

Child (Care, Protection and Adoption) Act

SAINT LUCIA

No. 8 of 2018

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I ASSENT

[L.S.]

NEVILLE CENAC,
Governor-General.

December 11, 2018.

SAINT LUCIA

No. 8 of 2018

AN ACT to provide for the care, protection and adoption of a child and for related matters.

[12th December, 2018]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the House of Assembly and the Senate of Saint Lucia, and by the Authority of the same, as follows:

*Child (Care, Protection and Adoption) Act***PRELIMINARY****Short title**

1. This Act may be cited as the Child (Care, Protection and Adoption) Act, 2018.

Interpretation

2.—(1) In this Act —

“abuse” includes —

- (a) physical abuse;
- (b) sexual abuse;
- (c) verbal abuse;
- (d) emotional abuse;
- (e) psychological abuse; and
- (f) financial abuse;

“adopted child” means a child with respect to whom an adoption order under section 107 is made;

“Adoption Committee” means the Adoption Committee established under section 73;

“Adoption List” means the list prepared and maintained under section 87;

“adoptive parent” means a person who has adopted a child;

“alternative action plan” means an arrangement —

- (a) that sets out the way in which the needs of the child are proposed to be met, having regard to the breakdown in the relationship between the child and his or her parents; and
- (b) that includes a proposal concerning —
 - (i) allocation of parental responsibility or specific aspects of parental responsibility,
 - (ii) a residential arrangement,

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- (iii) supervision,
- (iv) a contact arrangement,
- (v) education and training,
- (vi) medical care, or
- (vii) provision of a service;

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

“attorney-at-law” means a person who is admitted to practise law under the Legal Profession Act, Cap. 2.04;

“authorized person” means —

- (a) a health practitioner registered under the Health Practitioners Act, Cap. 11.06;
- (b) a nurse registered under the Registration of Nurses and Midwives Act, Cap. 11.08;
- (c) an administrator of a health, medical or hospital facility;
- (d) a school principal, teacher, guidance counsellor or other teaching professional;
- (e) an owner, operator or employee of a child care service;
- (f) a psychologist or physiologist;
- (g) a minister of religion;
- (h) a parent or guardian;
- (i) a person who by virtue of his or her employment or occupation has a responsibility to discharge a duty of care towards a child;
- (j) a person who holds a management position in an organization, the duties of which include direct responsibility for, or direct supervision of, the provision of health care, welfare services, social services, education, child care services, law

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enforcement, legal, transportation or other services wholly or partly to children; and

- (k) a person who provides health care, welfare services, social services, education, child care services, law enforcement, legal or other services wholly or partly to children;

“biological father” means a man who is the father of a child by blood;

“biological mother” means a woman who is the mother of a child —

- (a) by blood; or
- (b) as a result of an artificial conception procedure;

“biological parent” means the mother or father of a child by blood;

“care application” means an application for a care order under section 24;

“care and protection order” means an order made under section 30;

“care order” means —

- (a) a care and protection order;
- (b) an emergency protection order;
- (c) an assessment order;
- (d) a supervision order; or
- (e) a contact order;

“care plan” means a plan made by the Director for —

- (a) the consideration of the Court under section 26; or
- (b) the consideration of a child’s parent, relative, friend or other person connected with the child under section 119;

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“care responsibility” means the authority of a person to exercise the functions specified under section 36 in relation to a child;

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

“child care service” means a child care service designated by the Minister under section 5(1);

“consent” means the permission given unconditionally and with full understanding of what is involved;

“contact order” means an order made under section 49;

“couple” means a man and a woman —

(a) who are married to each other; or

(b) who are not married to each other, but are cohabiting;

“Court” means a District Court;

“custody” means the legal authority and responsibility for physically possessing a child and providing for the normal daily requirements related to the care and development of the child;

“Director” means a person appointed by the Public Service Commission as Director of Human Services within the Division;

“Division” means the Division responsible for human services;

“domestic violence” means an act of violence whether physical, emotional or verbal abuse perpetrated by a member of a household on a member of the same household which causes or is likely to cause physical, mental or emotional injury or harm to the abused party or another member of the household;

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

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“emotional abuse”, in relation to a child, means the child —

- (a) has suffered, is suffering or is likely to suffer in a way that has caused, is causing or is likely to cause harm to his or her well-being or development; or
- (b) is being or is likely to be exposed to domestic violence and the exposure is causing or is likely to cause harm to the psychological, emotional well-being or development of the child;

“financial abuse”, in relation to a child, includes a pattern of behaviour, the purpose of which is to exercise coercive control over, or exploit or limit a child’s access to financial resources so as to ensure financial dependence or defrauding a child of goods or property;

“foster care” means the temporary care provided by a foster parent, to a child who has been removed from his or her home by the Division, to ensure the safety and well-being of that child;

“foster child” means a child to whom foster care is provided;

“foster parent” means a person approved by the Director under section 66 to provide foster care to a child;

“guardian” in relation to a child, means a person who has been appointed by deed or will, or by order of a court of competent jurisdiction, with guardianship, to care for the personal or property interests of a child and includes a tutor appointed under the Civil Code, Cap. 4.01;

“guardianship” means the legal responsibility and authority for making decisions with respect to a child;

“home study assessment” means an assessment conducted by the Division and approved by the Adoption Committee on a person who makes an application under section 82;

“Minister” means the Minister responsible for human services;

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“neglect” means the failure of a parent or guardian to provide a child with adequate care and guidance or an act or omission by the parent or guardian with respect to that child that is not in the best interest of the child or likely to be harmful to the child;

“parent” includes —

- (a) a biological parent or adoptive parent who has parental responsibility for a child;
- (b) a person who has stood in *loco parentis* to a child for a period of not less than one year and who has a continuing relationship with the child; or
- (c) a guardian of the child who has custody or guardianship rights for the child;

“parental responsibility” means the duties, powers, rights, responsibilities and authority which by law, a parent of a child has in relation to that child;

“permanency”, in relation to a child, means the discharge of a child from a child care service to be reunified or adopted;

“physical abuse” means the intentional non-accidental use of bodily force by a person aimed at hurting, causing bodily harm or injuring a child;

“placement” means removing a child from his or her home and putting him or her in the care of a prospective adoptive parent or in the care of a child care service;

“police officer” means a member of the Royal Saint Lucia Police Force;

“prescribed” means prescribed by Regulations made under section 124;

“prospective adoptive parent” means a person approved by the Adoption Committee under section 84;

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- “Register of Adoptions” means a Register of Civil Status referred to under section 6(1) of the Civil Status Act, Cap. 4.02;
- “Register of Births” means a Register of Civil Status referred to under section 6(1) of the Civil Status Act, Cap. 4.02;
- “Registrar” means the Registrar of Civil Status appointed under section 4 of the Civil Status Act, Cap. 4.02;
- “relative” in relation to a child, means a parent, grandparent, brother, sister, uncle or aunt of the child, whether the relationship is by blood, affinity or adoption;
- “removal” means taking of a child and placing the child in the care and protection of the Director under this Act or taking a child from previously approved placement;
- “repealed Act” means the Adoption Act, Cap. 4.07;
- “request for assistance” means a request for assistance under section 10;
- “resident” means a person who is domiciled in Saint Lucia;
- “reunification” means the return of a child to his or her family home;
- “sexual abuse”, in relation to a child, includes the sexual exploitation of a child, molestation of a child, or the involvement of a child in unlawful sexual activity, prostitution or pornography;
- “supervision order” means an order made under section 44;
- “supervisor” includes the Director and a person appointed by the Director under section 24;
- “verbal abuse”, in relation to a child, includes a negative defining statement of a child to him or her, or a statement of disapproval which is likely to cause emotional harm to the child.

(2) In this Act, a reference to the best interest of a child includes a reference to —

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- (a) the safety of the child;
- (b) the capacity of the parent of the child to properly discharge his or her parental responsibilities with respect to the child;
- (c) the physical, mental and emotional needs of the child, and the appropriate care or treatment required to meet those needs;
- (d) the physical, mental, emotional or psychological development of the child;
- (e) where appropriate, the views of the child;
- (f) the need to provide a secure place for the child and the development of a positive relationship as a member of a family;
- (g) the love, affection and ties between the child and other persons in the life of the child;
- (h) the capacity of a person other than a parent to exercise custody rights and duties respecting the child;
- (i) the continuity of the care for the child and the possible effect of disruption of that care on the child;
- (j) a disability which the child may have;
- (k) the wishes expressed by one or both parents of the child;
- (l) the relationship that the child has with his or her biological parents or siblings, if any and a significant other person including a relative if this is considered to be relevant;
- (m) the physical, emotional and educational needs of the child, including the child's sense of personal, family and cultural identity;
- (n) the child's age, maturity, level of understanding, gender, background and family relationships and other characteristics of the child, if this is considered to be relevant;

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- (o) the attitude of a person wishing to adopt the child towards the child and to parental responsibilities;
- (p) the nature of the relationship of the child with the person wishing to adopt the child;
- (q) the suitability and capacity of the person wishing to adopt the child, to provide for the needs of the child, including the child's emotional and intellectual needs;
- (r) the need to protect the child from abuse;
- (s) a wish expressed by the child;
- (t) the likely effect on the child throughout his or her life of having ceased to be a member of his or her biological or original family and become an adopted child;
- (u) harm which the child has suffered or is at risk of suffering;
- (v) the likely prejudicial effect in the delay in arriving at a decision relating to a child; and
- (w) the making of an adoption order in determining alternative forms of care to best meet the needs of the child.

(3) In this Act, a child is in need of care and protection if the child —

- (a) has suffered harm or is likely to suffer harm caused by —
 - (i) the neglect of the child,
 - (ii) the failure of the child's parent to adequately supervise or protect the child, or
 - (iii) the failure of the child's parent to provide for the adequate supervision or protection of the child;
- (b) has been abused or is likely to be abused by his or her parent or by another person and the parent knew or

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- ought to have known of the possibility of the abuse of the child and the parent failed to protect the child;
- (c) has been harmed or is likely to be harmed as a result of sexual abuse and the parent has failed or has not been able to protect the child;
 - (d) has suffered or is likely to suffer as a result of being exposed to domestic violence by or towards a parent or other person residing with the child;
 - (e) requires specific medical, physical, emotional or psychological treatment to cure, prevent or ameliorate the effects of physical abuse or emotional abuse suffered, and the parent does not, or refuses to obtain treatment or is unavailable or unwilling to consent to services for treatment to remedy or to ameliorate the effects of the abuse;
 - (f) has been abandoned, or is likely to be abandoned or the only parent of the child has died or is unavailable, unwilling to take custody of the child, and adequate provisions have not been made for the care of the child;
 - (g) suffers or is likely to suffer from a mental, emotional, physical or developmental condition, that, if not addressed, could seriously harm the child and the parent does not, or refuses to obtain treatment or is unavailable, unwilling or unable to consent to services or treatment to remedy or ameliorate the effects of the condition;
 - (h) is beyond the control of his or her parent or guardian;
 - (i) is destitute or wanders without a settled place of abode and without visible means of subsistence;
 - (j) begs or receives alms;
 - (k) frequents the company of a person of undesirable character;
 - (l) is in the custody of the Director, a child care service or another person and the parent of the child refuses or is unable to resume custody of the child; or

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- (m) has a parent or guardian who is by —
 - (i) reason of mental or bodily disease,
 - (ii) infirmity or other capacity, or
 - (iii) other circumstances,
 prevented from providing for the child's up-bringing, and there is no available person capable, fit or willing to undertake the care of the child.

