

No. 7 of 2009.

Lukautim Pikinini (Child) Act 2009.

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No of 2009.

Lukautim Pikinini (Child) Act 2009.

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Objectives and Principles.



No. of 2009.

AN ACT

entitled

Lukautim Pikinini (Child) Act 2009,

Being an Act to protect and promote the rights and well-being, generally, of all children regardless of race, nationality, or sex, and repeal of the ***Lukautim Pikinini Act 2007***, and for related matters,

MADE by the National Parliament, to come into operation in accordance with a notice, in the National Gazette, by the Head of State, acting with, and in accordance with, the advice of the Minister.

PART I. – PRELIMINARY.

1 COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.

(1) This Law, to the extent that it regulates or restricts a right or freedom referred to in Subdivision III.3.C (qualified rights) of the ***Constitution***, namely -

- (a) freedom from arbitrary search and entry conferred by Section 44 of the ***Constitution***; and
- (b) freedom of assembly and association conferred by Section 47 of the ***Constitution***; and
- (c) the right to privacy conferred by Section 49 of the ***Constitution***; and
- (d) the right to freedom of movement conferred by Section 52 of the ***Constitution***; and
- (e) the right of equality of citizens conferred by Section 55 of the ***Constitution***; and

is a law that is made for the purposes of complying with Section 38 of the ***Constitution***, taking account of the National Goals and Directive Principles and Basic Social Obligations, in particular –

- (i) Goal Number 1 (Integral Human Development) which calls for every person to be dynamically involved in the process of freeing himself from every form of domination or oppression so that each man or woman will have the opportunity to develop as a whole person in relationship with others; and

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- (ii) Basic Obligation (*h*) which places an equal obligation on parents to support, assist and educate their children without discrimination,

and for the purpose of giving effect to the public interest in public order and public welfare, to the extent that the law is reasonably justifiable in a democratic society having proper respect or regard for the right and dignity of mankind.

(2) For the purposes of Section 41(2) of the *Organic Law on Provincial Governments and Local-level Governments*, it is declared that this Act relates to a matter of national interest.

(3) For the purposes of Section 41(6) of the *Organic Law on Provincial Governments and Local-level Governments*, it is declared that this Act is an Act of the Parliament on a matter specified in Sections 42 or 44, and prevails over any law made under Sections 42 or 44 to the extent of any inconsistency.

2. INTERPRETATION.

In this Act, unless the contrary intention appears -

“access” means the contact of a child with a parent who does not have custody of the child by way of -

- (a) a visit by or to that person, including attendance for a period of time at a place other than the child’s usual place of residence; or
- (b) communication with that person by letter, telephone or other means and includes overnight access; or
- (c) a person approved by the Director;

“care” includes custody and control;

“Caregiver” means a person with whom a child is placed by the Director and who, by agreement with the Director, has assumed responsibility for the day-to-date care of a child;

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

“child in care” means a child who is in the care and custody of the Director or any person authorized by the Director;

“child in need of protection” means a child -

- (a) whose parents are dead or incapacitate and adequate provision has not been made for the child’s care; or
- (b) who has been abandoned by his parents and adequate provision has not been made for the child’s care; or
- (c) who has suffered or is likely to suffer significant harm as a result of physical abuse or maltreatment; or
- (d) who has been, or is likely to be, sexually abused or exploited; or

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- (e) who has been, or is likely to be physically harmed, sexually abused or sexually exploited by some person other than the child's parent, and the parent is unwilling or unable to protect the child; and
- (f) who has been, or is likely to be physically harmed because of neglect by the child's parents, or who is sexually or emotionally abused by the child's parents or guardian; or
- (g) whose development is likely to be seriously impaired by treatable condition and the child's parents refuse to provide or consent to treatment; or
- (h) who is living in a household where there have been incidents of domestic violence and, as a consequence, the child is at risk of serious physical or psychological harm; or
 - (i) who is or has been absent from home in circumstances that endanger the child's safety or well-being; or
 - (j) who has serious differences with his parents to such an extent that the physical, mental or emotional well being of the child is being seriously impaired (or threatened) or the care and control of the child is likely to be seriously disrupted;

