

REPUBLIC OF VANUATU

BILL FOR THE CHILD PROTECTION ACT NO. OF 2024

Explanatory Note

This Bill provides for the protection of children in Vanuatu and for related matters.

Over recent years the reported levels of child abuse and violence in Vanuatu has increased. Studies, research and consultations undertaken in Vanuatu over the past years identify a range of abuses faced by children. These include sexual abuse, physical abuse, neglect and harmful traditional practices. Children are made significantly more vulnerable to abuses during emergencies, which is particularly relevant in a country that is as disaster prone like Vanuatu.

This Bill gives effect to the Convention on the Rights of a Child, the National Child Protection Policy of 2016 and the National Sustainable Development Plan. The Bill establishes a child protection system, and provides for the prevention of and response to all forms of violence and abuse of children.

The Bill provides for the following matters:

- (a) the definition of a child in need of protection and provides that any function performed or powers exercised under this Act must always be done in the best interest of the child;
- (b) the functions of the Ministry of Justice and Community Service as the lead agency for the management and coordination of child protection services;
- (c) the legal framework for a partnership approach between Government agencies, non-government organizations, traditional leaders, churches, and other community groups to support basic service delivery for children and their families;
- (d) the responsibilities of parents to safeguard and promote the protection and wellbeing of their child;
- (e) the procedures for reporting, referral, and responding to children in need of protection, and the obligation of Government agencies to supply necessary information to facilitate the granting of child protection orders;

- (f) the manner of assessments, procedures, and mediation deemed necessary and appropriate to ensuring the promotion of the child's safety and wellbeing;
- (g) the powers for Child Protection Officers to intervene and take action to protect a child, when the current environment is deemed on reasonable grounds to be dangerous;
- (h) the granting or revoking a Child Protection Order;
- (i) the establishment of a legal framework to allow alternative care options for children who are without parental care or who cannot, for their own safety, be allowed to live with their parents.

Minister of Justice and Community Services



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REPUBLIC OF VANUATU

BILL FOR THE CHILD PROTECTION ACT NO. OF 2024

An Act to provide for the protection of children and for related matters.

Be it enacted by the President and Parliament as follows-

PART 1 PRELIMINARY MATTERS

1 Interpretation

In this Act unless the contrary intention appears:

Chief means a Chief recognised by the Malvatumauri Council of Chiefs;

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

child protection focal point means a person appointed under section 10;

child protection officer means a person who is employed as a child protection officer by the Public Service Commission;

child protection order means an order made by a Court under section 39;

child protection service provider means any person who provides a service to safeguard the safety or wellbeing of children registered under section 12;

Coordinator means the National Child Social Welfare Coordinator appointed by the Public Service Commission;

Court means:

- (a) the Supreme Court; or
- (b) the Magistrates Court; or

(c) the Island Court;

Director General means the Director General of the Ministry responsible for child protection;

emotional abuse means acts or omissions causing or likely to cause psychological or emotional suffering to a child, including threatening, scaring, ridiculing, or other non-physical forms of degrading or rejecting treatment;

family, in relation to a child, means:

- (a) the parents or primary caregivers of the child; or
- (b) a brother, sister, aunt, uncle, niece, nephew, cousin, grandparent or great grandparent of the child, whether through blood, marriage or adoption; or
- (c) any other person who is treated by the child as a family member;

hazardous or exploitive labour in relation to a child includes any work that is:

- (a) inappropriate for the child's age; or
- (b) hazardous to the child's physical or mental health; or
- (c) interferes with the child's education; or
- (d) is contrary to labour and employment laws;

interim child protection order means an order made by a Court under section 29;

Minister means the Minister responsible for child protection;

neglect means the failure of a parent to provide for the child's physical, intellectual, emotional or social needs, including any special needs in relation to disability, that has or is likely to result in harm to the child's health or development;

parent, in relation to a child, means

- (a) the mother or father of a child; or

- (b) a step-parent; or
- (c) an adopted parent; or
- (d) a primary caregiver; or
- (e) a person to whom custody of a child has been granted by a Court or by agreement; or
- (f) a person who has any of the above relationships with a child through a recognised custom adoption;

physical abuse means any act of violence or maltreatment that results in physical wounds or bodily injury or otherwise causes physical harm to the child;

police officer means a member of the Vanuatu Police Force;

safe family means one or more persons, whether related to the child or not, who have been approved by the Director General to care for a child in need of protection;

safe house means any facility including a health care facility or other place that has been approved by the Director General as being able to provide temporary care for a child in need of protection;

safe place means the home of a safe family, a safe house, a health care facility, or any other place approved by the Director General to receive and temporarily care for a child;

sexual abuse means engaging in any sexual activity with a child:

- (a) who has not reached the legal age to consent to sexual activities; or
- (b) where such activity is made through coercion, force or threats; or
- (c) in circumstances where there is a relationship of trust, authority or dependency between the child and the other person involved in the activity; or
- (d) that is otherwise contrary to the laws of Vanuatu;

sexual exploitation of a child means:

- (a) the involvement of a child in sexual activity for remuneration or any other form of consideration; and
- (b) the use of a child in pornographic performances and materials.