Purpose

- 3.—(1) The purposes of this Act are —
- (a) to provide for the care and protection of a child from abuse and neglect;
 - (b) to provide for the adoption of a child in Saint Lucia in a way that —
 - (i) promotes the well-being and the best interest of the child throughout his or her life, and
 - (ii) supports efficient and accountable practice in the delivery of an adoption service;
 - (c) to ensure that in an action and decision made under this Act, whether by legal or administrative process, concerning a child, the safety, welfare and well-being of the child is of paramount consideration;
 - (d) to ensure that if a child is able to form his or her own view on a matter concerning his or her safety, welfare or well-being, he or she is given an opportunity to express that view freely and that view is to be given due weight in accordance with the developmental capacity of the child and the circumstances;
 - (e) to ensure that in deciding what action it is necessary to take, whether by legal or administrative process, in order to protect a child from harm, the course to be followed is the least intrusive intervention in the life of the child and his or her family, that is consistent with the paramount concern to protect the child from harm and to promote the development of the child;

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- (f) to ensure that if a child is temporarily or permanently deprived of his or her home or environment or cannot be allowed to remain in that home or environment in his or her own best interest, the child is entitled to special protection and assistance from the Government and his or her own name and identity is, if possible, preserved;
- (g) to ensure that if a child is placed in a child care service, arrangements are made in a timely manner, to ensure the provision of a safe, nurturing, stable and secure environment;
- (h) to ensure that if a child is removed from the home of his or her parent under this Act, whether temporarily or permanently, the child is entitled to a safe, nurturing, stable and secure environment and unless it is contrary to his or her best interest, and taking into account 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 biological or adoptive parents, siblings, extended family, peers, family friends and community;
- (i) to promote and encourage permanency for every child in need of care and protection;
- (j) to ensure that a child is able to participate in a decision that is likely to have a significant impact on the life of the child through the provision to the child of —
 - (i) adequate information, in a manner and language that he or she can understand, concerning the decisions to be made, the reasons for the intervention of the Director, the ways in which the child may participate in the decision making and relevant complaint mechanisms,
 - (ii) the opportunity to express his or her views freely, according to his or her abilities, age, maturity and developmental capacity,

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- (iii) assistance that is necessary for the child to express his or her views,
 - (iv) information as to how the views of the child will be recorded and taken into account,
 - (v) information with respect to the outcome of a decision concerning the child and an explanation of the reasons for the decision, and
 - (vi) an opportunity to respond to a decision made concerning the child.
- (2) For the purposes of subsection (1)(j), decisions that are likely to have a significant impact on the life of a child include —
- (a) a plan for an emergency or ongoing care, including placement of the child;
 - (b) the development of a care plan under section 26;
 - (c) the review of a care plan under section 27;
 - (d) a court application concerning the child;
 - (e) the provision of a counselling or treatment service; or
 - (f) contact with a parent, relative or other persons connected with the child.

**PART I
ADMINISTRATION**

Functions of the Minister

4. The functions of the Minister are —
- (a) to establish goals, objectives and guidelines for the delivery of child safety, well-being, care, protection and adoption;
 - (b) to promote a partnership approach between the Government and agencies or corporations respecting the care and protection of a child;
 - (c) to enter into an agreement and establish a procedure and protocol aimed at promoting the care and protection of a child and ensure that the agreement, procedure and protocol are implemented;

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- (d) to ensure that there is coordination between Government and a non-governmental agency in a matter relating to child care, protection and adoption; and
- (e) to administer this Act.

Designation of child care service

5.—(1) The Minister may, by Order published in the *Gazette*, designate as a child care service —

- (a) a boarding home;
- (b) a group home;
- (c) a foster home;
- (d) a residential care;
- (e) a training centre or training school;
- (f) an assessment centre;
- (g) a children’s home; or
- (h) a place that provides substitute family care for a child until —
 - (i) the parent of a child is able to provide adequate care to meet the basic needs of the child,
 - (ii) the child can be reunited with his or her family, or
 - (iii) an arrangement for permanency is made for the child.

(2) A child care service shall —

- (a) provide care that is safe, positive and nurturing;
- (b) promote the educational, social and developmental well-being of a child;
- (c) provide services to a child that meet the child’s individual needs, including the needs of a child with a disability, and services that enhance his or her physical, emotional, cognitive, social and cultural development; and

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- (d) provide the Division with a progress report on each child.

Functions of the Director

6.—(1) Subject to the direction of the Minister, the Director shall provide for the care and protection of children by promoting the development, adoption and evaluation of policies and procedures that accord with the purposes of this Act.

- (2) Without prejudice to subsection (1), the Director shall —
 - (a) promote and safeguard the safety, welfare and well-being of a child;
 - (b) assess and investigate or cause an assessment to be undertaken or reports to be assessed and investigated under Part II;
 - (c) oversee the operation and delivery of a child care service;
 - (d) establish, with the approval of the Minister, policies and procedures for a child care service;
 - (e) provide consultation and direction respecting a child care service under this Act;
 - (f) establish procedures for the delegation of his or her functions and to establish policies respecting the direction and supervision of the delegation;
 - (g) advise the Minister and other persons on matters relating to a child care service, or a programme, facility and resource necessary to carry out the requirements of this Act;
 - (h) determine in association with the Adoption Committee the manner in which a child is selected for adoption;
 - (i) establish guidelines for the conduct of negotiations entered into by the Adoption Committee with a parent who wishes to have a child selected by the Adoption Committee under this Act;

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- (j) receive applications for adoption made under this Act on behalf of the Adoption Committee and assist the Adoption Committee in the conduct of the investigation required under this Act with respect to the adoption of a child;
- (k) make arrangements for and in relation to the placement of a child;
- (l) take appropriate measures to ensure confidentiality of the records of a child, and the parent of a child;
- (m) issue guidelines to a child care service in giving effect to this Act; and
- (n) perform other functions as may be necessary to carry out this Act or as assigned by the Minister.

Request for service from agencies

7.—(1) In deciding what action should be taken to promote the care, protection, safety, welfare and well-being of a child, the Director may request a government department, agency in receipt of Government funding or a person that promotes the care and protection of children, to provide a service to a child or the family of the child.

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

(3) In determining the most appropriate government department, agency or person to which a request for services may be made, the Director shall consider whether the request —

- (a) is consistent with the responsibilities of the government department, agency or person; and
- (b) would prejudice the discharge of the functions of the government department, agency or person.

(4) If a government department, an agency or a person to which a request is made under subsection (1) is not able to comply with the request, the government department, agency or person shall, by notice in writing to the Director, inform the Director of the reasons for not being able to comply with the request.

*Child (Care, Protection and Adoption) Act***Delegation**

8.—(1) Subject to subsection (2), the Director may delegate his or her functions to a staff member of the Division or to another person.

(2) The Director shall not delegate the power of delegation under subsection (1).

Committees

9. The Minister may, to assist the Director in the exercise of the Director's functions under this Act, establish and appoint the members of —

- (a) an Advisory Committee —
 - (i) to review this Act and the services performed under this Act, and
 - (ii) to report to the Minister on the operation and administration of this Act and whether or not the purposes of this Act are being achieved; and
- (b) another Committee.

PART II**REQUEST, REPORT, INVESTIGATION AND ASSESSMENT****Request for assistance from parent or child**

10. A parent or a child may request assistance from the Director if the safety, welfare or well-being of a child is in jeopardy due to —

- (a) a serious or persistent conflict between the parent and the child; or
- (b) a parent being unable or the child determining that the parent is unwilling to provide adequate supervision for the child.

Response to request

11.—(1) In responding to a request under section 10, the Director shall consider the appropriateness of providing assistance as is necessary —

- (a) to enable the parent and the child to resolve the conflict without recourse to legal proceedings;

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- (b) to ensure that the child is adequately supervised; or
- (c) to enable the child and his or her parent to have access to a service.

(2) In making provision for the receipt of assistance under subsection (1), the Director shall ensure that the child has been counselled about the assistance necessary to resolve the conflict with his or her parent.

(3) If the Director is of the opinion that, despite the assistance provided under subsection (1), the safety, welfare or well-being of the child continues to be in jeopardy, the Director shall cause the child to be brought before the Court.

(4) The Court may place the child under the supervision of the Director, for a period not exceeding three years or may make a care order, if the Court is satisfied that —

- (a) the child cannot be controlled by a parent;
- (b) it is in the best interest of the child; and
- (c) the parent understands the results which will follow from, and consents to the making of, the order.

(5) The Court may extend the period of placement under subsection (4) for a period the Court considers appropriate.

(6) During the period of placement under subsections (4) and (5), the Director shall determine permanency in relation to that child.

Alternative dispute resolution

12.—(1) In responding to a request for assistance or a report, the Director shall, prior to making an application to the Court for a care order, consider the appropriateness of using an alternative dispute resolution procedure that is designed to —

- (a) ensure intervention so as to resolve a problem which may exist at an early stage;
- (b) develop a care plan under section 26;
- (c) reduce the likelihood for the making of a care application;

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- (d) reduce the incidence of breakdown in a child-parent relationship; and
- (e) work towards the making of a decision that is in the best interest of the child concerned if an application for a care order is made.

(2) The participation by a child or a parent of the child in an alternative dispute resolution procedure is voluntary.

(3) A care plan developed under subsection (1)(b) during the course of alternative dispute resolution may be registered in the Court and may be used as evidence of an attempt to resolve the matter, without making an application for a care order.

Report of child in need of care or protection

13. —(1) A person who has knowledge or has reasonable grounds to suspect that a child is in need of care and protection shall immediately report the need to the Director or a police officer.

(2) A report under subsection (1) may be made anonymously.

(3) The police officer under subsection (1) shall report the information to the Director and provide the Director with additional information as is known or available to the police officer.

(4) Subsection (3) applies, despite the confidential nature of the information on which the report is based, but nothing in this section abrogates an attorney-at-law client privilege.

(5) A person who falsely and maliciously reports information indicating that a child is in need of care and protection commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars or imprisonment for a term not exceeding one year.

Protection of person

14.—(1) If a person, in good faith, makes a report under section 13 —

- (a) the making of the report does not constitute a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct;

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- (b) liability is not incurred for defamation as a consequence of the report;
- (c) the making of the report does 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 proceedings, other than in proceedings relating to the care and protection of a child in the Court;
- (e) the person cannot be compelled in proceedings, to produce the report or a copy of or an extract from the report or to disclose or give evidence of its contents; and
- (f) the identity of the person who made the report or information from which the identity of that person could be deduced, must not be disclosed to another person, except with —
 - (i) the consent of the person who made the report, or
 - (ii) the leave of the Court before which proceedings relating to the report are conducted.

(2) Subsection (1) does not apply if the person knowingly makes a report or provides information which is false or misleading.

