a parent of the child -

- (a) other parents of the child and the Chief Executive Officer become respondents to the application; and
- (b) immediately after the application is made, the Registrar must give written notice to the Chief Executive Officer of the time and place for hearing the application; and
- (c) as soon as practicable after receiving the Registrar's notice, the Chief Executive Officer must comply with section 29 except so far as it relates to the applicant.

(6) The Judge may, under subsection (1)(a), revoke a child protection order for a child only if he or she is satisfied the order is no longer appropriate and desirable for the child's protection.

(7) Without limiting the things to which the Judge may have regard in deciding an application under this section, the Judge -

- (a) may have regard to a contravention of the child protection order or this Act; and
- (b) for an application to revoke a child protection order granting long-term guardianship of a child - must have regard to the child's need for emotional security and stability.

(8) This section does not apply to an interim order made under section 32.

32. Interim protection orders – (1) On the adjournment of a proceeding for a child protection order, the Judge may make any 1 or more of the following orders -

- (a) an interim order granting temporary custody of the child to the Chief Executive Officer or a suitable person who is a member of the child's family;
- (b) an interim order directing a parent of the child not to have contact (direct or indirect) -
 - (i) with the child; or
 - (ii) with the child other than when a stated person or a person of a stated category is present;
- (c) an interim order authorising an authorised officer or police officer to have contact with the child.

(2) In addition, the Judge may make an interim order authorising an authorised officer or police officer to enter and search any place the officer reasonably believes the child is, to find the child, if the Judge is satisfied -

- (a) entry to a place has been, or is likely to be, refused, or it is otherwise justified in particular circumstances, including, for example, because the child's whereabouts are not known; and
- (b) the entry is necessary for the effective enforcement of an order made under subsection (1)(c).

(3) On entering a place, an authorised officer or police officer may remain in the place for as long as the officer considers necessary for exercising the officer's powers under this section.

(4) An authorised officer or police officer may exercise the officer's powers under the order with the help, and using the force, that is reasonable in the circumstances.

(5) The order has effect for the period of the adjournment.

33. Order - procedure before entry – (1) This section applies if an authorised officer or police officer is intending to enter a place under an authority under an interim order.

(2) Before entering the place, the officer must do or make a reasonable attempt to do the following things -

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

34. Court's other powers on adjournment of proceedings for child protection orders – (1) On the adjournment of a proceeding for a child protection order, the Judge may also make 1 or more of the following orders -

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

**PART IV
APPROVAL OF CARERS AND CARE SERVICE
PROVIDERS**

Division 1

Standards of care

35. Standards to be applied by all approved carers – (1) All approved carers and care service providers must take reasonable steps to ensure a child placed in their care under this Act is cared for in a way that meets all of the following standards -

- (a) the child's dignity and rights will be respected at all times;
- (b) the child's needs for physical care will be met, including adequate food, clothing and shelter;
- (c) the child will receive emotional care that allows him or her to experience being cared about and valued and that contributes to the child's positive self-regard;
- (d) the child's religious upbringing will be respected and continued;
- (e) the child's material needs relating to his or her schooling, physical and mental stimulation, recreation and general living will be met;
- (f) the child will receive education, training or employment opportunities relevant to the child's age and ability;
- (g) the child will receive positive guidance when necessary to help him or her to change inappropriate behaviour;
- (h) the child will receive dental, medical and other health support and services necessary to meet his or her needs;
- (i) the child will be given the opportunity to participate in positive social and recreational activities appropriate to his or her developmental level and age;
- (j) the child will be encouraged to maintain family and other significant personal relationships;
- (k) if the child has a disability—the child will receive care and help appropriate to the child's special needs.

(2) The Chief Executive Officer may take any action that is necessary to ensure that a child placed in care under this Act is cared for in a way that meets all of the standards stated in subsection (1).

(3) For the purposes of subsection (1)(g), techniques for managing the child's behaviour must not include punishment that humiliates, frightens or threatens the child in a way that is likely to cause emotional harm.

(4) For the purposes of subsection (1)(j), if the Chief Executive Officer has custody or guardianship of the child, the child's carer must act in accordance with the Chief Executive Officer's reasonable directions.

(5) The application of the standards to the child's care must take into account what is reasonable having regard to -

- (a) the length of time the child is in the care of the carer or care service provider; and
- (b) the child's age and development.

Division 2

Licensing of care services providers and approval of carers

36. Purposes of this Division – The purpose of this Division is to provide a licensing system for child services, and for approving individuals to provide care for children to enable the Chief Executive Officer to ensure the care of children in the Chief Executive Officer's custody or guardianship meets the standards of care in the standards stated in section 35.