2 Child in need of protection

For the purpose of this Act a child is in need of protection if:

- (a) the child has been orphaned or abandoned and appropriate arrangements have not been made for his or her care; or
- (b) the parents of the child are unwilling or unable to care for the child; or
- (c) the child is being, or is likely to be, significantly harmed due to any of the following:
 - (i) physical abuse;
 - (ii) emotional abuse;
 - (iii) neglect;
 - (iv) sexual abuse;
 - (v) sexual exploitation;
 - (vi) hazardous or exploitive labour;
 - (vii) online abuse; or
- (d) the child is at risk of forced marriage or marriage before attaining the legal age of marriage; or
- (e) the child has been displaced, traumatized or separated from his or her family as a result of an emergency, natural disaster or conflict; or
- (f) the child is under the age of criminal responsibility as set out under the Penal Code [CAP 135] and has committed a criminal offence; or

- (g) the child is behaving in a manner that is, or is likely to be, harmful to the child or to others, and the child's parents are unable or unwilling to address the child's behaviour; or
- (h) the child is being, or is likely to be, significantly harmed due to discrimination, violence or bullying based on their identity, characteristics, or special needs.

3 Principal considerations

A person who performs any functions or exercises any powers under this Act must consider the following principal considerations:

- (a) the best interest of the child is the primary consideration; and
- (b) the preferred way of ensuring a child's wellbeing and protection is by supporting the child's family; and
- (c) the families and community of a child must assist in taking action to respond to concerns about the wellbeing and protection of that child; and
- (d) in protecting a child, the child must be consulted about, and be given the opportunity to take part in making decisions that affect them to the maximum extent possible, taking into consideration their age, maturity and development capacity; and
- (e) wherever practicable and appropriate, decisions about actions to protect a child must be reached by consensus, with active involvement of the child, the child's family and community members, and the intervention of the Court is to be used only as a last resort; and
- (f) in protecting a child, the person must only take action that is warranted in the circumstances; and
- (g) in protecting a child, a child must be removed from his or her home only where necessary in his or her best interest; and
- (h) if a child is removed from his or her home, support services must be given to the child and the child's family for the purpose of allowing the child to return to his or her family, if the return is in the child's best interests; and
- (i) a child's privacy and dignity must be respected and protected; and

- (j) the cultural values and beliefs and individual identity of the child must be taken into account when making any decision in relation to the protection of a child; and
- (k) any decision in relation to a child must be appropriate to the age, gender, character, condition, status, and special needs of that child; and
- (l) all proceedings under this Act must be conducted and completed as soon as practicable.

4 Determining the best interest of a child

For the purpose of this Act, in determining the best interests of a child, a person who performs any functions or exercises any powers under this Act must have regard to the following:

- (a) any views or wishes expressed by the child; and
- (b) the child's age, maturity, gender, background and family relationships; and
- (c) the importance of the child's development in having a positive relationship with a parent and a secure place to live in as a member of a family; and
- (d) the child's physical, emotional and educational needs; and
- (e) any disability that the child has; and
- (f) any interests expressed by either or both of the parents of the child; and
- (g) the need to preserve and promote the child's cultural, linguistic and religious heritage and identity; and
- (h) the need to protect the child from physical or psychological harm caused, or that may be caused, by being subjected or exposed to violence or abuse.

PART 2 CHILD PROTECTION SERVICES

5 Functions of the Director General relating to child protection services

In addition to other functions under this Act, the Director General has the following functions in relation to child protection services:

- (a) to manage and coordinate child protection, early intervention and response services; and
- (b) to ensure that collaboration is made between government agencies, non-government organisations, religious organisations, Chiefs and community leaders in the implementing child protection services; and
- (c) to strengthen community mechanisms for child protection; and
- (d) to develop mechanisms for identification, reporting and inter-agency response to children in need of protection; and
- (e) to ensure a timely and appropriate response to suspected cases of children in need of protection; and
- (f) to formulate policies, guidelines, plans and standards for child protection services; and
- (g) to approve alternative care providers; and
- (h) to monitor and evaluate the services provided under this Act; and
- (i) to maintain an information management system on children in need of protection; and
- (j) to promote the development and implementation of child safeguard policies in all sectors; and
- (k) to coordinate child protection in emergencies; and
- (l) to ensure timely reporting, referral, and inter-agency coordination relating to suspected cases of children in need of protection.