(3) If consent or leave is not granted under subsection (1)(f), a party or witness in the proceedings must not be asked, and if asked, is not required to answer a question that cannot be answered without disclosing the identity or leading to the identification of the person who made the report.

(4) Subsection (1)(f) does not prevent the disclosure of information from which the identity of the person may be deduced if the prohibition on the disclosure of that information would prevent the proper investigation of the report.

(5) The Court shall not grant leave under subsection (1)(f)(ii) unless the Court is satisfied that the evidence is of critical importance in the proceedings and that failure to admit it would prejudice the proper administration of justice.

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(6) If leave is granted under this section, the Court shall —

- (a) state the reasons for the grant of leave; and
- (b) direct that the Director be informed that evidence as to the identity of the person who made the report, or from which the identity of that person could be deduced, has been disclosed.

(7) A report to which this section applies is an exempt document for the purposes of a law in force relating to the freedom of information.

(8) A report that is certified by the Director is admissible in proceedings relating to the care and protection of a child.

Investigation and assessment

15.—(1) The Director shall conduct an investigation and assessment of the circumstances concerning a child, regardless of the consent of a person if —

- (a) it appears to the Director that the child may be in need of care and protection;
- (b) the parent or the child requests assistance under section 10; or
- (c) a person makes a report under section 13.

(2) An investigation and assessment must be conducted within seventy-two hours of the appearance by the Director that a child may be in need of care and protection, receipt of the request for assistance or the receipt of the report.

Conduct of investigation and assessment

16.—(1) In conducting an investigation and assessment under section 15, the Director may —

- (a) visit the residence of the child and other place frequented by the child;
- (b) transport a child to a place the Director considers appropriate;
- (c) interview a child;

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- (d) interview a parent of a child;
- (e) interview a person who cares for a child or a person who has had an opportunity to observe the child;
- (f) interview a person who provides health, social, educational and other services to a child or a parent of the child;
- (g) request information to be provided to the Director from medical, social, educational and other service records concerning a child, a parent of the child or both;
- (h) cause an examination to be made of the physical, mental and emotional health and development of a child;
- (i) request a parent of a child to undergo an examination of his or her physical, mental, or emotional health or other assessment;
- (j) cause an analysis of the economic and other factors affecting the life of a child; or
- (k) consult with other persons and gather other evidence as may be necessary to complete the investigation.

(2) In conducting an investigation or making an assessment under this Act, the Director shall have regard to a known or expressed wish of the child, taking into account the age and maturity of the child and the extent to which the child appears to be in need of care and protection.

Order for the provision of information or assistance

17.—(1) The Director may make an application to the Court for an order compelling a person to provide the information or assistance sought in the conduct of the investigation by the Director under section 16.

(2) On an application under subsection (1), the Court may order a person —

- (a) to provide information under subsection (1) to the Director;
- (b) to allow the Director access to a person, place or record;
or
- (c) to co-operate with an investigation by the Director.

*Child (Care, Protection and Adoption) Act***Report of investigation and assessment**

18.—(1) Subject to subsection (2), the Director shall provide a report of the results of an investigation or assessment to —

- (a) the parent of the child who is the subject of the investigation; and
- (b) the child, if the child is at least twelve years old and is capable of understanding the circumstances of the investigation.

(2) A report shall not be provided under subsection (1) if —

- (a) the Director has reasonable grounds to believe that the report will endanger the safety of the child or another person; or
- (b) a criminal investigation related to the matter has been initiated or is likely to occur.

(3) A person who intimidates, threatens or obstructs the Director in the exercise of his or her functions under this section commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term of imprisonment not exceeding three months.

Action by Director

19.—(1) If after an investigation or an assessment made under this Act, the Director is of the opinion that a child is in need of care and protection, the Director shall take the necessary action to safeguard or promote the safety, welfare and well-being of the child.

(2) Without limiting subsection (1), the Director may, following an investigation or an assessment —

- (a) provide or arrange for the provision of support services for the child or his or her 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 or her family which does not involve taking the matter before the Court;

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- (c) ensure the protection of the child by exercising his or her powers to remove the child under this Act; or
- (d) apply to the Court for a care order.

(3) The Director may decide that no action is necessary if he or she considers that proper arrangements exist for the care and protection of the child and the circumstances which led to the investigation or assessment have been or are being adequately dealt with.

(4) If the Director decides that no action is necessary under subsection (3), the Director shall make a record of the reasons for his or her decision.

Warrant

20.—(1) The Director may make an application without notice to the Court for the issue of a warrant.

(2) On an application under subsection (1), the Court may issue a warrant to the Director under this section if the Court is satisfied that —

- (a) there are reasonable grounds to believe that —
 - (i) a child is in need of care and protection, and
 - (ii) a less intrusive course of action will not adequately protect the health or safety of the child; and
- (b) the parent or another person caring for the child has refused to give up the child or to permit entry to the place or premises if the Director has reason to believe that the child is present.

(3) Notwithstanding subsection (1), in the case of an emergency, the Director may, with the assistance of a police officer, and without the need for further authority other than that conferred by this subsection, enter a place or premises where a child is believed to be present or to reside and search for, locate, remove and take the child into custody if the Director has reasonable grounds to believe that —

- (a) the child is in need of protection; and
- (b) the health or safety of the child is in immediate jeopardy.

(4) It is not necessary that a child be identified by name for the purpose of removal, a warrant or order issued under this section.

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(5) For the purposes of this section, “in the case of an emergency” includes a situation where the life of the child is at risk or there is a risk of serious harm to the child.

Assumption of care responsibility by the Director

21.—(1) The Director may assume the care responsibility of a child by notice in writing signed by the Director and served on the person, whether or not a parent of the child, who in the opinion of the Director appears to be in charge of the place or premises if the Director —

- (a) suspects on reasonable grounds that a child is in need of care and protection; and
- (b) is satisfied that it is not in the best interest of the child that the child be removed from the place or premises in which the child is currently located.

(2) A notice under subsection (1) does not cease to have effect because the child to whom it relates has been transferred to a different place or premises.

Prompt application to court for a care order

22. If a child is taken into custody under section 20 or the care responsibility of the child is assumed by the Director under section 21, the Director shall immediately or within twenty-four hours of removing the child, apply to the Court for a care order in respect of the child as follows —

- (a) an emergency protection order;
- (b) an assessment order; or
- (c) a care and protection order.

Record of report and subsequent action

23.—(1) The Director shall keep a record of —

- (a) a report made to or by the Director;
- (b) action taken under this Act, as a consequence of a report; and

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(c) a disposition of and dealings with a child to whom the report and action referred to in paragraph (b) relate.

(2) The record of a report kept under subsection (1) must be as prescribed.

PART III

CARE ORDER

Division 1

Care Application

Care application

24.—(1) The Director may make a care application to the Court —

- (a) in the case of a supervision order, if the Director is satisfied that there is need for continuous supervision enforced by the supervision order;
- (b) in the case of an emergency protection order —
 - (i) within twelve hours of the removal of a child under section 22,
 - (ii) vesting care responsibility in a child care service —
 - (A) after all possible alternative methods of assisting the child have been tried without success and the abuse or harm from which the child is suffering or is likely to suffer requires his or her removal from where he or she is living; or
 - (B) if the danger to which the child is exposed is so severe as to require his or her immediate removal from where he or she is living.

(2) A care application must —

- (a) specify the particular care order sought and the grounds on which it is sought; and
- (b) be accompanied by —

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- (i) a care plan,
- (ii) an affidavit in support from the Director, and
- (iii) other supporting documents.

(3) Before making a care application for a supervision order under subsection (1)(a), the Director shall appoint a person to perform the duties of supervisor and to offer services the Director considers appropriate.

(4) The Director shall, in making a care application to the Court under subsection (1), furnish details to the Court of —

- (a) the support and assistance provided for the safety, welfare and well-being of the child; and
- (b) an alternative action plan to a care order that was considered, prior to the making of the care application and the reasons the alternative action plan was rejected or abandoned.

(5) The Court shall not —

- (a) dismiss a care application in relation to a child; or
- (b) discharge a child who is under the care responsibility of the Director from that care responsibility,

by reason only that the Court is of the opinion that an appropriate alternative action plan that could have been taken in relation to the child was not considered.

Notification of care application

25.—(1) Subject to subsection (2) the Director shall make all reasonable efforts to notify the parents of a child of the making of a care application by the Director in relation to the child.

(2) The Director shall, as soon as possible, after a care application is made, cause a copy of the care application to be served on the parents of the child.

(3) The Director shall notify the child who is the subject of a care application of the making of the application and the notification shall

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be made in a language and in a manner that the child can understand having regard to his or her age, maturity and the circumstances.

(4) If the Director fails to comply with this section in relation to a care application, that failure does not invalidate the care application or decision of the Court in respect of the care application.

Consideration of care plan

26.—(1) A care plan must outline the steps to be taken to protect the welfare of a child and to reduce the likelihood of further harm to him or her and must include reunification.

(2) If the Director makes an assessment that there is no realistic possibility of reunification, the Director shall prepare a care plan for suitable adoption or guardianship for the child and submit it to the Court for the Court's consideration.

(3) In preparing a care plan under subsection (1), the Director may consider and state what is the preferred option for the child.

(4) The Court shall consider the care plan prepared by the Director and if it does not accept it, the Court may direct the Director to prepare a different care plan.

Review of care plan

27.—(1) A care plan shall be reviewed by the Court within six months after the last occasion on which it was considered by the Court.

(2) A review under subsection (1) must determine —

- (a) whether the provisions of the care plan should be changed, particularly with respect to the length of time during which restoration is actively pursued;
- (b) whether other arrangements should be made for the permanency of the child; and
- (c) whether a care order should be made, varied or revoked.

Withdrawal of care application

28.—(1) The Director may, with the leave of the Court, make an application for leave to withdraw a care application.

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(2) An application for leave to withdraw a care application under subsection (1) must be accompanied by —

- (a) a statement that indicates how the issues that led to the making of the application have been resolved; or
- (b) a care plan.

Division 2

Care and Protection Order, Emergency Protection Order, Assessment Order, Supervision Order and Contact Order

Making of care order

29. —(1) If the Director makes a care application, the Court may make a care order.

(2) The Court may, on a care application, make a care order different from, in addition to, or in substitution for, the order for which the care application was made.

Care and Protection Order

Care and protection order

30.—(1) The Court may make a care and protection order in relation to a child if it is satisfied that the child is in need of care and protection.

(2) The Court shall not make a care and protection order under subsection (1) unless the Court is satisfied that —

- (a) a parent is not available to care for the child as a result of death or incapacity of the parent or for another reason;
- (b) the parents acknowledge that they have difficulties in caring for the child;
- (c) the child has been, or is likely to be abused;
- (d) subject to subsection (3), the basic physical, psychological, emotional or educational needs of the child are not being met, or are not likely to be met by his or her parents;

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- (e) the child is suffering or is likely to suffer developmental impairment or psychological harm, as a consequence of the domestic environment in which the child is living;
- (f) the child has exhibited sexually abusive behaviour and an order of the Court is necessary to ensure his or her access to, or attendance at an appropriate therapeutic service;
- (g) the child is subject to a care and protection order issued by another jurisdiction that is not being enforced; or
- (h) a care plan has been considered.