37. Individuals cannot hold care services licences – An individual may be an approved carer but is not eligible to hold a care services licence.

38. Application for a care services licence – (1) An application for, or renewal of, a licence to provide care services must meet all of the following requirements -

- (a) it must be made by a corporation (including an incorporated association, or any other body corporate established in accordance with an Act);
- (b) it must be made to the Chief Executive Officer in the form approved by the Chief Executive Officer;
- (c) it must nominate an adult to be nominee for the licence;
- (d) if the application is for renewal of a licence it must be made at least 30 days before the licence ends.

(2) The application form approved by the Chief Executive Officer may require the disclosure of the domestic violence history and any other relevant history of the nominee, or any person associated with the corporation making the application.

39. Restrictions on granting application – The Chief Executive Officer must not grant the application unless he or she is satisfied in relation to all of the following

-

- (a) the applicant is a suitable entity to provide care services;
- (b) the following persons are all suitable persons
 -
 - (i) the directors or office holders of the applicant;
 - (ii) the nominee for the licence;
 - (iii) the persons who will be, or are, responsible for directly managing the care service;
 - (iv) the persons who will be, or are, engaged in relation to the provision of care services by the applicant; and
- (c) the standard of care provided complies, and will continue to comply, with the standards stated in section 35;
- (d) methods for the selection, training and management of people engaged in providing the services are suitable;
- (e) a core function of the applicant is a function relating to the care of children in need of protection who are in the custody or guardianship of the Chief Executive Officer;
- (f) any accommodation provided by the applicant to children in need of protection is, and will continue to be, at a place that the applicant has a right to occupy.

40. Grant of an application – (1) If the Chief Executive Officer decides to grant an application for a care services licence, he or she must issue and give to the applicant a licence in a form approved by the Chief Executive Officer.

(2) The licence may be issued subject to any conditions the Chief Executive Officer considers appropriate.

(3) The licence or its renewal has effect for 3 years from the date of issue or renewal.

41. Licensee's obligations – The holder of a care services licence must ensure that all of the following requirements are met -

- (a) all care services provided must comply with the standards of care stated in section 35;
- (b) each person the licensee engages to provide care services is a suitable person;
- (c) any other conditions or requirements imposed by the Chief Executive Officer from time to time are met and complied with.

42. Approval of foster carers and kinship carers – The Chief Executive Officer may give approval under this Part for the issue of –

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

43. Eligibility for a certificate – (1) Only an individual is eligible to hold a certificate under this Division.

(2) Two or more individuals may hold a certificate jointly.

(3) A person living with his or her spouse may only hold a certificate jointly with the spouse.

(4) A person may hold more than 1 kinship carer certificate.

44. Process for initial issue of a certificate – (1) A person may apply to the Chief Executive Officer to be issued with a certificate under this Division.

(2) The application must be in the form approved by the Chief Executive Officer.

(3) An applicant must give full disclosure of each of the following -

- (a) the applicant's criminal history and any domestic violence history;
- (b) the members of the applicant's household;

- (c) information of which the applicant is aware, or that the applicant reasonably suspects, about the criminal history and domestic violence history of each member of the applicant's household;
- (4) The application must be signed by the applicant and each adult member of the applicant's household.
- (5) If the Chief Executive Officer decides to grant the application, the Chief Executive Officer must issue a certificate and give it to the applicant.
- (6) The certificate may be issued subject to any conditions the Chief Executive Officer considers appropriate.
- (7) If it is a kinship carer certificate, it must relate only to the care of 1 child.
- (8) The matters stated in the certificate must include all of the following -
 - (a) the approved carer's name;
 - (b) whether the carer is an approved foster carer or approved kinship carer;
 - (c) for a kinship carer certificate—the name of the child for whom the carer is approved;
 - (d) any conditions applying to the certificate;
 - (e) the day of its issue;
 - (f) the day on which it is due to expire.
- (9) The expiry day must be either -
 - (a) for a foster carer certificate—1 year from the day of issue; or
 - (b) for a kinship carer certificate—not more than 1 year from the day of issue.
- (10) Subject to this Act, the certificate has effect until the expiry day.

45. Process to renew a certificate – (1) Before a certificate ends, the holder may apply to the Chief Executive Officer to renew the certificate.

(2) The application must be in the form approved by the Chief Executive Officer.