6 Delegation

- (1) The Director General may, in writing, delegate any of his or her functions under this Act to the Coordinator and any other staff of the Ministry.
- (2) A delegation may be made generally or in respect of a particular matter or class of matters.
- (3) The Director General may at any time revoke or vary a delegation.
- (4) A delegation does not prevent the Director General from performing the function that he or she has delegated.

7 Appointment of child protection officers

The Public Service Commission may, on the advice of the Director General, appoint child protection officers.

8 Functions of child protection officers

A child protection officer has the following functions:

- (a) to coordinate child protection and awareness activities; and
- (b) to conduct community outreach and to strengthen community mechanisms for child protection; and
- (c) to advise families and communities on child protection issues; and
- (d) to maintain a network of child protection service providers in their area, including any public servant or any other person who provides a service that is aimed at ensuring the safety and well-being of children; and
- (e) to receive reports of children suspected of being in need of protection, and to lead the response process, including taking action to protect a child in accordance with this Act; and
- (f) to maintain data on child protection cases; and
- (g) such other functions that may be conferred on the child protection officer by this Act or any other Act.

9 Powers of child protection officers

A child protection officer has the power to do all things necessary or convenient to be done for or in connection with the performance of his or her functions under this Act.

10 Child protection focal point

- (1) The Director General may designate a public servant or any other person to be a child protection focal point for the purpose of this Act.
- (2) In making a designation, the Director General may delegate to the child protection focal point any or all of the powers and functions of a child protection officer.
- (3) The designated child protection focal point must act in accordance with any direction given by the Director General and the Coordinator.
- (4) The Minister may prescribe requirements for the qualifications and trainings required for a person to be designated as a child protection focal point.

11 Director General may request services from other agencies

- (1) The Director General may, in deciding what action is to be taken to protect a child, request a government department or agency to provide services to the child or to the child's family.
- (2) The government department or agency must, as far as practicable, comply with such a request if it is consistent with its own responsibilities and does not unduly prejudice the discharge of its functions.

12 Registration of child protection service providers

- (1) The Minister must prescribe procedures for the registration of individuals and organisations providing services required under this Act for children in need of protection and their families.
- (2) The procedures under subsection (1) may include but is not limited to the following:
 - (a) the form of the application; and

- (b) the criteria for approval; and
 - (c) the inspections and evaluations of child protection service providers; and
 - (d) the suspension or cancellation of registration.
- (3) An application for registration is to be approved by the Minister upon the recommendation of the Director General.
- (4) The Minister may, on the recommendation of the Director General revoke a registration.
- (5) An individual or organisation providing prescribed services for children in need of protection must:
- (a) register with the Ministry in accordance with the procedures set out in the Regulations; and
 - (b) comply with this Act and the conditions of registration; and
 - (c) comply with any Regulations, standards or guidelines made under this Act in relation to the provision of the services.
- (6) An individual or organisation providing prescribed services for children in need of protection that fails to register in accordance with this section, commits an offence punishable on conviction by a fine not exceeding VT500,000.

PART 3 RESPONSIBILITY OF PARENTS, PREVENTION MEASURES AND INTERVENTION

13 Responsibilities of parents

A parent in safeguarding and promoting the wellbeing of his or her child, has the following responsibilities:

- (a) to provide a safe and a secure home; and
- (b) to protect the child from all forms of abuse, neglect and exploitation, including online abuse; and
- (c) to ensure that the child's basic needs are met, including any needs of a child living with disability; and
- (d) to support the child's healthy development and ensure access to appropriate medical care; and
- (e) to ensure that the child completes compulsory education, and to encourage further study; and
- (f) to use positive discipline and ensure that discipline is carried out in a non-abusive way; and
- (g) to properly supervise the child and protect him or her from engaging in activities that are harmful to his or her health, education and moral development; and
- (h) to ensure that in the temporary absence of a parent, the child is cared for by a known and trusted person; and
- (i) to ensure that the care, protection and emotional and financial well-being of a child are explicitly planned and accounted for; and
- (j) to teach the child religious and cultural values and traditional practices; and
- (k) to encourage the child to participate in social, religious and cultural activities; and

- (l) to provide fair and equal treatment to all their children; and
- (m) to empower the child and encourage him or her to express himself or herself.

14 Prevention services

The Director General is to coordinate prevention measures to promote the wellbeing and prevent danger or risk to the safety or wellbeing of children, including:

- (a) promoting community discussion of issues relating to the wellbeing and prevention of children from being in danger or at risk to their safety or wellbeing; and
- (b) reinforcing positive caring and protective practices by parents, families and communities; and
- (c) promoting respect for positive values and traditions that encourage caring attitudes and behaviours towards children; and
- (d) developing appropriate parenting skills and developing the capacity of parents to safeguard the wellbeing and best interests of their children, including the promotion of positive, non-violent forms of discipline; and
- (e) raising public awareness of the dangers and consequences of child abuse, neglect and exploitation, the need to report cases of children in need of protection, and the ways in which concerns may be reported; and
- (f) coordinating prevention initiatives with government and non-government agencies, including religious organisations, Chiefs, women and community groups, and ministries responsible for education, health, youth and sport, and law enforcement; and
- (g) ensuring child protection is incorporated into national and local disaster and crisis preparedness and response plans.