(3) The Court shall not conclude that the basic physical, psychological, emotional or educational needs of a child are not likely to be met solely on the grounds of the disability of a parent or on the grounds of poverty.

Effect of care and protection order

31. A care and protection order authorizes the Director —

- (a) to remove a child;
- (b) to assist the child and those with whom the child is living or wishes to live with to examine the circumstances that have led to the making of the order; and
- (c) to take steps to resolve or ameliorate the problem so as to ensure permanency.

Duration of care and protection order

32.—(1) A care and protection order is valid for a period not exceeding two years or until the child attains the age of eighteen years, whichever is the earlier.

(2) The Court may, on the application by the Director, extend the duration of a care and protection order.

Duty of Director after termination of care and protection order

33.—(1) The Director shall work with the parent of the child after the termination of a care and protection order.

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(2) The Director shall —

- (a) arrange family and child counselling for the child and his or her family after reunification; and
- (b) seek the assistance of a person in the family or community who can help in the process of resolving the problems which caused the care and protection order to be made.

(3) If a child is removed under section 31(a), the Director shall communicate with the parent of the child, to —

- (a) inform the parent of the progress of the child; and
- (b) arrange a trial period for reunification.

*Emergency Protection Order***Emergency protection order**

34.—(1) The Court may make an emergency protection order in relation to a child if it is satisfied that the child is suffering or is likely to suffer harm and is in urgent need of care and protection.

(2) The Court may, by an emergency protection order, vest the care responsibility of a child in the Director and a child care service.

(3) The Court may make an order prohibiting a person from doing anything that could be done by the parent in carrying out his or her parental responsibility.

Duration of emergency protection order

35.—(1) An emergency protection order has effect for a period not exceeding thirty days, unless the order is extended under subsection (2).

(2) An emergency protection order may, while it remains in effect, be extended once for a period not exceeding thirty days.

Care responsibility

36.—(1) The Director and a child care service specified in an emergency protection order under section 34(2) shall in exercising care responsibility —

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- (a) consent to the medical treatment of the child not involving surgery, on the advice of a medical practitioner;
- (b) consent to medical treatment involving surgery if a medical practitioner certifies in writing that the surgery needs to be carried out as a matter of urgency and in the best interest of the child;
- (c) correct and manage the behaviour of the child;
- (d) give permission for the child to participate in activities;
- (e) encourage contact of the child with his or her parent, relative and friends unless it is not in the best interest of the child;
- (f) ensure that the development of the child particularly the child's health and education, is given paramount attention;
- (g) assist in reunification; and
- (h) make other decisions that are required to be made with respect to the day-to-day care of the child.

(2) If reunification is not possible, the child shall, where possible, be cared for and assisted by the child care service specified in the emergency protection order and the Director until permanency is achieved.

Delegation of care responsibility

37.—(1) The Director and a child care service specified in an emergency protection order under section 34(2) may delegate care responsibility to a relative of the child, or to a person approved by the Court.

(2) Notwithstanding subsection (1), the Director may delegate the care responsibility for a child on an interim basis to a person other than a person specified in subsection (1) but the Director shall delegate that responsibility to a person so specified as soon as is reasonably practicable.

(3) The exercise of the care responsibility by a person under subsection (1) or (2) is subject to directions given to the person by

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the Director or the child care service specified in an emergency protection order.

Discharge of child from care responsibility

38.—(1) The Director and child care service may make an application to the Court for the discharge of a child from care responsibility with or without an undertaking being given by the child or the parent of the child.

(2) An undertaking under subsection (1) shall be in writing and shall be signed by the child or the parent of the child.

(3) In determining whether or not to discharge a child from care responsibility under subsection (1), the Director and child care service specified in an emergency protection order shall have regard to —

- (a) views expressed by the child as to whether he or she wishes to be discharged;
- (b) views expressed by the child in relation to reunification;
- (c) whether the discharge of the child by the Director or child care service specified in an emergency protection order is likely to protect the safety, welfare and well-being of the child; and
- (d) whether the failure of the Director or child care service specified in an emergency protection order to discharge is likely to endanger the safety, welfare and well-being of the child or any other person.

(4) If the Director and child care service specified in an emergency protection order intend to discharge a child from care responsibility, the Director and child care service specified in an emergency protection order shall explain to the Court why care responsibility with respect to the child is no longer required.

(5) After reunification, the Director may visit the child and his or her family twice a month for six months for the duration of the emergency protection order or until the emergency protection order is varied or revoked.

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Transfer of child from child care service

39.—(1) A person shall not transfer a child from a child care service without the consent of the Court.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars or to a term of imprisonment not exceeding one year.

Assessment Order

Assessment order

40.—(1) Subject to subsection (4) the Court may make an assessment order for —

- (a) the physical, psychological, psychiatric or other medical examination of a child or a parent of the child; or
- (b) a child and family assessment; or
- (c) the matters referred to in paragraphs (a) and (b).

(2) A person appointed by the Court to carry out an assessment or a part of an assessment, shall do so in accordance with the terms of the order and prepare a report of the assessment.

(3) The carrying out of a medical examination under an assessment order may include the taking and analysis of samples and the use of a machine or device that enables or assists in the examination of a person.

(4) The Court may make an assessment order on its own motion, whether or not an application has been made for a care order under section 29.

Matters for consideration in making assessment order

41.—(1) In considering whether to make an assessment order, the Court shall have regard to —

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- (a) whether the proposed assessment is likely to provide information that is unlikely to be obtained elsewhere;
- (b) a distress already caused to the child by a previous assessment undertaken for the same or another purpose; and
- (c) another matter the Court considers relevant.

(2) 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.

(3) An assessment under subsection (2) must be carried out with the consent of the person whose capacity is to be assessed.

(4) In making an assessment order, the Court shall ensure that a child is not subjected to unnecessary assessment.

Information concerning assessment

42. A child must be informed of the reasons for an assessment in a language and a manner that he or she understands, having regard to his or her age, maturity and circumstances.

Report of assessment

43. A report of an assessment prepared under section 40(2) shall be submitted to the Court in the prescribed manner.

Supervision Order

Supervision order

44.—(1) The Court may make a supervision order placing a child in relation to whom a care application has been made under the supervision of the Director if the Court is satisfied that the child is in need of care and protection.

- (2) In making a supervision order, the Court shall specify —
 - (a) the reasons for making the supervision order;
 - (b) the purpose of the supervision order; and

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(c) the length of the supervision order.

Requirements of supervision order

45. Without limiting the information that may be included in a supervision order by the Court, a supervision order may require the child, the parents of the child or both the child and his or her parents to —

- (a) report to the Director at a place and at intervals stated by the Director; and
- (b) take part in discussions with the Director in relation to the welfare, safety and well-being of the child, in particular whether the child should be engaged in some form of activity including educational, vocational or recreational activity.

Duration of supervision order

46.—(1) The Court may make a supervision order for six months and a supervision order may be extended for a period not exceeding six months.

(2) An application for extension of a supervision order shall be supported by a written report from the Director.

(3) Notwithstanding subsection (2), the Court may, on its own motion and after giving the parties an opportunity to be heard, extend the period of a supervision order for a further period, not exceeding six months as it considers necessary in the circumstances.

(4) The Court may require the Director to present —

- (a) a report before the end of the period of supervision which sets out —
 - (i) the outcome of the supervision,
 - (ii) whether the purpose of the supervision has been achieved,
 - (iii) whether there is need for an extension of the period of supervision under subsection (1),

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- (iv) whether another order should be made for the care and protection of the child;
- (b) a report during the period of supervision which describes the progress of the report; or
- (c) reports under paragraphs (a) and (b).

Duties of the Director in relation to a supervision order

47. The duties of the Director while a supervision order is in force with respect to a child are —

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

Enforcement of supervision order

48.—(1) The Director shall enforce a supervision order and inspect the premises in which the child resides.

(2) The Director shall notify the Court of an alleged breach of a supervision order and the Court, on being notified of the alleged breach shall —

- (a) give the parties an opportunity to be heard concerning the allegation; and
- (b) determine whether the supervision order has been breached.

(3) If the Court finds that a supervision order has been breached, the Court may make an order it considers appropriate in the circumstances.

*Child (Care, Protection and Adoption) Act**Contact Order***Contact order**

49.—(1) If a child is the subject of proceedings before a Court, the Court may, on an application made by a party to the proceedings, make a contact order in respect of the following —

- (a) stipulating minimum requirements concerning the frequency and duration of contact between the child and his or her parent, a relative or another person of significance to the child;
- (b) 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; or
- (d) that contact with the child be supervised by the Director.

(2) A contact order under —

- (a) subsection (1)(a) does not prevent more frequent contact with a child with the consent of a person having parental responsibility for the child;
- (b) subsection (1)(b) may be made only with the consent of the person specified in the order and the person who is required to supervise the contact.

*General***Interim or final order**

50.—(1) The Court may make an interim care order or a final care order.

(2) The Court shall not make a final care order unless it finds that permanency has been appropriately and adequately addressed.

Making of interim care order

51.—(1) The Court may make an interim care order in relation to a child before a care application is finally determined if the Court considers an interim care order appropriate for the welfare, safety, and

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well-being of a child in proceedings before it, pending the conclusion of the proceedings.

(2) An interim care order shall not be made unless the Court is satisfied that the making of the interim care order is necessary in the interest of the child and is preferable to the making of a final order or an order dismissing the proceedings.

Child and family assessment report before final order

52.—(1) The Director shall submit to the Court for consideration a written child and family assessment report in respect of a child before the Court makes a final order.

(2) The Director shall make a home visit to interview the parent of the child concerned and carry out the necessary investigations concerning the child before making a child and family assessment report.

(3) If the child in respect of whom the child and family assessment report is made is considered by the Director to be of sufficient age and understanding, the Director, shall interview the child.

(4) A child and family assessment report shall contain matters relating to the welfare of the child and recommendations as to an action to be taken by the Court.

(5) The Court shall take the information contained in the child and family assessment report into account in so far as it is relevant to the order being made.

(6) The Court is not required to accept a recommendation made by the Director in the child and family assessment report if the Court is not satisfied with the recommendation.

(7) If the Court does not accept a recommendation made by the Director in the child and family assessment report, it shall state and record its reasons for not accepting the recommendation.

Parties to receive copy of final order

53. The Court shall take action as is reasonably practicable to ensure that each party to a care application receives a copy of a final order of the Court.

*Child (Care, Protection and Adoption) Act***Variation and revocation of care order**

54.—(1) An application for the variation or revocation of a care order may be made with leave of the Court by —

- (a) the Director;
- (b) a person who has parental responsibility for a child;
- (c) a person who considers himself or herself to have sufficient interest in the welfare of a child.

(2) The Court is not required to hear or determine an application under subsection (1)(c) unless it considers the person to have a sufficient interest in the welfare of the child.

(3) An applicant under subsection (1)(b) or (c) shall notify the Director of the application and the Director is entitled to be a party to the application if —

- (a) the application for the variation or revocation is in relation to a care order, other than a contact order;
- (b) the application seeks to change the parental responsibility for the child; and
- (c) the Director is not a party to the proceedings.