(3) The approved form may require the disclosure of a change to any of the following information that has not been previously notified to the Chief Executive Officer -

- (a) the applicant's criminal history or domestic violence history;

- (b) the membership of the applicant's household;
 - (c) information of which the applicant is aware, or that the applicant reasonably suspects, about the criminal history or domestic violence history of a member of the applicant's household.
- (4) The application must be signed by the applicant and each adult member of the applicant's household.
- (5) If the Chief Executive Officer decides to grant the application, the Chief Executive Officer must issue a new certificate and give it to the applicant.
- (6) The matters stated in the certificate must include all of the following -
- (a) that it is a renewed certificate;
 - (b) the approved carer's name;
 - (c) whether the carer is an approved foster carer or approved kinship carer;
 - (d) for a kinship carer certificate - the name of the child for whom the carer is approved;
 - (e) any conditions of the certificate;
 - (f) the day of its issue;
 - (g) the day on which it is due to expire (the expiry day).
- (7) The expiry day is either -
- (a) for a foster carer certificate - 2 years from the day of issue;
 - (b) for a kinship carer certificate—not more than 2 years from the day of issue.
- (8) Subject to this Act, the certificate has effect until the expiry day.

46. Restrictions on granting applications – (1)

The Chief Executive Officer must not grant an application for, or to renew, a certificate unless the Chief Executive Officer is satisfied of all of the following matters -

- (a) for a foster carer certificate -
 - (i) the applicant is a suitable person to be an approved foster carer;
 - (ii) all members of the applicant's household are suitable persons to associate on a daily basis with children;
 - (iii) the applicant is able to meet the standards of care required by section 35;

- (iv) the applicant is able to help in appropriate ways towards achieving plans for the protection of a child placed in the carer's care;
- (b) for a kinship carer certificate -
 - (i) the applicant is a relative to the child to whom the approval relates;
 - (ii) the applicant is a suitable person to be an approved kinship carer for the child;
 - (iii) all members of the applicant's household are suitable persons to associate on a daily basis with the child;
 - (iv) the applicant is able to meet the standards of care required by section 35;
 - (v) the applicant is able to help in appropriate ways towards achieving plans for the child's protection.
- (2) In this section -
 - “**adult member**” of an applicant's household, means a person who is an adult member of the household both at the time when the application is made and when it is decided.

47. Grant of provisional certificate as a carer –

- (1) The Chief Executive Officer may give limited approval to a person to care for a particular child in circumstances where -
 - (a) the person has been provisionally assessed as suitable to care for the child; and
 - (b) it is not possible, or not in the child's best interests, for the child to be placed in the care of an approved kinship carer for the child, approved foster carer, entity conducting a departmental care service or licensee.
- (2) The Chief Executive Officer may decide to issue a person with a provisional certificate relating to the care of a particular child if all of the following apply -
 - (a) the Chief Executive Officer proposes to place the child in care under this Act;
 - (b) the person has applied for a certificate of approval as either -
 - (i) an approved foster carer; or
 - (ii) an approved kinship carer for the child;

- (c) the application has not yet been decided; and
- (d) the person agrees to being issued with a provisional certificate of approval as a provisionally approved carer for the child;
- (e) the Chief Executive Officer is satisfied of all of the following matters -
 - (i) the person is a suitable person to be a provisionally approved carer for the child;
 - (ii) all members of the person's household are suitable persons to associate on a daily basis with the child;
 - (iii) the person is able to meet the standards of care required by section 35.

48. Issue of provisional certificate – (1) If the Chief Executive Officer makes a decision to approve the grant of a provisional certificate the Chief Executive Officer must issue a certificate and give it to the applicant.

(2) The certificate may be issued subject to any conditions the Chief Executive Officer considers appropriate.

(3) The certificate must relate only to the care of 1 child.

(4) The matters stated in the certificate must include the following -

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

(5) The expiry day must be not more than 60 days from the day of issue.

(6) Subject to this Act, the certificate has effect until the earlier of the following days -

- (a) the expiry day;
- (b) the day the carer is -
 - (i) issued with a foster carer certificate or kinship carer certificate for the child; or
 - (ii) given written notice that the carer's application for a foster carer certificate

or kinship carer certificate for the child has been refused.

Division 3

Amendment, suspension and cancellation of licences and certificates

49. Amendment of licences and certificates –

(1) The Chief Executive Officer may amend a licence or certificate issued under this Part at any time if -

- (a) the holder agrees to the amendment; or
- (b) the Chief Executive Officer considers it is necessary or desirable because -
 - (i) the holder is not meeting the standards required under the licence or certificate or a condition of the licence or certificate; or
 - (ii) the holder has contravened a provision of this Act; /or
 - (iii) the authority was issued because of a materially false or misleading representation or declaration (made either orally or in writing); or
 - (iv) of another circumstance which the Chief Executive Officer considers to be affecting the welfare of the child.