15 Early intervention services

The Director General is to promote and coordinate the progressive development of early intervention services to:

PART 3 RESPONSIBILITY OF PARENTS, PREVENTION MEASURES AND INTERVENTION

- (a) strengthen the capacity of families and communities to identify and respond appropriately to children who are vulnerable or who are at risk; and
- (b) work with families, Chiefs, communities and other service providers to prevent or alleviate conditions that might place children at risk, and to reduce the negative consequences of risk factors through appropriate support services; and
- (c) provide children and their families with information to enable them to access support services.

PART 4 PROTECTION OF CHILDREN

Division 1 Reporting and referral of children in need of protection

16 Reporting a child in need of care and protection

- (1) Any person who has reason to believe that a child is in need of protection may report the matter to the Coordinator, a child protection officer, child protection focal point, or a police officer.
- (2) Any government officer or person who performs professional duties with respect to a child and who, in the course of that person's professional duties, has reason to believe that the child is in need of protection, must immediately report the matter to the Coordinator or a child protection officer.
- (3) For the purposes of subsection (2), a person who performs professional duties with respect to a child means a health professional, a police officer, a teacher, a labour officer, a sports coach, and an operator or employee of a registered child protection service provider.

17 Protection of person reporting

- (1) Despite the provisions of this Act or any other Act, where a person, acting in good faith, makes a report or discloses information concerning a child under this Act, the report or disclosure:
 - (a) does not give rise to civil, criminal or disciplinary proceedings against that person; and
 - (b) does not constitute a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct.
- (2) Any person who threatens or harms a person who makes a report commits an offence punishable on conviction by a fine not exceeding VT50,000, or a term of imprisonment not exceeding 2 years, or both.

18 Government agencies may be required to supply information

- (1) The Director General or the Coordinator may request from a government department, agency or statutory body, information relating to any child for the purposes of:
 - (a) determining whether that child is in need of protection; or

- (b) any proceedings under this Act.
- (2) Subsection (1) applies despite the provision of any Act requiring a person to maintain secrecy or not to disclose any matter.
- (3) To avoid doubt, any compliance with this section is not a breach of the relevant obligation of secrecy or nondisclosure.

19 Referral of children by the Court

- (1) If it appears to any Court in the course of proceedings that a child involved in or affected by those proceedings is in need of protection, the Court must issue an order that the child be referred to the Coordinator for an assessment under Division 2.
- (2) A Court issuing such an order may also issue an interim child protection order in accordance with section 29 if it appears to the Court that this is necessary for the safety and wellbeing of the child.

Division 2 Assessment and intervention planning

20 Coordinator may inquire into child’s wellbeing and protection

- (1) If the Coordinator receives information that raises concerns about a child’s wellbeing, the Coordinator may cause any assessment to be made that the Coordinator considers reasonably necessary for the purpose of determining whether intervention is necessary to protect the child.
- (2) In addition to subsection (1), the Coordinator may direct a child protection officer to assess the circumstances of the child and his or her home environment, including but not limited to the following:
 - (a) visiting the child’s home; and
 - (b) speaking with the child, the child’s parents, members of the child’s family, and any other person with an interest in, or knowledge of, the care and wellbeing of the child; and
 - (c) making inquiries about the child and his or her circumstances; and
 - (d) requesting information from any person or any government department, agency or body; and

- (e) any other actions deemed necessary to conduct a thorough assessment.
- (3) An assessment made under subsection (2) must be undertaken as soon as practicable.
- (4) If the person who has custody of the child refuses to allow the Coordinator access to the child, the Coordinator may exercise his or her authority under Division 4, including requesting assistance from the police to search for and remove the child.

21 Medical examination of the child

- (1) In carrying out the assessment under section 20, the Coordinator may, with the consent of any parent of the child, arrange for the child to be medically examined by a medical professional.
- (2) If, after making reasonable efforts to do so, the Coordinator is unable to obtain the consent of the child's parent, the Coordinator may apply for an interim child protection order directing that the child be medically examined.

22 Taking action to protect a child

- (1) If the Coordinator determines that actions must be taken to protect a child, the Coordinator may do any of the following:
 - (a) develop, in consultation with the parents, the child and, where appropriate, family and community members, an agreed care and protection plan for the child; or
 - (b) exercise the Coordinator's emergency protection powers under Division 3 of this Part; or
 - (c) refer the matter to a police officer if it appears that a criminal offence has been committed against the child, and collaborate with the police in the response; or
 - (d) seek an appropriate interim child protection order or child protection order from the Court.