"child with a disability" means a child who is blind, deaf, dumb, or suffers from a mental disorder of any kind or is substantially and permanently handicapped by illness, injury or congenital deformity;

"confinement expenses" means -

- (a) the expenses of the maintenance of the mother during the period of one month immediately before the birth of the child; and
- (b) reasonable medical and nursing expenses attendant on the confinement of the mother; and
- (c) the expenses of the maintenance of the mother and child during the period of three months immediately after the birth of the child;

"the Council" means the National Lukautim Pikinini Council established under Section 12;

"Court" means -

- (a) a Pikinini Court established under this Act; and
- (b) a District Court;

"the Department" means the Government Department in which the Office of the Director is housed and which is responsible for family and children matters;

"the Director" means the Director of Lukautim Pikinini appointed in accordance with Section 26;

"discrimination" means negative discrimination;

"family member", in relation to a child, means -

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- (a) a parent, grandparent, step-parent, brother, sister, uncle, aunt or cousin of the child, whether by birth or adoption; or
 - (b) the child's guardian or any other person who is legally responsible for the care and welfare of the child; or
 - (c) the primary care-giver of a child; or
 - (d) any other person with whom the child has developed a significant relationship based on psychological or emotional attachment, which significantly resembles a family relationship;
- “foster care” means the provision of residential care to a child by, and in the home of, a person who has been approved by the Director as a foster parent;
- “in-kind” includes providing clothes, providing food, providing transport, making food gardens and fishing for the child;
- “Local Committees” means Local Lukautim Pikinini Committees established under Section 23;
- “Lukautim” means taking of or providing and caring for, loving and protecting children;
- “maintenance” includes the provision of food, clothing, lodging, nursing, medical treatment, necessities, training and education;
- “maintenance order” means an order made by a Court under this Act for payment of money by a family member in respect of child;
- “Minister” means the National Minister responsible for family and children matters;
- “near relative” means -
- (a) in the case of a child other than an illegitimate child - the father, mother, stepfather or stepmother of the child; or
 - (b) in the case of an illegitimate child means -
 - (i) a person admitting himself or adjudged by a Court to be the father of the child; or
 - (ii) the husband of the mother of the child, if the child was born before the husband's marriage to the mother of the child; or
 - (iii) the mother of the child; or
 - (c) in the case of any child - a person, not being a person specified in Paragraphs (a) or (b) who is liable to maintain the child, including an adopting parent;
- “out-of-home Care” means -
- (a) a foster home; or
 - (b) any other child-friendly place approved by the Director for the day-to-day care of children who are in the care of the Director;
 - (c) a step-parent; or
 - (d) a primary case-giver; or

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- (b) a person to whom custody of a child has been granted by a Court under this Act of or by an agreement, but does not include a caregiver or the director;

“parent” means -

- (a) the mother of a child; or
(b) the father of a child; or
(c) a step-parent; or
(d) a primary care-giver; or
(e) a person to whom custody of a child has been granted by a Court under this Act of or by an agreement, but does not include a caregiver or the director;

“place of safety” means a foster home, out of home care, hospital, home of a caregiver, or other child-friendly place approved by the Director willing to temporarily receive and care for a child;

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

“Provincial Lukautim Pikinini Council” means a Provincial Lukautim Pikinini Council appointed under Section 20;

“the Regulations” means any Regulation made under this Act;

“superintendent” in relation to an institution, means a person appointed to the position of superintendent of the institution;

“this Act” includes the Regulations;

“well-being” includes the absence of extreme poverty, ill health, violence, abuse, neglect, exploitation, fear and conflict, and the presence of peace, health, civil relationships with others, opportunities for emotional, physical, intellectual and creative expression and fulfillment and the opportunity to realize the rights as provided through domestic laws and international instruments as may apply from time to time.

PART II. - UNDERLYING RIGHTS OF THE CHILD.

3. GUIDING PRINCIPLES.

The well-being principles, objectives, and children’s rights set out in Schedule 1 to this Act shall be the guiding principles in the making of any decision under the provisions of this Act.

4. BEST INTERESTS OF THE CHILD.

In any matter concerning the well-being and rights of the child under this Act, the best interests of the child shall be the paramount consideration.