(2) If the Chief Executive Officer is satisfied an amendment is necessary or desirable, the Chief Executive Officer must give written notice to the holder of the amendments and re-issue the licence or certificate accordingly.

(3) An amendment may be made under this section to extend the date of a kinship carer certificate by up to 2 years from the next applicable expiry date of the certificate.

(4) An amendment may be made under this section to extend the date of a kinship carer certificate by up to 60 days from the next applicable expiry date of the certificate, but only one such extension may be made.

50. Licence or certificate may be suspended or cancelled –

(1) The Chief Executive Officer may suspend or cancel a licence or certificate issued under this Part on the following grounds -

- (a) in the case of a licence - a relevant person for the licence is not a suitable person;
- (b) in the case of a certificate of approval as an approved foster carer –
 - (i) the holder of the certificate is not a suitable person to be an approved foster carer; or
 - (ii) a member of the holder's household is not a suitable person to associate on a daily basis with children;
- (c) in the case of a certificate of approval as an approved kinship carer -
 - (i) the holder of the certificate is not a suitable person to be an approved kinship carer for the child to whom the approval relates; or
 - (ii) a member of the holder's household is not a suitable person to associate on a daily basis with the child to whom the approval relates;
- (d) in the case of a certificate of approval as a provisionally approved carer -
 - (i) the holder is not a suitable person to be a provisionally approved carer for the child to whom the approval relates; or
 - (ii) a member of the holder's household is not a suitable person to associate on a daily basis with the child to whom the approval relates; or
 - (iii) the Chief Executive Officer has decided to refuse the holder's application for a certificate of approval as an approved foster carer or approved kinship carer;
- (e) the holder is not meeting the standards required under the licence or certificate or another condition of the licence or certificate;
- (f) the holder has contravened a provision of this Act;
- (g) the authority was issued because of a materially false or misleading representation or declaration (made either orally or in writing);
- (h) any other circumstance prescribed under by regulations.

(2) Subject to subsection (4), the Chief Executive Officer may cancel a certificate of approval if the holder lives with the holder's spouse but does not hold the certificate jointly with the spouse.

(3) Subject to subsection (4), the Chief Executive Officer may cancel a certificate of approval held jointly by 2 persons if -

- (a) when the certificate was issued to them, they were spouses living together; and
- (b) they have stopped being spouses or stopped living together; and
- (c) the Chief Executive Officer considers it inappropriate in all the circumstances for them to continue to jointly hold the certificate.

(4) If the holder of a certificate of approval referred to in subsection (2) or (3) (the current certificate) applies for another certificate of approval, the Chief Executive Officer must not cancel the current certificate under subsection (2) or (3) until the application is decided.

(5) In this section -

“relevant person”, for a licence, means -

- (a) a director or officer holder of the licensee; or
- (b) the nominee for the licence; or
- (c) a person responsible for directly managing the care service the subject of the licence; or
- (d) a person who is engaged in relation to the provision of care services by the service.

51. Procedure for suspension or cancellation –

(1) If the Chief Executive Officer considers a ground exists to suspend or cancel a licence of certificate issued under this Part authority, he or she must give the holder written notice that states the following -

- (a) the proposed action;
- (b) the grounds for the proposed action;
- (c) the facts and circumstances forming the basis for the grounds;
- (d) if the proposed action is suspension of the authority, the proposed suspension period;
- (e) that the holder may make, within a stated time of at least 28 days, written representations to show why the proposed action should not be taken.

(2) If, after considering all written representations made within the stated time, the Chief Executive Officer still considers a ground to take the proposed action exists, the Chief Executive Officer may suspend or cancel the licence or certificate.

(3) The Chief Executive Officer must inform the holder of the decision by written notice.

(4) The Chief Executive Officer must record particulars of the suspension or cancellation on the licence or certificate, and in the records held by the Ministry in relation to it.

(5) This section does not apply to a provisional certificate, which may be suspended or cancelled by service of a notice to that effect on the holder of the provisional certificate.

PART V PROTECTING THE RIGHTS OF CHILDREN UNDER THE LAW

52. Minimum age for children to marry – For all purposes under the law, and despite the provision of any law to the contrary, both male and female children may lawfully marry after they have reached the age of 18 years.