- (2) In making a determination as to what action to take, the Coordinator must, to the extent that it is in accordance with the best interest of the child, ensure that:
 - (a) the child and any relevant family and community members participate in the decision-making process; and
 - (b) decisions are reached by collaboration and consensus.
- (3) The Coordinator may decide to take no action if the Coordinator considers that proper arrangements have been made for the care and protection of the child and the circumstances that led to the report have been or are being satisfactorily dealt with.

23 Child welfare meeting

- (1) In determining what actions are needed to ensure the care and protection of a child, the Coordinator may direct that a child welfare meeting be convened by a child protection officer.
- (2) The purpose of a child welfare meeting is to:
 - (a) actively engage the child, his or her parents and family members, Chiefs and other community members in assessing and making decisions about the child's care and protection needs; and
 - (b) develop an agreed care and protection plan to meet those needs.
- (3) Depending on the nature of the report and the child's best interest, and having regard to the views of the child, the child protection officer may involve any of the following persons in the child welfare meeting:
 - (a) the child;
 - (b) one or both of the child's parents;
 - (c) other members of the child's family;
 - (d) a Chief and other community leaders;
 - (e) women leaders and groups;

- (f) religious groups;
 - (g) a community health worker and other relevant service providers;
 - (h) any other person whose involvement, in the opinion of the child protection officer, would assist in developing an agreed care and protection plan.
- (4) If a child does not take part in the child welfare meeting, the child protection officer must take all reasonable steps to:
- (a) find out the views and wishes of the child; and
 - (b) make the views and wishes of the child known to the persons taking part in the meeting; and
 - (c) ensure that the views and wishes of the child are considered in reaching any agreement.
- (5) The child protection officer must ensure that anyone participating in a child welfare meeting understands his or her obligation to respect the child's privacy and dignity.

24 Agreed care and protection plan

- (1) An agreed care and protection plan may include any of the following arrangements:
- (a) psycho-social support, psycho-social first aid or counselling for the child;
 - (b) parenting advice and positive parenting skills for the child's parents;
 - (c) referrals to health, education or other services;
 - (d) regular monitoring and supervision of the child by a child protection officer, child protection focal point, or other specified person;
 - (e) attendance of a parent for counselling or treatment for alcohol, drug or other substance abuse;

- (f) agreement that a specified person, including a parent, is not to enter the place where the child lives or have any contact with the child;
 - (g) agreement that a parent or other person may have supervised visits with the child;
 - (h) agreement that the child is to live in the home of a family member or other appropriate safe family approved by the child protection officer;
 - (i) any other measures the child protection officer considers appropriate to ensure the wellbeing and protection of the child.
- (2) The agreed care and protection plan must engage members of the child's family and community, including family elders, Chiefs, women and religious groups, and other community groups, in the provision of support to the child and parents.
- (3) In addition to subsection (2), the agreed care and protection plan must:
- (a) be developed by the child protection officer; and
 - (b) be in writing; and
 - (c) be approved by the Coordinator; and
 - (d) include provision on how the progress and compliance is to be monitored.
- (4) If the Coordinator has reasonable grounds to believe that a child is in need of protection and:
- (a) no agreement can be reached on a care and protection plan for the child; or
 - (b) the plan proposed is not, in the opinion of the Coordinator, adequate to ensure the protection of the child; or
 - (c) the provisions of an agreed care and protection plan have not been complied with,

the Coordinator may apply to the Court for a child protection order in accordance with Division 4.

Division 3 Emergency child protection powers

25 Removal of a child in immediate danger

- (1) A child protection officer or police officer may, without a warrant or Court order, remove a child to a safe place if the officer suspects on reasonable grounds that:
 - (a) the child's health or safety is in immediate danger; and
 - (b) there would be a substantial risk to the child's health or safety during the time necessary to obtain an interim child protection order.
- (2) In addition to subsection (1), a child protection officer or police officer may enter any premises or vehicle or board any vessel where it is reasonably believed that the child may be, and may search for and remove the child, by force if necessary.
- (3) A police officer under this section must as soon as possible notify the child protection officer to take custody of the child.

26 Police assistance

A child protection officer performing his or her functions or exercising his or her powers under this Division may request the assistance of a police officer, and the police officer must provide such assistance wherever practicable.

27 Duration and location of temporary custody of a child

If a child has been removed to a safe place under this Division:

- (a) the child is in the custody of the Director General until:
 - (i) the child is returned to a parent or guardian; or
 - (ii) the Court issues an Interim Protection Order in relation to the child; and

- (b) the Director General, in consultation with the Coordinator, must make arrangements for the temporary care of the child with a family member, an approved safe family, or any other safe place.