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5. RIGHTS OF THE CHILD.

A child shall have the right to exercise or demand the exercise of, in addition to all the rights stated or implied in Schedule 1 of this Act, all the rights set out in any domestic laws and the Convention on the Rights of the Child.

6. RIGHT OF CHILD TO LIVE WITH PARENTS.

A child is entitled to live with his parents or guardians unless it is determined that it is in the best interests of the child to separate him from his parents and placed in a out-of-home care place in accordance with this Act.

7. DUTY TO MAINTAIN CHILD.

(1) It shall be the duty of a parent, guardian or any person having custody of a child to maintain that child and, in particular that duty gives a child the right to -

- (a) adequate diet; and
- (b) immunization; and
- (c) clothing; and
- (d) shelter; and
- (e) education and guidance; and
- (f) medical attention.

(2) It shall be the duty of any person having custody of a child to protect the child from discrimination, violence, abuse, neglect, and exploitation.

8. PARENTAL RESPONSIBILITY.

(1) Every parent shall have parental responsibility for his child.

(2) Where the natural or legal parents of a child are deceased or physically unable to perform parental responsibilities, this may be passed on to or assumed by relatives of either parents in accordance with custom, or by way of a direction of the Director, or a court order in accordance with this Act.

9. HARMFUL CUSTOMARY PRACTICES.

It shall be unlawful to subject a child to social or customary practices that are harmful to a child's well-being as guided by the principle of the best interests of the child.

10. HARMFUL EMPLOYMENT.

No child shall be employed or otherwise engaged in any activity that may be harmful to his health, education, mental, physical or moral development or well-being.

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11. CHILD WITH DISABILITIES.

The parents of child with disabilities and, as far as possible the Director, shall take appropriate steps to ensure that such a child is -

- (a) assessed as early as possible as to the extent and nature of his disabilities; and
- (b) offered appropriate treatment; and
- (c) afforded facilities for his rehabilitation and equal opportunities to education.

PART III. - LUKAUTIM PIKININI COUNCILS AND COMMITTEES.

12. NATIONAL LUKAUTIM PIKININI COUNCIL.

- (1) The National Lukautim Pikinini Council is hereby established.
- (2) The Council shall consist of -
 - (a) the Director of Lukautim Pikinini, *ex-officio*; and
 - (b) a Child Protection Officer; and
 - (c) a lawyer representing the Department responsible for justice matters; and
 - (d) a representative of Police Force not below the rank of Inspector; and
 - (e) a representative of the Department responsible for education matters; and
 - (f) a representative of the Department responsible for health matters; and
 - (g) a representative of the private sector recommended by the Papua New Guinea Chamber of Commerce; and
 - (h) one person representing the interests of the religious communities in the country; and
 - (i) two women representing women; and
 - (j) two persons representing children -
 - (i) of which one shall be a female; and
 - (ii) both of which shall be above 16 years but below 18 years of age, recommended by the Director.
- (3) The members of the Council, other than the Director, shall -
 - (a) be appointed in accordance with the *Regulatory Statutory Authorities (Appointment to Certain Offices) Act 2004*; and
 - (b) subject to this Act, hold office for a period of three years; and
 - (c) be eligible for re-appointment.

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(4) The members of the Council referred to in Subsection (2)(g), (h), (i) and (j) shall be paid such allowances as are determined under the *Boards (Fees and Allowances) Act* (Chapter 299).

(5) A person who has been convicted of, or is known to have committed, an offence against children or is considered by the Director to be inappropriate for appointment is ineligible to be a member of the Council.

13. VACATION OF OFFICE.

A member of the Council vacates his office, if he-

- (a) dies; or
- (b) becomes bankrupt or insolvent, applies to take the benefit of the law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his salary or remuneration for their benefit; or
- (c) fails to attend three consecutive meetings of the Council without leave of the Chairperson; or
- (d) becomes permanently incapable of performing the duties of his office; or
- (e) is convicted of an indictable offence, or an offence against children; or
- (f) resigns his office by writing under this hand addressed to the Minister.