53. Duty to report sexual abuse or exploitation of children – (1) This section applies to all persons who become aware of any sexual abuse or exploitation of a child in a school, church or other religious institution, health facility, prison or corrections facility or any other place where children are supervised or cared for, and who –

- (a) holds a position of authority in that place;
- (b) is employed in any position or capacity which involves the provision of care, supervision or protection of children in that place;
- (c) xx

(2) A person to whom this section applies must immediately report any sexual abuse or exploitation of a child, or circumstance in which the person believes that sexual abuse or exploitation of a child has, or may have taken place, to the Commissioner of Police and to the Chief Executive Officer.

(3) A person to whom this section applies must cooperate with the police and the Ministry in relation to any

subsequent inquiry, investigation or other action taken as a result of the report made.

(4) Any person to whom this section applies who

- (a) fails to make a report of sexual abuse or exploitation against a child as required by this section; or
 - (b) fails to cooperate with the police or the Ministry as required by subsection (3) -
- commits an offence and shall be liable to a fine not exceeding 1,000 penalty units or to imprisonment for a term not exceeding 12 months, or both.

54. Prohibition on the sale of children – (1) No child in Samoa may be bought or sold, and any contract, agreement or arrangement purporting to be the basis of such a sale is void and of no legal effect.

(2) A person who –

- (a) enters in to any arrangement for the sale or purchase of a child in Samoa;
- (b) offers any money or valuable consideration to the parent or guardian of a child in Samoa in order to purchase the child, or to obtain or assume any parental status or authority over the child;
- (c) facilitates the sale or purchase of a child in Samoa in any way-

commits an offence and is liable to a fine not exceeding 10,000 penalty units or to imprisonment for a term not exceeding 15 years, or both.

55. Restrictions on the use of children to sell goods on the streets – (1) No child under the age of 14 years is permitted to sell any goods on the streets, or in any public place.

(2) No child who is below the age requiring compulsory attendance at school is permitted to sell goods on the streets or in any public place after 7pm on any day.

(3) A person who –

- (a) arranges for or procures a child to act in contravention of this section;
- (b) permits a child to act in contravention of this section;

- (c) sells or provides goods to a child for the purpose of sale by the child on a street or in another public place-
 commits an offence and is liable to a fine not exceeding 1,000 penalty units or to imprisonment for a term not exceeding 12 months, or both.

56. Children not to be used for the purposes of research etc. – (1) No child may be used for any form of research (including medical or scientific experimentation), unless –

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

(2) A person who –

- (a) undertakes research relating to a child in contravention of this section;
 (b) permits research to be undertaken in relation to child in contravention of this section;
 (c) during any authorised research, acts in a manner which is detrimental to the health or well-being of the child without lawful or reasonable justification;
 (d) xx

commits an offence and is liable to a fine not exceeding 1,000 penalty units or to imprisonment for a term not exceeding 12 months, or both.

57. Obligations of employer's of children – (1) A person who employs a child must provide proof of the child's age if required to do so by an authorised officer.

(2) **Other employment related provisions??**

**PART VI
 INVESTIGATIONS AND COURT PROCEDURES
 WHERE CHILDREN ARE INVOLVED**

58. Special requirements applying to investigations and inquiries – (1) Despite the provision of any other law to the contrary, the following matters apply whenever an investigation or inquiry is undertaken in relation to a child by a police officer, authorised officer, or any other person lawfully exercising powers of investigation or inquiry under any law –

- (a) at all stages of the investigation or inquiry, the best interests of the child must be the primary consideration;
- (b) the investigation of or inquiry into the child must recognise and protect the rights and interests of the child at all stages of the justice process, and must reduce trauma and secondary traumatisation of the child;
- (c) the matter must be promptly notified and referred to other relevant agencies to promote the protection and welfare of the child; and his or her rights;
- (d) any action taken must permit the child to fully state his or her views, and the relevant officer must take into account the child's views in accordance with their age and maturity and respect the child's right to privacy;
- (e) child-friendly interview environments and interview techniques must be implemented and applied;
- (f) special procedures must be applied to reduce the number and length of interviews which children are subjected to;
- (g) special facilities and appropriate processes must be provided and applied where the child has a disability to ensure the effective application of the requirements of this section;
- (h) children are entitled to have a parent, guardian, legal representative or other appropriate support person agreed to by the child, present with them at all stages of the investigation and trial proceedings;
- (i) measures must be implemented to ensure children are protected from direct confrontation with persons accused of violating their rights and from hostile,

insensitive or repetitive questioning or interrogation;

- (j) investigations must be conducted expeditiously and followed by expedited court proceedings;
- (k) investigators who have received special training in relation to dealing with cases involving children must be engaged in the process, if they are available.

(2) Any orders or approved procedures applying to members of the Police Service must be consistent with the requirements stated in subsection (1).