28 Application for interim child protection order

- (1) The Coordinator may make an application to a Court for an interim child protection order if he or she has grounds to believe that a child is in need of protection and:
 - (a) the child protection officer has been denied access to the child; or
 - (b) the child's parent has refused to consent to a medical examination of the child; or
 - (c) the child is in danger of significant harm and immediate intervention from the Court is needed to protect the child.
- (2) An application to the Court for an interim child protection order may be made:
 - (a) orally; or
 - (b) by telephone, radio or other similar facility; or
 - (c) in writing; or
 - (d) by facsimile, telex or email.
- (3) If a child has been removed using emergency powers under this Division, the Coordinator must, within 3 days, make an application to the Court for an interim child protection order.
- (4) Despite subsection (3), any application to Court for an interim child protection order may be discontinued by the Coordinator if the Coordinator:
 - (a) reaches an agreement with a parent of the child that the Coordinator considers adequate to protect the child; or

- (b) considers that circumstances have changed so that the child is no longer in need of emergency protection and the Coordinator returns the child to the parent.

29 Interim Child Protection Orders

- (1) An interim child protection order may include any of the following orders:
 - (a) return of the child to his or her parent, with or without conditions;
 - (b) placement of the child in the care of a family member or other appropriate safe family approved by the Coordinator;
 - (c) authorise and direct a medical examination of the child;
 - (d) prohibit any specified person from entering the home or place where the child lives or from having any contact with the child;
 - (e) prohibit any specified person from having unsupervised contact with the child;
 - (f) provide for interim maintenance of the child;
 - (g) any other order the Court considers necessary and in the best interests of the child.
- (2) An application for an interim child protection order must be heard and determined in accordance with the procedures in Division 4.
- (3) A Court may make an interim child protection order on such evidence as the Court considers sufficient and appropriate having regard to the temporary nature of the order.
- (4) A Court must determine an application for an interim child protection order as soon as practicable.
- (5) An interim child protection order remains in force until a final order has been made under Division 4, or is earlier varied, suspended or discharged by a Court.

Division 4 Child Protection Orders

30 Application for Child Protection Order

- (1) An application for a child protection order for a child may be made by the Coordinator.
- (2) The application must be accompanied by a report compiled by a child protection officer that includes the following information:
 - (a) the grounds for considering the child is in need of protection; and
 - (b) a description of the proposed arrangements for the custody or supervision of the child; and
 - (c) a description of the services to be provided to remedy the condition or situation in which the child was found in need of protection; and
 - (d) an estimate of the time required to achieve the purpose of the intervention; and
 - (e) if the Coordinator proposes to temporarily remove the child from a parent's custody:
 - (i) an explanation of why the child cannot be adequately protected while in the parent's custody, and a description of any past efforts to do so; and
 - (ii) a statement of what efforts, if any, are planned to maintain the child's contact with parents and other family members; and
 - (f) if the Coordinator proposes to remove the child from a parent's custody permanently, a description of the arrangements made or being made for the child's long-term placement in a stable environment.

31 Application to be given priority

- (1) A Court must give priority to applications for child protection orders so far as is practicable.

- (2) A Court must determine an application for a child protection order on the same day on which the application is made unless there are exceptional circumstances.

32 Parties to the proceedings

The following persons are parties to the proceeding relating to an application for a child protection order:

- (a) the Coordinator; and
- (b) the child; and
- (c) each parent of the child; and
- (d) any other person who is the caregiver for the child.

33 Legal representation

Where a child involved in a matter before the Court is not represented by a legal representative and the Court is of the opinion that the child must be separately represented, the Court may order that the child is to be separately represented and that the cost of the child's legal representation be paid by the State.

34 Child protection hearing

- (1) A hearing of an application for a child protection order is civil in nature and must:
- (a) be conducted with as little formality and legal technicality as the circumstances of the case permit; and
 - (b) be conducted in a manner conducive to the active participation of all persons involved in the proceedings; and
 - (c) be held in closed chambers and attended only by persons directly involved in the proceedings; and
 - (d) be held, as far as is practicable:

- (i) at a different time or at a different place from the usual time or place for sittings of the Court relating to criminal matters; and
 - (ii) in a room that is furnished and designed in a manner aimed at putting the child at ease.
- (2) The Chief Justice may from time to time make rules for regulating practice and procedure for child protection hearings.
- (3) In addition to subsection (2), the provisions of any other written law or rule that regulate procedure in civil cases are to have effect on child protection hearings.

35 Views of the child

Prior to issuing an order under this Part, the Court must ensure that a child who is capable of expressing his or her views has had an opportunity to express his or her views, and those views must be given due consideration having regard to the age and understanding of the child.

36 Evidence

In proceedings under this Act (other than proceedings for an offence), a Court may receive any evidence that the Court thinks fit, whether the evidence is otherwise admissible in a Court or not.

37 Burden of proof

In proceedings under this Act (other than proceedings for an offence), a Court is to decide questions of fact on the balance of probabilities.