(4) The Court may grant leave under subsection (1) if it appears that there has been a significant change in the circumstances since the care order was made or last varied by the Court.

(5) In determining whether to grant leave to vary or revoke a care order, the Court shall take the following matters into consideration —

- (a) the nature of the application;
- (b) the age and maturity of the child;
- (c) the length of time for which the child has been in the care of the person who has parental responsibility for the child; and
- (d) the plans for the child.

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(6) If —

- (a) an application for variation of a care order is made or opposed by the Director; and
- (b) a ground on which the application for variation of a care order is made is a ground that has not previously been considered by the Court,

the ground must be proved as if it were a ground of a fresh application for a care order.

(7) Before making an order to vary or revoke a care order that places a child under the care responsibility of the Director or a care order that allocates specific aspects of care responsibility to another person, the Court shall consider the following matters —

- (a) the age and maturity of the child;
- (b) the wishes of the child and the weight to be given to those wishes;
- (c) the length of time the child has been in the care of the person who has parental responsibility for the child;
- (d) the strength of the bond of the child to his or her parent or the person who has parental responsibility for the child;
- (e) the capacity of the parent of the child to provide an adequate standard of care for the child; and
- (f) the risk to the child of psychological harm if the present care arrangements are varied or revoked.

(8) The Court may vary or revoke a care order if it is satisfied that it is appropriate to do so.

(9) If the Court revokes a care order under this Act, it may make any order that it could have made in relation to the child as if a care application had been made to it with respect to the child.

(10) On the making of an order under subsection (9), the Court shall cause notice of the order to be served on the Director.

*Child (Care, Protection and Adoption) Act***Escape from a child care service**

55.—(1) A child who runs away from a child care service specified under a care order may, pending investigation —

- (a) be returned to the child care service specified in the care order; or
- (b) be put in another child care service to be determined by the Court.

(2) If returning the child under subsection (1)(a) is not in the best interest of the child, the Director may make an application to the Court for variation of the care order.

(3) In making a determination under subsection (2), the Director may interview the manager of the child care service.

PART IV**OTHER ORDERS****Other orders which may be made by the Court**

56. The Court may, in addition to making a care order, make the following orders —

- (a) an order —
 - (i) accepting undertakings,
 - (ii) for the provision of support services to the child or a parent of the child, or
 - (iii) for the child or a parent of the child to attend a therapeutic programme or a treatment programme;
- (b) a compulsory assistance order;
- (c) a contribution order; or
- (d) recovery order.

Order accepting undertakings

57.—(1) The Court may, in considering a care application, make an order accepting an undertaking given by the parent of a child, with respect to the care and protection of the child.

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(2) An undertaking under subsection (1) —

- (a) must be in writing signed by the person giving the undertaking; and
- (b) remains in force until the child attains the age of eighteen years or as may be specified in the undertaking.

(3) The Court shall cause a copy of an undertaking to be served on the person giving the undertaking.

(4) The Director or a party to proceedings in which an order accepting an undertaking was made shall notify the Court of an alleged breach of the undertaking.

(5) The Court, on being notified of an alleged breach of an undertaking shall give the parties to the undertaking, an opportunity to be heard concerning the allegation, and shall determine whether the undertaking has been breached.

(6) If the Court finds that the undertaking under subsection (1) has been breached, it may make an order it considers appropriate in the circumstances.

Order for the provision of support services

58.—(1) The Court may, to facilitate reunification, make an order directing a person or child care service named in the order to provide support services to a child or the parent of a child for a period not exceeding twelve months or as stipulated in the order.

(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 service who would be required to provide support under the order;
- (b) the person or child care service is given an opportunity to appear and be heard by the Court;
- (c) the person or child care service 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.

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(3) The Director may be required to provide support services under an order made under this section.

Support services by government department, agency or funded non-government agency

59. A government department, agency or a funded non-government agency that is requested by the Court to provide support services under section 58 shall use its best efforts to provide the support services.

Order to attend therapeutic or treatment programme

60.—(1) Subject to this section, the Court may make an order —

- (a) requiring a child to attend a therapeutic or treatment programme for the treatment of abusive behaviour; and
- (b) requiring the parent of the child to take the necessary steps to enable the child to participate in a therapeutic programme or treatment programme,

in accordance with the terms specified in the order.

(2) 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 care plan that outlines the therapeutic programme proposed for the child.

Compulsory assistance order

61.—(1) The Director may make an application to the Court for a compulsory assistance order if the Director is of the opinion that —

- (a) compulsory assistance is necessary for the child; and
- (b) a less intensive means would be inadequate for the safety of the child.

(2) The Court shall not make a compulsory assistance order unless it is satisfied that —

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- (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 or herself;
 - (b) the programme offered to the child is likely to lead to a significant improvement in his or her 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 must make provision for —
- (a) the person who will be responsible for the child under the order;
 - (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 twenty-four hour supervision of the child;
 - (e) subject to subsection (4), the duration of the order; and
 - (f) other matters the Court determines.

(4) The duration of a compulsory assistance order must not exceed three months.

(5) For the purposes of this section “compulsory assistance” means support in the form of intensive care and aid that is necessary to protect the child from suicide or other life threatening or serious self-destructive behaviour.

Contribution order

62.—(1) If a child has been placed in a child care service, the Court may make a contribution order compelling the parent of the child to contribute towards the maintenance of the child.

(2) The contribution under subsection (1) must be reasonable and within the means of the parent and may be varied or dismissed

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by the Court if there is a change in the circumstances of the parent or the child.

(3) A contribution order made under subsection (1) remains in force as long as the child is in the child care service.

(4) A parent in relation to whom a contribution order has been made may make an application to the Court for the order to be varied or dismissed on the ground that the circumstances have changed since the order was made.

Orders with significant impact on persons

63.—(1) The Court shall not make an order which has a significant impact on a person who is not a party to the proceedings unless the person has been given an opportunity to be heard on the matter of significant impact.

(2) A person given an opportunity to be heard under subsection (1) does not have the status or rights of a party to the proceedings.

Application for recovery order

64. The Director or a parent may make an application for a recovery order.

Recovery order

65.—(1) If a Court has been provided with information on oath that a child has been removed unlawfully, it may make a recovery order.

(2) A recovery order may —

- (a) direct a person who is in possession of the child to produce the child on demand to a person specified by the Court;
- (c) require a person who has information leading to the location of the child to disclose the information;
- (d) authorise a search by a police officer of the premises where the child is believed to be staying; and
- (e) specify the name of the child in question and the parent of the child.

*Child (Care, Protection and Adoption) Act***PART V
FOSTER CARE****Conditions for foster care**

66.—(1) A person may make an application in the prescribed form to the Director to foster a child.

(2) A relative of a child may foster a child without applying to the Director.

(3) If a relative of a child fosters the child under subsection (2), this Part does not apply to the relative.

(4) The Director shall cause a Register of approved foster parents to be maintained.

(5) If an applicant is found to be a suitable foster parent, the Director shall ensure that the applicant is trained in his or her roles, functions, and duties as a foster parent.

Responsibility of foster parent

67. A foster parent shall be responsible for the safety, education and welfare of the foster child in the care of the foster parent.

Visits to child in foster care

68.—(1) The Director shall authorize a person to visit a foster child and the premises in which he or she is being kept in order to be satisfied as to whether the safety, educational and welfare needs of the child are being met and to give, if necessary, advice or directions to the foster parent to the care of the foster child.

(2) If a person authorized under subsection (1) is refused admission to premises or has reason to believe that a foster child is being kept in premises in contravention of this Act, the person may apply to the Court for a warrant to enter the premises.

(3) If the Court is satisfied with information on oath that admission has been refused, or that there is reasonable grounds to believe that an offence under this Part has been committed, the Court may issue a warrant authorising the person to enter the premises to take the foster child to a child care service and to detain him or her

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there, until the foster child can be brought before a court for child care proceedings.

(4) A court issuing a warrant under this section may by the same warrant cause a person accused of an offence in respect of the foster child to be apprehended and brought before the Court.

Persons prohibited from receiving a foster child

69.—(1) A person shall not receive or keep a foster child without the consent of the Director —

- (a) if that child has been previously taken from the care of that person under this Part; or
- (b) in premises from which a child has been removed under this Part by reason of the premises being dangerous or unsanitary.

(2) A person who keeps or causes a foster child to be kept in contravention of this section, commits an offence and is liable on summary conviction to a fine not exceeding five hundred dollars and to imprisonment for a term not exceeding six months and the Court may make other orders in respect of that child.

Transfer of foster child kept in unsuitable premises or by unsuitable persons

70. If a foster child is to be received or is being kept —

- (a) in premises which are unsanitary, overcrowded or dangerous;
- (b) by a person who by reason of old age, infirmity, ill-health, negligence, immorality or criminal conduct or for other reasons is unfit to care for the foster child;
- (c) in an environment which is detrimental to the foster child;
- (d) in premises or by a person in contravention of the provisions of this Part,

the Director may —

- (i) if the foster child is the subject of a care order

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placing him or her in foster care, apply to the Court for an order to transfer the foster child to the care of another approved foster parent until the foster child is returned to his or her parent or other arrangements are made with respect to the foster child, or

- (ii) if the foster child is not the subject of a care order placing him or her in foster care, transfer the foster child to another approved foster parent until the foster child is returned to his or her parent or other arrangements are made with respect to the foster child.

Notice to be given of change of residence

71.—(1) A person who has received a foster child and intends to move to another residence, shall, not less than seven days before moving, give notice to the Director of the intended change of residence.

(2) If an immediate change of residence is necessitated by an emergency, a notice under subsection (1) may be given within twenty-eight hours after the change of residence.

Foster parent to give notice

72. A foster parent shall, if a foster child leaves the foster home without permission, notify the Director within twenty-four hours of the departure of the foster child.

**PART VI
ADOPTION**

*Division 1
Adoption Committee*

Establishment of Adoption Committee

73.—(1) There is established an Adoption Committee.

(2) The Adoption Committee shall assist the Minister in giving effect to the provisions relating to adoption in this Part.

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(3) The Minister shall appoint the following persons as members of the Adoption Committee —

- (a) the Director, who is the Chairperson;
- (b) a family case worker;
- (c) a paediatrician;
- (d) a mental health practitioner;
- (e) a representative from the Attorney General’s Chambers;
and
- (f) one representative from a non-governmental organization whose mandate reflects the care and protection of children registered by the Ministry.

(4) A person under subsection (3)(f) must possess the relevant experience, qualifications and expertise in the field of child care, protection and adoption.

Terms of appointment

74. A member of the Adoption Committee holds office for a period not exceeding two years and is eligible for reappointment.

Functions of the Adoption Committee

75. —(1) The Adoption Committee shall act as an advisory body to the Division with respect to matters relating to adoption.

(2) Without limiting the generality of subsection (1), the functions of the Adoption Committee are to —

- (a) assess adoption applications received by it from the Division and make recommendations to the Director as it considers fit including recommendations with respect to the suitability of a person to adopt a child;
- (b) assess the suitability of a person to adopt a child;
- (c) prepare and maintain an Adoption List;
- (d) take appropriate measures to ensure confidentiality of the records of a child, the biological parents of a child and the adoptive parents of the child; and

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- (e) perform other functions as may be necessary to carry out this Act.