59. Special requirements applying to court proceedings – (1) Despite the provision of any other law to the contrary, court proceedings involving children must be undertaken in accordance with the following requirements –

- (a) the hearing of the cases must be expedited and prioritized as far as is practicable;
- (b) measures must be applied and enforced to protect the child's privacy, including closed court proceedings and bans on publishing the child's identity or any information leading to identification of the child;
- (c) measures must be applied and implemented to protect the safety of children and their families, and to prevent intimidation and retaliation;
- (d) appropriate facilities and support must be provided to children with disabilities;
- (e) children are entitled to have a parent, guardian, legal representative or other appropriate support person agreed to by the child, present with them at all stages of the court proceedings;
- (f) child-friendly court procedures must be promoted and applied, including alternative arrangements for giving testimony such as screens, video-taped evidence and the use of closed circuit television;
- (g) social and legal counselling is to be provided where appropriate, and children must be given adequate information concerning the purpose and effect of the court processes;

- (h) children must be fully accorded the right to effectively participate in any proceedings that affect them, to express their views, and to have those views given due weight;
 - (i) police, prosecutors, lawyers and court officer are to receive specialised training in dealing with cases involving children;
 - (j) no proof of resistance to establish non-consent in sexual assault proceedings is to be required where the victim is a child;
 - (k) no corroboration of a child's evidence in criminal proceedings for sexual assault is to be required;
 - (l) the use of prior sexual conduct to establish non-consent in sexual assault proceedings involving a child is prohibited;
 - (m) expert evidence regarding patterns of disclosure or behaviour of child in cases involving sexual abuse is to be automatically admissible;
 - (n) discriminatory provisions or processes applying to children are to be removed.
- (2) All rules of court are to be read and applied subject to the above requirements, and necessary modifications to make such rules consistent with this section must be made as soon as is practicable.

PART VII CONFIDENTIALTY REQUIREMENTS

- 60. Confidentiality of notifiers of harm or risk of harm** – (1) This section applies if a person (the notifier) notifies the Chief Executive Officer, an authorised officer or a police officer that the notifier suspects -
- (a) a child has been, is being or is likely to be, harmed; or
 - (b) an unborn child may be at risk of harm after he or she is born.
- (2) The person who receives the notification, or a person who becomes aware of the identity of the notifier, must not disclose the identity of the notifier to another person unless the disclosure is made -
- (a) in the course of performing functions under this Act; or

- (b) by way of evidence given in a legal proceeding under subsections (3) and (4).
- (3) Subject to subsection (4) -
 - (a) evidence of the identity of the notifier or from which the identity of the notifier could be deduced must not be given in a proceeding before a court or tribunal without leave of the court or tribunal; and
 - (b) unless leave is granted, a party or witness in the proceeding -
 - (i) must not be asked, and, if asked, can not be required to answer, any question that can not be answered without disclosing the identity of, or leading to the identification of, the notifier; and
 - (ii) must not be asked to produce, and, if asked, can not be required to produce, any document that identifies, or may lead to the identification of, the notifier.
- (4) The court or tribunal must not grant leave unless -
 - (a) it is satisfied -
 - (i) the evidence is of critical importance in the proceeding; and
 - (ii) there is compelling reason in the public interest for disclosure; or
 - (b) the notifier agrees to the evidence being given in the proceeding.
- (5) In deciding whether to grant leave, the court or tribunal must take into account -
 - (a) the possible effects of disclosure on the safety or wellbeing of the notifier and the notifier's family; and
 - (b) the public interest in maintaining confidentiality of notifiers.
- (6) As far as practicable, an application for leave must be heard in a way that protects the identity of the notifier pending a decision on the application.

61. Confidentiality of information obtained by persons involved in administration of Act – (1) This section applies to a person who -

- (a) is or has been -
 - (i) a public servant, a person engaged by the Chief Executive Officer, or a police

officer, performing functions under or in relation to the administration of this Act; or

- (ii) a licensee or the executive officer of a corporation that is a licensee; or
- (iii) a person employed or engaged by a licensee to perform functions under or in relation to the administration of this Act; or
- (iv) an approved carer or other person in whose care a child has been anyone else; and

- (b) in that capacity acquired information about another person's affairs or has access to, or custody of, a document about another person's affairs.

(2) Subject to subsections (2) and (3), the person must not use or disclose the information, or give access to the document, to any other person.