38 Interim order on adjournment

If the hearing of an application for a child protection order under this Division is adjourned, the Court may make an interim child protection order in relation to the child until the Court completes the hearing.

39 Court may make a child protection order

A Court may, on an application, make a child protection order if the Court is satisfied that:

- (a) the child is in need of protection on any of the grounds specified in the definition of child in need of protection under section 2; and

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

40 Conditions of a Child Protection Order

A child protection order may include one or more of the following conditions or directions as the Court considers appropriate in the best interests of the child:

- (a) that the child and parents be under the supervision of a child protection officer, child protection focal point, or other person designated by the Court for a specified period not exceeding 12 months; or
- (b) that a specified person:
 - (i) is prohibited from entering the home or place where the child lives; or
 - (ii) is prohibited from having any contact with the child; or
 - (iii) may have contact with the child only under supervision or subject to other limitations conditions; or
- (c) that the child be placed in the temporary custody of any of the following persons for a specified period not exceeding 6 months, subject to the supervision of the Coordinator and on such reasonable terms and conditions as the Court considers appropriate:
 - (i) a family member who has agreed to assume care of the child; or
 - (ii) a safe family nominated by the Coordinator; or
- (d) that the child be placed in the permanent custody of:
 - (i) a member of the child's family or other safe family nominated by the Coordinator who agrees to assume custody and guardianship of the child; or
 - (ii) the Director General.

41 Conditions relating to supervision

As part of a child protection order with conditions about the supervision of a child, the Court may impose reasonable terms and conditions in relation to the care and supervision of the child, including but not limited to any of the following:

- (a) the guidance, support and assistance to be provided to the parent and the child by the Coordinator or any other person or organisation;
- (b) the participation of the parent in counselling, parenting skills education or a specified treatment or rehabilitation programme where this is necessary for the wellbeing or protection of the child; and
- (c) the right of a child protection officer, child protection focal point, or other designated person to visit, assist and advise the child and parents.

42 Conditions relating to custody

- (1) The Court must not issue a child protection order that has the effect of removing a child from the care of his or her parent unless satisfied that less disruptive alternatives would be inadequate to protect the child.
- (2) A temporary custody order is for a maximum of 6 months, but may be renewed by the Court for up to a maximum of 18 months.
- (3) The Court must not issue a permanent custody order unless:
 - (a) the identity or location of the child’s parents is not known, and is not likely to be determined; or
 - (b) a parent is unable or unwilling to resume custody of the child; or
 - (c) the nature and extent of the harm the child has suffered is such that it is not in the child’s best interest to be returned to the parent, within a reasonably foreseeable time.
- (4) In making a child protection order with conditions relating to the custody of a child, the Court:
 - (a) must give priority to placing the child with a family member, unless doing so is not in the best interest of the child; and

- (b) may impose reasonable terms and conditions in relation to the care and wellbeing of the child, including:
 - (i) contact with the child by a parent or other family member, unless the Court is satisfied that continued contact with a parent or family member is not in the best interests of the child; and
 - (ii) the guidance, support and assistance to be provided to the child by the Coordinator or any other person or organisation; and
 - (iii) the guidance, support and assistance to be made available to the child's parents to address the condition or situation that makes it necessary that the child is removed from their custody.

- (5) If permanent custody has been granted to the Director General, the Director General:
 - (a) must make appropriate arrangements for the care of the child; and
 - (b) is the child's legal guardian; and
 - (c) may consent to the child's adoption.

43 Conditions relating to maintenance

If a Court has issued a child protection order placing a child in the care of the Director General or another person, the Court may order the child's parent to pay an amount, in cash or in kind, that the Court considers reasonable for the maintenance of the child.

44 When a child protection order ceases

A Child Protection Order ceases to have effect when:

- (a) the child reaches the age of 18 years; or
- (b) the term specified in the order expires; or
- (c) the child is adopted; or

- (d) the Court varies or revokes the order, whichever occurs first.

45 Form and service of a child protection order

- (1) A Court must make a child protection order in the prescribed form.
- (2) When issuing a child protection order, the Court must:
- (a) cause a copy of the order to be served personally on the child's parents; and
 - (b) cause a copy of the order to be given or forwarded to:
 - (i) the child protection officer closest to the place where the child lives; and
 - (ii) the officer in charge of the police station closest to where the child lives; and
 - (iii) the officer in charge of the police station closest to where the child's parents live, if this is different from subparagraph (ii).

46 Court may vary or revoke a child protection order

A party to the initial proceedings may apply to the Court to vary or revoke a child protection order. On hearing this application, the Court may, if satisfied that it is in the best interests of the child to do so:

- (a) confirm the order; or
- (b) vary the order or any condition of the order; or
- (c) revoke the order; or
- (d) revoke the order and issue a new child protection order in respect of the child.