(3) For the purpose of carrying out its functions, the Adoption Committee may —

- (a) conduct inquiries and make recommendations for further investigations with respect to a matter;
- (b) establish procedures to conduct interviews; and
- (c) solicit, accept and review reports from individuals or organisations concerned or involved in the adoption of children.

Secretary to the Adoption Committee

76. The Minister shall designate a public officer to serve as the Secretary of the Adoption Committee.

Office of the Adoption Committee

77. The Minister shall designate an office for the Adoption Committee and the records of the Adoption Committee must be kept there securely and confidentially.

Oath or affirmation of secrecy

78. A member of the Adoption Committee shall, before assuming office, take the Oath of Secrecy or Affirmation of Secrecy set out in the Schedule.

Conduct of meetings of the Adoption Committee

79. —(1) The Adoption Committee shall meet once a month at a time and a place the Director decides.

(2) The Chairperson may call a meeting as necessary if five days notice is given to the members of the Adoption Committee, indicating the day, time and place of the meeting.

(3) The Chairperson shall preside at a meeting of the Adoption Committee.

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(4) If the Chairperson is unable to preside at a meeting of the Adoption Committee, he or she shall appoint another member of the Adoption Committee to preside at that meeting.

(5) The quorum for a meeting of the Adoption Committee is four members.

(6) The Adoption Committee shall establish its own procedure.

Report to the Minister

80. The Adoption Committee shall report to the Minister on the conduct of the business, activities and other affairs of the Adoption Committee.

Division 2

Placement of a child for adoption

Placement of a child for adoption

81.—(1) The Division may place a child for adoption with a prospective adoptive parent if it is satisfied that the child be placed for adoption.

(2) A biological parent of a child or other person having the custody of a child may, in a manner determined by the Division, select a single person or a couple with whom he or she wishes to have his or her child placed for adoption as a prospective adoptive parent.

Application for placement of a child

82.—(1) A person may make an application to the Division to have a child placed in his or her home for adoption if that person —

- (a) has attained the age of twenty-five years;
- (b) is at least twenty-one years older than the child, except where he or she is the spouse of the parent of the child or a relative of the child; and
- (c) has been resident in Saint Lucia for at least one year.

(2) An application under subsection (1) must be in the prescribed form and accompanied by the prescribed fee.

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(3) A person may apply to the Court for a waiver of the requirements under subsection (1).

(4) The Court may waive the requirements under subsection (1) if it determines that —

- (a) it is in the best interest of the child to do so; and
- (b) in the particular circumstances of the case, it is desirable to make an adoption order.

Home study assessment

83.—(1) If the Division receives an application under section 82(1), the Division shall conduct a home study assessment on the applicant in order to determine the suitability of the applicant to be an adoptive parent and the capability and willingness of the applicant to assume the responsibility as a parent of the child.

(2) The Division shall compile a report of its findings under the home study assessment conducted under subsection (1) and submit the report to the Adoption Committee together with recommendations of the Division.

Decision of the Adoption Committee

84.—(1) If, having regard to the application for adoption under section 82, the Adoption Committee determines that an applicant —

- (a) is suitable and capable of having a child placed in the home of the applicant for the purposes of adoption, the Adoption Committee shall —
 - (i) immediately inform the Division of its decision,
 - (ii) within two weeks after making its decision, issue a notice of approval to the applicant in the prescribed form, and
 - (iii) enter the name of the applicant on the Adoption List; or
- (b) is not suitable or capable of having a child placed in the home of the applicant for the purposes of adoption, the Adoption Committee shall immediately —

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- (i) inform the Division of its decision,
- (ii) issue a notice of refusal to the applicant in the prescribed form, and
- (ii) attach the reasons for its decision.

(2) The Division may place a child for adoption with a prospective adoptive parent if the Adoption Committee makes a decision under subsection (1)(a).

Review of decision of Adoption Committee

85. An applicant who is aggrieved by a decision of the Adoption Committee made under section 84, may, not later than two weeks after the date of receipt of the written notice of the decision from the Adoption Committee, make an application to the Court in the prescribed form for review of that decision.

Confidentiality of information

86.—(1) A member of the Adoption Committee shall not, except in the course of, and for the purpose of the performance of his or her duties, disclose to another person anything that comes to his or her knowledge related to a matter which is to be, is being or has been determined by the Adoption Committee.

(2) A member of the Adoption Committee who contravenes subsection (1) is liable to be dismissed as a member of the Adoption Committee or, in the case of all members of the Adoption Committee is liable on summary conviction to a fine not exceeding ten thousand dollars or imprisonment for a term not exceeding one year.

Adoption List

87. The Adoption Committee shall prepare and maintain an Adoption List in which it shall record —

- (a) the name of each prospective adoptive parent, in a form that —
 - (i) sets out the chronological order in which applications were received by the Adoption Committee,

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- (ii) shows a record of particulars, as the Adoption Committee thinks necessary to assist it in the placement of a child for adoption with an applicant;
- (b) the name or identification of each prospective child available for adoption, in a form that —
 - (i) sets out the chronological order in which each child was approved for adoption, and
 - (ii) shows a record of particulars, the Adoption Committee thinks necessary to assist it in the placement of the child for adoption.

Adoption Committee to have regard to Adoption List

88. In making arrangements for and in relation to the placement of a child for adoption, the Adoption Committee shall, having regard to the Adoption List and without prejudice to its duty, consider other relevant matters, including —

- (a) the welfare and interests of the child; and
- (b) the wishes of the parent of the child and the prospective adoptive parent.

Duties of the Division prior to placement

89.—(1) Before a child is placed for adoption with a prospective adoptive parent, the Division shall —

- (a) provide counselling and information on adoption and alternatives to adoption to the biological parents of the child or another person having care and protection of the child who is requesting a placement of that child for adoption;
- (b) if a biological parent of the child wishes to select the child's prospective adoptive parent, provide the biological parent with information about the prospective adoptive parent;
- (c) obtain as much information as possible about the medical and social history of the biological parents of the child and preserve the information for the child;

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- (d) give the prospective adoptive parent information about the medical and social history of the biological parents of the child;
- (e) ensure that the child —
 - (i) if sufficiently mature, has been counselled about the effects of adoption, and
 - (ii) if twelve years of age or older, has given consent to the adoption;
- (f) make reasonable efforts to obtain consent under section 99;
- (g) enter into a placement agreement with the prospective adoptive parent under subsection (2).

(2) A placement agreement under subsection (1)(g) must —

- (a) be for a period of three months;
- (b) be made in the prescribed form; and
- (c) specify the terms and conditions of the placement and the manner and the circumstances under which the placement agreement may be revoked.

(3) The Division may reduce or extend the placement period if it is in the best interest of the child to do so.

(4) The date on which a placement agreement comes into effect is the date on which the child is placed in the home of the prospective adoptive parent.

Supervision of placement

90.—(1) If a placement agreement has been entered into under section 89, and a child is placed in the home of a prospective adoptive parent, the Division shall appoint a person to supervise the placement of the child.

(2) At the end of a placement period, the person appointed under subsection (1) shall prepare a post placement report which shall be submitted to the Division for approval.

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- (3) The post placement report required under subsection (1) shall provide information and professional assessment concerning —
- (a) the apparent suitability of the placement of the child in the home of the prospective adoptive parent; and
 - (b) the likelihood that the welfare of the child will be satisfactorily provided for in the long term.
- (4) The post placement report must include —
- (a) the relevant circumstances of the placement;
 - (b) the relations between the child and the prospective adoptive parents and members of the household of the prospective adoptive parents;
 - (c) the care the child is receiving;
 - (d) whether the child understands the meaning of adoption;
 - (e) whether the child has views on the proposed adoption and proposed change of the name of the child; and
 - (f) further information as the Court requires for the purpose of considering an application for an adoption order made under section 95.

Transfer of care responsibility during placement

91. If a child is placed in the home of a prospective adoptive parent, the Director retains the care responsibility of the child —

- (a) until an adoption order is made;
- (b) if the consent to the adoption is withdrawn; or
- (c) if the placement agreement is revoked under section 89(2).

Return of child to child care service

92. If an application for an adoption order in respect of a child is refused, the prospective adoptive parent shall, within seven days of the date on which the application was refused return the child to the child care service and the manager of the child care service shall receive the child into the child care service and keep the child there

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for the unexpired period, if any, of the term for which he or she was originally sent to the child care service.

Contravention of placement requirements

93.—(1) Unless a child has been placed by the Division under this Act, a person shall not —

- (a) place or arrange the placement of a child for the purposes of adoption; or
- (b) receive a child in his or her home for the purpose of adoption.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars or imprisonment for a term not exceeding two years.

Advertising

94.—(1) A person shall not publish or cause to be published an advertisement dealing with the placement of a child for adoption in any form.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars or imprisonment for a term not exceeding two years.

Division 3
Adoption Proceedings

Application for adoption order

95.—(1) Within four weeks of the decision of the Adoption Committee, a prospective adoptive parent with whom a child has been placed for adoption may make an application to the Court for an adoption order under this Part.

(2) An application under subsection (1) must be accompanied by the following documents —

- (a) the consent required for the adoption, an order dispensing with consent or an application to dispense with consent;

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- (b) the birth certificate of the child or if it cannot be obtained, satisfactory evidence of the facts relating to the birth of the child;
- (c) a copy of the report of the home study assessment;
- (d) a copy of the notice of approval of application for placement under section 84;
- (e) a copy of the placement agreement and a statement from the Director that applicable placement requirements as stipulated in the placement agreement have been met; and
- (f) other information prescribed or required by the Court.

(3) The Court may dispense with the need to provide a document under subsection (2).

(4) If a parent or other person having custody of a child requires that the parentage or the surname of the child be kept secret, the documents referred to in subsection (2)(a) and (b) must be sealed or masked to prevent the identification of the biological parent of the child or the disclosure of the surname of the child.

(5) If the biological parent of a child does not know the identity of a prospective adoptive parent of his or her child and an applicant does not know the identity of the biological parent of the child he or she is desirous of adopting, the Court may order that the identity of either party or information that could reveal their identities not be disclosed in a document.

(6) The Court may require the Division to inquire into matters respecting an application for an adoption order that the Court considers necessary.

Notice of application to Adoption Committee

96.—(1) At the time of making an application to the Court under this Part, the prospective adoptive parent shall send a notice of the application in the prescribed manner to the Adoption Committee, together with supporting documents.

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(2) On receipt of the notice of the application made under subsection (1) the Adoption Committee shall submit the following to the Court —

- (a) a copy of the report of the home study assessment conducted on the prospective adoptive parent;
- (b) a copy of the post placement report prepared and approved under section 90;
- (c) certification in the prescribed manner, that the prospective adoptive parent has been resident in Saint Lucia for at least one year;
- (d) a copy of the placement agreement and a statement from the Director that applicable placement requirements as stipulated in the placement agreement have been met;
- (e) a recommendation on an issue relating to adoption which the Adoption Committee considers necessary; and
- (f) other information which the Adoption Committee considers necessary to enable the Court to determine whether the proposed adoption is in the best interest of the child.

Search of documents

97. An application for an adoption order made under this Act or a document filed in Court in connection with the application may be searched by an order of the Court.