(3) However, the person may use or disclose the information or give access to the document to someone else

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- (a) to the extent necessary to perform the person's functions under or in relation to this Act; or
- (b) if the use, disclosure or giving of access is for purposes related to a child's protection or wellbeing; or
- (c) if the use, disclosure or giving of access -
 - (i) relates to the Chief Executive Officer's function of cooperating with government entities that have a function relating to the protection of children or that provide services to children in need of protection or their families; or
 - (ii) is for the lawful performance by the Chief Executive Officer of a function or power under any other law;
 - (iii) is otherwise required or permitted under this Act.

(4) The person may disclose the information or give access to the document -

- (a) to another person, to the extent that the information or document is about the other person; or

- (b) to the Chief Executive Officer or an authorised officer, to enable the proper administration of Part IV.

62. Confidentiality of information given by persons involved in administration of Act to other persons – (1) This section applies if the Chief Executive Officer, an authorised officer, a police officer and any other person performing functions under or in relation to the administration of this Act, gives a person (the receiver) information or a document about another person's affairs.

(2) The receiver must not use or disclose the information, or give access to the document, to anyone else.

(3) However, the receiver may, subject to section 61, use or disclose the information or give access to the document to someone else -

- (a) if the use, disclosure or giving of access is authorised by the Chief Executive Officer; or
- (b) if the use, disclosure or giving of access is for purposes directly related to a child's protection or wellbeing; or
- (c) if the use, disclosure or giving of access is for purposes directly related to obtaining information requested by the Chief Executive Officer; or
- (d) if the use, disclosure or giving of access is otherwise required or permitted by law.

63. Police use of confidential information – (1) This section applies if a police officer acquires information during the course of exercising a function or power under this Act.

(2) The police officer, and any other police officer to whom the information is disclosed under this section, may use the information to the extent necessary to perform his or her functions as a police officer.

64. Disclosure of information to a child's family group – (1) The Chief Executive Officer or an authorised officer may disclose information about a child to a member of the child's family if he or she is satisfied the disclosure would be in the child's best interests.

(2) Before disclosing information under this section, the Chief Executive Officer or officer must -

- (a) obtain and have regard to the child's views, if the child is able to form and express views, taking into account the child's age and ability to understand; and
- (b) consider whether the disclosure is likely to adversely affect the child's relationship with members of the child's family group; and
- (c) consider whether the disclosure is likely to have adverse effects for anyone else, including a risk to anyone's safety; and
- (d) have regard to -
 - (i) any views expressed by the child's parents; and
 - (ii) the relationship between the child and the person to whom it is proposed to disclose the information, and any views expressed by that person; and

65. Prohibition of publication of information leading to identity of children – (1) A person must not, without the Chief Executive Officer's written approval, publish information that identifies, or is likely to lead to the identification of, a child as -

- (a) a child who is or has been the subject of an investigation under this Act of an allegation of harm or risk of harm; or
- (b) a child in the Chief Executive Officer's custody or guardianship under this Act; or
- (c) a child for whom an order is in force.

(2) A person must not, without the Chief Executive Officer's written approval, publish information that identifies, or is likely to lead to the identification of, a child living in Samoa as a child who -

- (a) has been harmed or allegedly harmed by a parent or step-parent of the child or another member of the child's family; or
- (b) is, or allegedly is, at risk of harm being caused by a parent or step-parent of the child or another member of the child's family.

PART VIII OFFENCES AGAINST THIS ACT

66. General offence against this Act – A person who breaches any requirement of this Act for which no

offence is prescribed, commits an offence and is liable upon conviction to a fine not exceeding 100 penalty units or to a term of imprisonment of up to 1 month, or both.

67. Obstructing authorised officers etc. – (1) A person who does any of the following –

- (a) impedes, hinders or obstructs an authorised officer who is lawfully discharging a function or exercising a power under this Act;
- (b) fails to provide any information relating to a child when requested to do so by an authorised officer;
- (c) impersonates an authorised officer – commits an offence and is liable upon conviction to a fine not exceeding 500 penalty units or to a term of imprisonment of up to 6 months, or both.

(2) A child does not commit an offence against subsection (1)(a) merely because the child resists being taken into custody under this Act for the child's protection.

68. Offence to remove child from carer – (1) This section applies if a child is in the Chief Executive Officer's custody or guardianship under any order made under this Act, or in the exercise of any power provided for in this Act.

(2) A person who does any of the following -

- (a) unlawfully removes a child from the care of the child's carer appointed under this Act;
- (b) if the child has been unlawfully removed from the care of the child's carer - keeps the child;
- (c) if the child has been lawfully removed from the care of the child's carer - keeps the child beyond the period allowed for the removal – commits an offence and is liable upon conviction to a fine not exceeding 1,000 penalty units or to a term of imprisonment of up to 12 months, or both.