14. CHAIRPERSON AND VICE-CHAIRPERSON OF THE COUNCIL.

(1) The Council shall -

- (a) subject to Subsection (2), at its first meeting immediately after its *Constitution* under Section 12; and
- (b) thereafter, as the occasion arises,

elect from its members, a Chairperson and a Vice-Chairperson of the Council.

(2) For the purposes of Subsection (1)(a), the Director shall act as the Chairperson during the meeting.

15. MEETINGS OF THE COUNCIL.

(1) The Council shall meet -

- (a) at such times and places as the Chairperson determines; and
- (b) not less frequently than once in every two (2) months.

(2) The Chairperson shall, at anytime, on request by at least by seven members of the Council, convene a meeting of the Council.

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- (3) At a meeting of the Council -
- (a) the Chairperson, the Vice-Chairperson shall preside; and
 - (b) in the absence of the -
 - (i) Chairperson, the Vice-Chairperson shall preside; and
 - (ii) Chairperson and the Vice-Chairperson, the members of the Council shall elect one of their member to preside at the meeting; and
 - (c) seven members, of whom the Director is one, are a quorum; and
 - (d) all matters before the meeting shall be determined in accordance with the votes of the majority of the members present and voting; and
 - (e) the person presiding has a deliberative vote, and, in the event of an equality of votes on a matter, also a casting vote.
- (4) Subject to this Act, the Council may prescribe its own procedures.

16. FUNCTIONS OF THE COUNCIL.

- (1) The principal roles and functions of the Council are to formulate policies towards preventing and responding to violence, abuse, neglect, exploitation and discrimination against all children and accordingly, shall -
- (a) advise and report to the Minister on matters related to children and family services in the country; and
 - (b) advise the Director on any child and family services matter referred to the Council by the Director; and
 - (c) advise the Director, on the Council's own initiatives or at the request of the Director, on any matter relating to the operation or administration of this Act; and
 - (d) monitor the operation and administration of this Act; and
 - (e) make such recommendations to the Minister as the Council thinks fit for the changes to this Act or for the making of administrative changes or otherwise to further the objectives and principles under Schedule 1; and
 - (f) to investigate any alleged breaches of the Act and, where relevant, and with the Director, prosecute such breaches; and
 - (g) issue and revoke licenses in accordance with Part XIV of this Act; and
 - (h) solicit funding for and authorize the conduct of research or reviews or the performance of such other work consistent with the "Objectives" of this Act.
- (2) The Council may appoint one or more of its members -
- (a) to investigate any matter relating to the discharge of the functions and the operations of the Secretariat, the Office of the Director and the Council; and

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(b) to report the findings to the Council.

(3) As soon as practicable after having considered the report, the Council shall, report its findings and recommendations to the Minister.

17. PROVISION FOR CHAIR, LUKAUTIM PIKININI COUNCIL, TO ACT.

(1) If no meeting of the Council is scheduled within a reasonable time to consider any matter requiring urgent approval by Council, the Chairperson may, in consultation with the Director, act on behalf of the Council.

(2) An approval under Subsection (1) shall be reported to the Council at its first appropriate meeting.

18. DELEGATION.

The Council may by instrument, delegate to the Director, a Provincial Lukautim Pikinini Council, a Local Lukautim Pikinini Committee or an officer of the Secretariat all or any of its functions under this Act (except this power of delegation).

19. ANNUAL AND OTHER REPORTS.

(1) The Council shall, on or before the end of March each year, give to the Minister a report relating to the well-being of children in the country.

(2) In addition to the reports required under Subsection (1), the Council may at any time give to the Minister, such other report on any matter relating to the well-being of children in the country it considers appropriate.

(3) As soon as practicable after receipt of a report under Subsection (1), the Minister shall present it to the Parliament.

20. PROVINCIAL LUKAUTIM PIKININI COUNCILS.

(1) The Minister may on the recommendation of the Council establish and appoint members of Provincial Lukautim Pikinini Councils, in each provinces.

- (2) A Provincial Lukautim Pikinini Council shall consist of -
- (a) a Chairperson; and
 - (b) a senior officer of the Provincial Administration; and
 - (c) no more than 10 other members consistent with Section 12 of this Act.