Hearing

98. The hearing of an application made under section 95 must be held in private and access to the files of the Court concerning an application for adoption is restricted unless the Court determines otherwise, having regard to the best interest of the child.

Consent to be obtained prior to adoption

99.—(1) Subject to section 100, the Court shall not make an adoption order in relation to a child unless consent is obtained from —

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- (a) the child, if the child is twelve years of age or over;
- (b) the biological parents of the child; and
- (c) if applicable, a person having custody of the child.

(2) Consent given by the biological mother to the making of an adoption order is invalid if it is given less than six weeks after the birth of the child.

(3) A biological parent who is not married and who is under the age of sixteen years cannot give valid consent to the adoption of his or her child.

(4) If a child from another jurisdiction is to be placed for adoption in Saint Lucia, the laws of that jurisdiction apply with respect to the consent required for placing the child for adoption.

(5) Notwithstanding subsections (2) and (3), the Court may approve an adoption if it is in the best interest of the child.

Form of consent

100.—(1) Consent to the adoption of a child shall be in writing and contain particulars as prescribed.

(2) If consent to the adoption of a child in Saint Lucia is required from a person who resides outside Saint Lucia, the consent is sufficient for the purposes of this Act if it is in a form that meets the requirements for the consent to adoption in the jurisdiction in which the person resides.

Dispensing with consent

101.—(1) On application, the Court may, by order, dispense with consent required under section 99 if —

- (a) the Court is satisfied that it is in the best interest of the child to do so;
- (b) the person or child whose consent is to be dispensed with is not capable of giving an informed consent;
- (c) reasonable but unsuccessful attempts have been made to locate the person whose consent is to be dispensed with;

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- (d) the person whose consent is to be dispensed with
 -
 - (i) has abandoned or deserted the child,
 - (ii) is not capable of caring for the child, or
 - (iii) has not made reasonable efforts to meet his or her parental obligations with respect to the child; or
- (e) other circumstances exist which, in the opinion of the Court, justify dispensing with consent.

(2) Before making an order under this section, the Court may consider a recommendation in a report filed by the Adoption Committee, the Division or a parent of the child.

(3) An application under this section may be made without notice to another person and may be joined with another application which may be made under this Act.

Withdrawal of consent

102.—(1) Subject to subsection (5), a person who has consented to the adoption of a child may withdraw his or her consent in the prescribed form or by notice given to the Division or Adoption Committee before an adoption order is made.

(2) As soon as possible after receipt of the withdrawal in subsection (1), the Division or Adoption Committee shall make all reasonable efforts to give notice of the withdrawal to each person who consented to the adoption and to the prospective adoptive parent.

(3) If the person who withdrew his or her consent had custody of the child immediately before the giving of his or her consent, the child shall be returned to that person as soon as possible after the receipt of the withdrawal under subsection (1).

(4) If a child is required to give his or her consent to an adoption, that child may, before the adoption order is made by the Court, withdraw his or her consent in the prescribed form.

(5) The withdrawal of consent is ineffective if it is given after an adoption order is made.

*Child (Care, Protection and Adoption) Act***Withdrawal of consent given outside Saint Lucia**

103.—(1) If consent to the adoption of a child residing in Saint Lucia was given by a person under the laws of another jurisdiction, the consent given must be withdrawn in accordance with the laws of that jurisdiction.

(2) Subsection (1) does not operate to limit the right of a child to withdraw his or her consent under section 102.

Withdrawal of consent by the Court

104.—(1) Subject to subsection (2), if an application for an adoption order has been made after consent to the adoption of a child has been given under this Act, a person who has provided consent under section 99 may make an application to the Court to have his or her consent withdrawn and that consent may only be withdrawn with the approval of the Court.

(2) An application to the Court under subsection (1) must be made before an adoption order is granted.

(3) If a child has not been placed with a prospective adoptive parent, an application to the Court for the withdrawal of consent is not required and the approval of the withdrawal may be given by the Division.

(4) A notice of an application to the Court under subsection (1) shall be served on the Division and each person who consented to the adoption.

Change of name

105.—(1) An adoptive parent may request the Court to change the given name or the surname of the child or both.

(2) If a request is made under subsection (1), the Court may change the given name or the surname of the child or both, if —

- (a) the child is five years or older and his or her views are considered on the matter; and
- (b) the child is twelve years or older and gives his or her consent.

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(3) The consent of a child may be obtained for the purposes of this section even if the Court has dispensed with the consent of the child for adoption.

(4) Before changing the given name or surname of a child the Court shall consider factors that it considers relevant, including the level of maturity or the level of understanding of the child, in determining the weight that it should give to the views of the child.

Interim adoption order

106.—(1) Subject to this section, the Court may, on an application for an adoption order, postpone the determination of the application and make an interim adoption order giving the custody of the child to the prospective adoptive parent for a period not exceeding two years, by way of a probationary period, on terms as regards parental responsibility and otherwise as the Court determines.

(2) Subject to the power of the Court to dispense with consent, consent required with respect to an adoption order is necessary for an interim adoption order.

(3) An interim adoption order is not an adoption order within the meaning of this Act.

Adoption order

107.—(1) The Court may, on consideration of the documents and evidence filed under section 96, make an adoption order if it is satisfied that —

- (a) the requirements of this Act have been complied with;
- (b) the prospective adoptive parent is able to fulfil the obligations and exercise parental responsibility in relation to the child; and
- (c) the best interest of the child will be served by the granting of the adoption order.

(2) Without limiting subsection (1), the Court shall —

- (a) take into account the wishes or feelings expressed by the child, in light of the age, maturity and understanding of the child; and

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- (b) consider whether there is a need for arrangements to allow a person to have contact with the child and to that effect consider existing or proposed arrangements and obtain views of the parties to the proceedings.

(3) An adoption order must contain a direction to the Registrar to make in the Register of Adoptions an entry and must specify the particulars to be entered.

(4) If an adoption order is made by the Court, the Registrar shall cause compliance to be made with the directions contained in the order in regard to marking an entry in the Register of Births with the word “Adopted” and in regard to making the appropriate entry in the Register of Adoptions.

(5) An adoption order may be made even if the child to be adopted is already an adopted child.

(6) If an adoption order is made by the Court in respect of a child who has previously been the subject of an adoption order made under this Act or the repealed Act, the order must contain a direction to the Registrar to cause the previous entry in the Register of Adoptions to be marked with the word “Re-adopted”.

Effect of adoption order

108.—(1) If an adoption order is made under section 107 —

- (a) the adopted child becomes the child of the adoptive parent and the adoptive parent becomes the parent of the adopted child;
- (b) the adopted child has the same rights in relation to the adoptive parent, as a child born to the adoptive parent;
- (c) the adoptive parent has the same parental responsibility to the adoptive child as the parent of a child born to the adoptive parent;
- (d) the adopted child ceases to be regarded as the child of the biological parent and the biological parent ceases to have parental responsibility with respect to the child, except a biological parent

Child (Care, Protection and Adoption) Act

who remains as a parent jointly with the adoptive parent;

- (e) a person having custody of the child ceases to have custody of the child; and
- (f) a person whose consent is required under this Act, ceases to have a right or obligation to consent on a matter with respect to that child.

(2) If a child is adopted for a subsequent time —

- (a) the child becomes the child of the subsequent adoptive parent;
- (b) the subsequent adoptive parent becomes the parent of the child;
- (c) the adoptive parent, immediately before the subsequent adoptive parent, ceases to have parental responsibilities with respect to the child except an adoptive parent who remains as a parent jointly with the subsequent adoptive parent; and
- (d) a person having custody of the child ceases to have custody of the child.

(3) An adoption order does not affect an interest in property or a right of the adopted child that was vested in the child before the date of the adoption order.

(4) For the purposes of any law relating to incest and the prohibited degrees of marriage, subsection (1) does not remove a person from a relationship by blood which, but for this section, would have existed between that person and another person.

(5) In a will or other document made at any time before or after the commencement of this Act, and whether the maker of the will or document is alive on that day or not, a reference to a person or group of persons described in terms of relationship by blood or marriage to another person is deemed to refer to or include a person who comes within the description as a result of an adoption, unless the contrary is expressed.

Child (Care, Protection and Adoption) Act

(6) Subject to subsection (7), if an adoption order is made in respect of a child, a maintenance order or an affiliation order in force with respect to the child and an agreement under which the biological father of the child has undertaken to make payments specifically for the benefit of the child, ceases to have effect.

(7) A biological father of a child shall pay arrears of maintenance or affiliation payments specifically for the benefit of the child which are due under a maintenance order, an affiliation order or agreement at the date of the adoption order.

Submission of certified copy of adoption order

109.—(1) If an adoption order is made, the Court shall send a certified copy of the order to —

- (a) the Registrar; and
- (b) the Division.

(2) On receipt of an adoption order under subsection (1), the Registrar shall register the order under this Act.

Revocation of adoption on marriage of biological parents

110. If a biological parent of a child who has adopted the child marries the other biological parent of the child, the Court by which an adoption order was made may revoke the adoption order, on application of the biological parents.

Division 4
Registration of Adoption Orders

Register of Adoption and other registers

111.—(1) The Registrar shall make entries in the Register of Adoptions as may be directed to be made in it under an adoption order.

(2) A certified copy of an entry in the Register of Adoptions, if purporting to be sealed or stamped with the seal or stamp of the Office of the Registrar is, without further or other proof of that entry, receivable as evidence of the adoption to which it relates.

Child (Care, Protection and Adoption) Act

(3) If the entry in the Register of Adoptions under subsection (2) contains a record of the date of the birth or the country of the birth of the adopted child, it is receivable as evidence of that date or country in all respects as if the copy were a certified copy of an entry in the Register of Births.

(4) The Registrar shall cause an index of the Register of Adoptions to be made and kept in the Registrar's office and a person is entitled to —

- (a) search the index; and
- (b) have a certified copy of an entry in the Register of Adoptions and subject to the same terms, conditions and Regulations as to payment of fees or otherwise as are applicable under the Civil Status Act, Cap. 4.02 in respect of —
 - (i) a search in a register kept in the Registrar's office, and
 - (ii) the supply from the office of certified copies of entries in the Register of Births.

(5) The Registrar shall keep other registers and books and make entries in the other registers as may be necessary to record and make traceable the connection between an entry in the Register of Births which has been marked "Adopted" under this Act and a corresponding entry in the Register of Adoptions.

(6) The registers and books kept under subsection (5) and index of the registers and books are not open to public inspection and search.

(7) The Registrar shall not furnish a person with information contained in or with a copy or extract from the registers or books, except under an order of a Court.

(8) For the purposes of compliance with the requirements of subsection (2) —

- (a) if the precise date of the birth of a child is not proved to the satisfaction of the Court, the Court shall determine the probable date of the birth of the child and the date determined must be specified in the order as the date of birth of the child; or

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- (b) if the given name or surname which the child is to bear after the adoption differs from his or her original given name or surname, the new given name or surname must be specified in the order instead of the original given name or surname.

Post Register of Adoption

112.—(1) The Adoption Committee shall establish and maintain a Post Register of Adoptions with respect to adoption and all information relating to adoption must be recorded in the Post Register of Adoptions.