47 Appeals

- (1) Any party to proceedings may appeal against any order issued, or any refusal to issue an order, to the Court having jurisdiction to hear an appeal against a judgement of the Court.
- (2) The procedures for the conduct of an appeal must be, with any reasonable modification directed by the Court, in accordance with the rules of Court relating to an appeal against judgements in civil cases.

48 No application fees

Despite the provisions of any other Act or law, no fees or charges are payable to a Court in relation to the making of an application for a child protection order or an appeal.

49 Review of a care and protection plan

- (1) The Coordinator must ensure that a care and protection plan is prepared for each child who is the subject of a child protection order from a Court.
- (2) A care and protection plan prepared under subsection (1) or section 24 must be:
 - (a) monitored and assessed quarterly; and
 - (b) reviewed and revised from time to time as the Coordinator determines necessary, and in any event at least every 6 months.

PART 5 ALTERNATIVE CARE

50 Responsibility of the Director General

The Director General is responsible for arranging appropriate alternative care for a child in need of protection who cannot, in the best interest of the child, remain with or return to their parents.

51 Placement of a child in need of alternative care

- (1) The Coordinator may place a child in the care of:
 - (a) an approved member of the child's family who has agreed to assume care of the child; or
 - (b) an approved safe family; or
 - (c) as a last resort, an approved safe house.
- (2) In determining the placement of a child, the Coordinator is required to give proper consideration to placing the child, in order of priority, with:
 - (a) a member of the child's family; or
 - (b) a family from the child's community or cultural group; or
 - (c) a family in the same locality as that in which the child was living so as to allow the child to maintain contact with relatives and friends, and to continue in the same school.

52 Approval of safe families and safe houses

- (1) The Director General may approve:
 - (a) any person or persons as a safe family to provide care for a child in need of protection; and
 - (b) a safe house for children.
- (2) The Minister, on the recommendation of the Coordinator, must issue guidelines or Regulations on the standards and criteria for approving safe families and safe houses for children.

PART 6 OFFENCES

53 Obstructions

Any person who improperly influences, hinders or obstructs the Director General, the Coordinator or a child protection officer, a child protection focal point or a police officer in carrying out his or her functions or exercising his or her powers under this Act, commits an offence, punishable on conviction by a fine not exceeding VT50,000, or by a term of imprisonment not exceeding 12 months, or both.

54 Breach of a child protection order

- (1) A person who breaches a child protection order commits an offence punishable, on conviction by a fine not exceeding VT100,000 or a term of imprisonment not exceeding 2 years, or both.
- (2) It is not a defence to an offence under subsection (1) that the defendant has paid an amount of money or given other valuable consideration in relation to his or her custom marriage for the child.

55 Removal of a child in alternative care

A person who, without lawful excuse:

- (a) removes a child from the care of a person or place into whose care the child has been placed under this Act; or
- (b) causes or procures a child to be so removed; or
- (c) attempts to unlawfully enter a safe space into whose care a child has been placed under this Act,

commits an offence punishable, on conviction by a fine not exceeding VT200,000 or a term of imprisonment not exceeding 5 years, or both.

56 Restriction on publication of a child's identity

- (1) A person must not publish or make public information that has the effect of identifying a child who is the subject of proceeding under this Act.
- (2) A person who contravenes subsection (1) commits an offence punishable on conviction:

- (a) if the person is an individual - by a fine not exceeding VT50,000 or imprisonment for a term not exceeding 3 months, or both; or
- (b) if the person is a body corporate - by a fine not exceeding VT250,000.

57 Abduction of a child

A person who takes, entices away, conceals, detains, receives or harbours a child with the intent of removing or keeping the child from the custody of the child's parent, guardian or any other person who has the lawful care or custody of the child, commits an offence punishable on conviction by a term of imprisonment not exceeding 5 years.

58 Transfer of a child

- (1) A person must not transfer a child or cause a child to be transferred from one person to another for remuneration, settlement of a dispute, or any other consideration.
- (2) A person who contravenes subsection (1) commits an offence punishable, on conviction by a term of imprisonment not exceeding 15 years.

59 Sexual communication with a child

- (1) For the purposes of this section, communication is sexual if:
 - (a) any part of it relates to sexual activity; or
 - (b) a reasonable person would, in all the circumstances but regardless of any person's purpose, consider any part of the communication to be sexual.
- (2) A person commits an offence if:
 - (a) for the purpose of obtaining sexual gratification, intentionally communicates with a child under the age of 16 years; and
 - (b) the communication is sexual or is intended to encourage the child to participate in a communication that is sexual.

PART 7 MISCELLANEOUS

60 Regulations

The Minister may make regulations prescribing all matters that are required or permitted under this Act or are necessary or convenient to be prescribed for giving effect to the purposes of the Act.

61 Commencement

This Act commences on the date on which it is published in the gazette.