(3) Subsection (2) applies whether the removal or keeping of the child is done within or outside Samoa.

69. Offence to remove child from custody or guardianship – (1) This section applies if a child is in the custody or guardianship of a person (the first person) under this Act.

(2) A person who does any of the following -

- (a) unlawfully remove the child from the first person's custody or guardianship;
- (b) if the child has been unlawfully removed from the first person's custody or guardianship - keep the child;
- (c) if the child has been lawfully removed from the first person's custody or guardianship - keep the child beyond the period allowed for the removal –

commits an offence and is liable upon conviction to a fine not exceeding 1,000 penalty units or to a term of imprisonment of up to 12 months, or both.

(3) Subsection (2) applies whether the removal or keeping of the child is done within or outside Samoa.

70. Offence to refuse contact with child in custody or guardianship – (1) This section applies –

- (a) to a child in the Chief Executive Officer's custody or guardianship under an order made under this Act, or the exercise of a power under this Act; and
- (b) an authorised officer reasonably asks a person for permission to enter premises for the purpose of having contact with a child in the premises to ensure the child's protection.

(2) A person who refuses the authorised officer's request without a reasonable excuse commits an offence and is liable upon conviction to a fine not exceeding 500 penalty units or to a term of imprisonment of up to 1 month, or both.

71. Offence for person to take child out of Samoa – A person who takes a child who is under the custody or guardianship of the Chief Executive Officer under this Act out of Samoa with the intention of obstructing, preventing or defeating the administration or enforcement of this Act commits an offence and is liable upon conviction to a fine not exceeding 1,000 penalty units or to a term of imprisonment of up to 5 years, or both.

72. Child's parent must comply with orders made under this Act – (1) This section applies in any case where an order has been made under this Act preventing or limiting rights of access of a parent to a child, or otherwise affecting any right that the parent may have in relation to the child.

(2) A child's parent who knowingly contravenes an order directing the parent not to have contact (direct or indirect) -

- (a) with the child; or
- (b) with the child other than when a stated person or a person of a stated category is present - commits an offence and is liable upon conviction to a fine not exceeding 100 penalty units or to a term of imprisonment of up to 12 months, or both.

(3) A child's parent who knowingly contravenes any other order made under this Act which affects the rights of the parent in relation to the child commits an offence and is liable upon conviction to a fine not exceeding 100 penalty units or to a term of imprisonment of up to 12 months, or both.

PART IX MISCELLANEOUS PROVISIONS

73. Protection of persons performing duties under this Act – Any person who lawfully exercises any power or performs any function under the authority of this Act is not liable for any loss or damage, or be subject to any criminal prosecution, in relation to the reasonable exercise of that power or the performance of that function.

74. Regulations – The Head of State, acting on the advice of Cabinet, may make Regulations for the purpose of giving effect to the provisions of this Act, including Regulations which make provision in relation to all or any of the following –

- (a) prescribing additional functions of the Ministry in relation to the welfare of children;
- (b) prescribing additional powers under this Act, and processes for enforcing them;
- (c) empowering authorised officers to effectively implement and enforce this Act;
- (d) empowering committees established under this Act;
- (e) protecting children (including unborn children) at risk of harm, or likely to be at such risk;
- (f) clarifying any matter concerning the making, scope and effect of protection orders for children;

- (g) prescribing additional standards applicable to approved carers and licensed care services providers;
- (h) otherwise regulating any aspect matter relevant to approved carers and licensed care services providers;
- (i) providing for any other matter, consistent with the CRC, to ensure that the rights of children are respected and protected under the law;
- (j) prescribing additional special requirements applying to investigations, inquiries and court proceedings to protect the rights and interest of children who are subject to them;
- (k) prescribing any additional requirement applying to information obtained or given under this Act;
- (l) prescribing additional offences for breaches of the Act, or the regulations;
- (m) facilitating the effective application of this Act by ensuring a smooth transition from repealed laws or obsolete procedures.

75. Repeal of Parts of the Infants Ordinance –

(1) Parts III and IV of the Infants Ordinance 1961 are repealed.

(2) xx

76. Transitional and Savings Provisions – (1)

Any order, proceeding, action, document or thing done under any law repealed or amended under this Act remains valid and is deemed to have been made under the authority of this Act, except to the extent that it is inconsistent with any requirement applying under this Act.

(2) The Chief Executive Officer may take any action authorised by this Act, and commence any legal proceeding, necessary to ensure that any order, proceeding, action, document or thing done under any law repealed or amended under this Act is inconsistent with any requirement applying under this Act.

x. xx – (1) xx

(2) xx

x. xx – (1) xx

(2) xx