(2) Except as may be prescribed, no record or copy of a record kept and maintained under subsection (1) is open to inspection by, or otherwise available to, a person.

*Division 5
Inter-country Adoptions*

Approval for inter-country adoptions

113.—(1) A person who is not a resident of Saint Lucia may make an application to the Adoption Committee for the adoption of a child resident in Saint Lucia as provided for in this Part.

(2) An application under subsection (1) shall be made by the applicant and presented by himself or herself or through an attorney-at-law.

(3) An application under subsection (2) must be accompanied by a police certificate from the applicant's place of ordinary residence and an affidavit sworn by the applicant in the prescribed form that satisfies the Adoption Committee that the applicant —

- (a) does not have a criminal record;
- (b) is a fit and proper person to adopt the child and has adequate means to maintain and look after the child in an appropriate manner;
- (c) has a current recommendation from the competent body responsible for adoption in his or her country of origin; and

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(d) that his or her country of origin will respect and recognize an adoption order made under this Act.

(4) For the purposes of an application under this section, the Division shall seek verification in writing of the recommendation referred to in subsection (3)(c) at the cost to the applicant.

(5) The Division may, after receiving the verification under subsection (4), recommend that the applicant make an application to the Court for an adoption order under this Act.

(6) If an application to the Court is made pursuant to a recommendation made by the Adoption Committee under subsection (5), the Court may request the Adoption Committee to transmit all or a record relevant to the matter of the adoption and the record is admissible as evidence before the Court in the proceedings and the Court may accept the record of the Adoption Committee without further proof.

(7) The Court may require some other person or authority to submit a report in respect of the application made under this section.

(8) If an application has been made to the Court for the adoption of a child under this section, the Court shall proceed in accordance with this Act.

(9) An adoption order made under subsection (10) remains a provisional order for twelve months during which time quarterly reports shall be submitted to the Court by the relevant competent authority in the country where the adopted child lives, on the status, and progress of the adopted child.

(10) On the expiration of the twelve-month period, in subsection (9), the Court shall grant the adoption order if it is satisfied that it is in the best interest of the child to do so.

(11) The Court may, in the matter of adoption of a child by a person who is not ordinarily resident in Saint Lucia for the transfer of the child abroad, make exceptions or dispense with requirements or formalities as it considers necessary, if it is satisfied that the proposed adoption for transfer abroad is in the best interest of the child and that under the circumstances the case should be disposed of expeditiously.

*Child (Care, Protection and Adoption) Act***Exception**

114. Section 113 does not apply to a child who is brought into Saint Lucia for adoption by a relative of the child or by a person who will become an adoptive parent jointly with a biological parent of the child.

Memorandum of understanding

115. The Government may enter into a memorandum of understanding or other arrangement with the government of another jurisdiction in order to allow for the —

- (a) collaboration and exchange of information with a competent authority in that jurisdiction that is responsible for adoption; and
- (b) establishment of safeguards to ensure that an inter-country adoption takes place in the best interest of the child and with respect to the fundamental rights of the child as recognized by law.

Provision and exchange of information

116.—(1) The Minister may, in accordance with the prescribed requirements —

- (a) furnish a person with information relating to the safety, welfare and well-being of a particular child or class of children; and
 - (b) direct a person to furnish the Minister with information relating to the safety, welfare and well-being of a particular child or class of children.
- (2) A person to whom a direction is given under subsection (1) shall comply promptly with the requirements of the direction.
- (3) If information is furnished under subsection (1) —
- (a) the furnishing of the information is not, in proceedings before a court, tribunal or committee, to be held to constitute a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct;

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- (b) liability for defamation is not incurred because of the furnishing of the information; and
- (c) the furnishing of the information does not constitute a ground for civil proceedings for malicious prosecution or for conspiracy.

(4) A reference under subsection (3) to information furnished under subsection (1) extends to information furnished in good faith and with reasonable care.

(5) A law in force in Saint Lucia that prohibits or restricts the disclosure of information does not operate to prevent the furnishing of information or affect a duty to furnish information, under this section.

(6) This section does not affect an obligation or power to provide information under this Act.

Division 6
General

Matters to be considered in making decision on adoption

117. The Adoption Committee and the Court in the making of a decision with respect to the adoption of a child shall have regard, as far as practicable or appropriate, to the following —

- (a) adoption is to be regarded as a service for the child, not for a person wishing to acquire and care for the child;
- (b) a person does not have the right to adopt a child;
- (c) if a child is able to form his or her own views on a matter concerning his or her adoption, he or she shall be given an opportunity to express those views freely and those views are to be given due weight in accordance with the age, maturity, developmental capacity of the child and the circumstances; and
- (d) the given name of a child, identity, religious ties and cultural identity must, as far as possible, be identified and preserved.

*Child (Care, Protection and Adoption) Act***Making of payment prohibited**

118.—(1) A person shall not give or receive, agree to give or receive a payment or reward to procure or assist in procuring a child for the purposes of adoption.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding twenty thousand dollars or to imprisonment for a term not exceeding five years.

(3) Subsections (1) and (2) do not apply in respect of —

- (a) a prescribed fee under this Act; or
- (b) fees charged by an attorney-at-law for legal services.

**PART VII
MISCELLANEOUS**

Care plan

119. — (1) A care plan must make provision 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 or her parent;
- (b) the kind of placement proposed to be sought for the child including —
 - (i) how it relates to permanency planning for the child,
 - (ii) an interim arrangement that is proposed for the child pending permanent placement and the timetable proposed for achieving a permanent placement;
- (c) the arrangements for contact between the child and his or her parent, a relative, a friend and another person connected with the child; and
- (d) the health, educational and another service that needs to be provided to the child.

Child (Care, Protection and Adoption) Act

(2) A care plan must be made as far as possible with the agreement of the parent of the child concerned.

(3) A care plan is enforceable if it —

- (a) is adopted by the Court;
- (b) is developed by the Director with the parent of the child and the child, where applicable; or
- (c) represents a set of proposals developed by the Director which is in the best interest of the child.

(4) A care plan under subsection (1) must include the following

- (a) a description of the minimum outcomes the Director requires a parent to achieve before it is safe for reunification;
- (b) a method to assist the child and his or her parent to examine the circumstances that have led to the making of the order of the Court and to take steps to resolve or ameliorate the problem so as to ensure reunification;
- (c) details of the services that the Director will arrange for or provide to the child in order to facilitate his or her reunification;
- (d) details of other services that the Court may request from other government departments or funded non-government agencies to provide to the child or the family of the child or both, in order to facilitate reunification;
- (e) an interim arrangement that is proposed for the child pending permanent placement and the timetable proposed for achieving a permanent placement;
- (f) a statement of the length of time during which permanency may be actively pursued;
- (g) the type of permanency sought by the Division;
- (h) the arrangements for contact between the child and his or her parent, a relative, a friend, and another person connected with the child; and

Child (Care, Protection and Adoption) Act

- (i) the health, educational and another service that needs to be provided to the child.

(5) A care plan must aim to provide a child with a stable placement which offers long term security and that —

- (a) meets the needs of the child; and
- (b) avoids the instability and uncertainty arising through a succession of different placements or temporary care arrangements.

Releasing confidential information to unauthorised person

120.—(1) A person shall not release information that is deemed confidential under this Act to an unauthorised person.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars or imprisonment for a term not exceeding two years.

Limitation of liability

121. A person acting in the course of the exercise or performance of a power, duty or function under this Act is not personally liable for damage suffered by a person in consequence of an act or thing —

- (a) done in good faith; or
- (b) omitted to be done in good faith.

Costs

122. The Court shall not make an order for costs in proceedings relating to the care and protection of a child unless there are exceptional circumstances that justify the Court in doing so.

Appeals

123. An appeal from a decision of the Court lies with the Court of Appeal.

Regulations

124.—(1) The Minister may make Regulations for giving effect to this Act.

Child (Care, Protection and Adoption) Act

(2) Without prejudice to the generality of subsection (1), the Minister may make Regulations —

- (a) respecting procedures for and access to, and the disclosure of, information obtained in the administration of this Act;
- (b) respecting reports of investigations;
- (c) respecting the establishment and maintenance of a child abuse register;
- (d) providing for temporary care arrangements;
- (e) prescribing forms to be used under this Act;
- (f) prescribing the fees payable for applications made or other things done under this Act;
- (g) prescribing the procedures and the terms and conditions for placement arrangements;
- (h) respecting the maintenance of records;
- (i) providing for the establishment and the operation of a child care service;
- (j) prescribing requirements as to the accommodation and equipment to be provided in a child care service;
- (k) prescribing the medical arrangements to be made for protecting the health and well-being of a child in a child care service;
- (l) regulating the management of a child care service;
- (m) respecting the regular inspection of a child care service;
- (n) to ensure the safety, welfare and well-being of a child in a child care service;
- (o) to promote certain standards for the delivery of a child care service;
- (p) respecting the qualifications necessary for employment with a child care service;

Child (Care, Protection and Adoption) Act

- (q) respecting the Post Register of Adoptions;
- (r) respecting home study assessments and post placement reports;
- (s) governing the review of decisions made by the Adoption Committee;
- (t) respecting foster care; and
- (u) respecting other matters the Minister considers necessary or advisable to effectively carry out the purposes of this Act.

Repeal

125.—(1) The Adoption Act, Cap.4.07 is repealed.

(2) Until replaced by subordinate legislation made under this Act, subordinate legislation made under the repealed Act continues in force with the necessary modifications to bring them into conformity with this Act

Transitional provisions

126.—(1) If —

- (a) an application for an order was made under the repealed Act, that application continues pursuant to and in conformity with this Act; and
- (b) an order has been made in respect of a child under the repealed Act, this Act applies if that order is brought before the Court for review.

(2) If a child was placed for adoption under the repealed Act, the repealed Act continues to apply to all matters relating to the adoption of that child by the prospective adoptive parent.

(3) If a parent consented to the adoption of a child under the repealed Act and the child is placed for adoption with a prospective adoptive parent on the commencement of this Act, the repealed Act continues to apply to all matters relating to the adoption of the child by that prospective adoptive parent.

Child (Care, Protection and Adoption) Act

(4) A valid consent given under the repealed Act continues to be valid for the purposes of this Act.

(5) An order dispensing with consent under the repealed Act is valid for the purposes of this Act.

SCHEDULE

(Section 78)

Oath of Secrecy

I, _____, member of the Adoption Committee, do solemnly and sincerely swear that I will faithfully and honestly fulfil the duties that devolve on me by reason of my membership on the Adoption Committee and that I will not, without due authority, disclose or make known a matter that comes to my knowledge by reason of such membership. So help me God.

Affirmation of Secrecy

I, _____, member of the Adoption Committee, do solemnly affirm and declare that I will faithfully and honestly fulfil the duties that devolve on me by reason of my membership on the Adoption Committee and that I will not, without due authority, disclose or make known a matter that comes to my knowledge by reason of such membership.

Passed in the House of Assembly this 20th day of November, 2018.

ANDY G. DANIEL,
Speaker of the House of Assembly

Passed in the Senate this 22nd day of November, 2018.

JEANNINE GIRAUDY-MCINTYRE,
President of the Senate.