(3) A member of a Provincial Lukautim Pikinini Council holds office, subject to this Act, for a period of three years, and is eligible for re-appointment.

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- (4) A member of the Provincial Lukautim Pikinini Council vacates his office, if -
- (a) he dies; or
 - (b) he becomes bankrupt or insolvent, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his salary or remuneration of their benefit; or
 - (c) fails to attend three consecutive meetings of the Council without leave of the Chairperson; or
 - (d) becomes permanently incapable of performing the duties of his office; or
 - (e) is convicted of an indictable offence, or an offence against children; or
 - (f) resigns his office by writing under his hand addressed to the Chairperson of the Council.

(5) A person who has been convicted of, or is known to have committed, an offence against children or is considered by the Director as not being appropriate for appointment is ineligible to be a member of the Council.

21. FUNCTIONS OF THE PROVINCIAL LUKAUTIM PIKININI COUNCIL.

Subject to any direction of the National Lukautim Pikinini Council for that purpose, the principal roles and functions of the Provincial Lukautim Pikinini Council are to implement and administer the provisions of this Act in the Province in which it has been established to prevent and respond to violence, abuse, neglect, exploitation and discrimination against all children and accordingly, and shall -

- (a) advise the National Lukautim Pikinini Council, the Director and the Provincial Government on children and family services in the province; and
- (b) advise the Provincial Government on any child and family matters referred to the Provincial Lukautim Pikinini Council by the National Lukautim Pikinini Council or by the Director; and
- (c) advise and report to the Provincial Government, the Director or the National Lukautim Pikinini Council on the workings, generally, of the Provincial Lukautim Pikinini Council and the Local Lukautim Pikinini Committee; and
- (d) advise and submit, in February, an annual report to the National Lukautim Pikinini Council on the workings, generally, of the Provincial Lukautim Pikinini Council and the Local Lukautim Pikinini Committee.

22. MEETINGS OF A PROVINCIAL LUKAUTIM PIKININI COUNCIL.

- (1) A Provincial Lukautim Pikinini Council shall -
- (a) meet at such times and places as the Chairperson determines; and

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(b) at least once every two months.

(2) Subject to this Act a Provincial Lukautim Pikinini Council may prescribed its own procedures.

(3) The Director shall, in consultation with and support from, the Provincial Administrator, provide or cause to be provided such professional and secretarial and other services and facilities as may be reasonably required to enable the Provincial Lukautim Pikinini Council to perform its functions effectively.

(4) Within one month of the conclusion of a meeting of a Provincial Lukautim Pikinini Council, the Chairperson shall submit a report to the Director on the deliberations of the Provincial Lukautim Pikinini Council.

23. LOCAL LUKAUTIM PIKININI COMMITTEE.

(1) A Provincial Lukautim Pikinini Council may, on request by a local community or a Local Level Government, establish a Local Lukautim Pikinini Committee for the community or Local Level Government area, as the case may be.

(2) A Local Lukautim Pikinini Committee shall consist of -
(a) a Chairperson; and
(b) such other members, not exceeding five,
appointed by the Provincial Lukautim Pikinini Council.

(3) The Provincial Lukautim Pikinini Council shall, within one month of the establishment of a Local Lukautim Pikinini Committee under Subsection (1), report it to the National Lukautim Pikinini Council.

(4) Subject to this Act, the procedures at meetings of a Local Lukautim Pikinini Committee shall be as determined by the Committee and approved by the Provincial Lukautim Pikinini Council.

(5) The members of a Local Lukautim Pikinini Committee may be paid such allowances as are determined by the National Lukautim Pikinini Council upon recommendation by the Provincial Lukautim Pikinini Council.

(6) The District Administrator shall provide or cause to be provided such professional and secretarial and other services and facilities as may be reasonably required to enable the Local Lukautim Pikinini Committee to perform its functions effectively.

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(7) Within one month of the conclusion of a meeting of the Local Lukautim Pikinini Committee, the Chairperson shall, submit a report to the Provincial Lukautim Pikinini Council, on the deliberations of the Committee.

- (8) A member of the Local Lukautim Pikinini Committee vacates his office if he -
- (a) he dies; or
 - (b) becomes bankrupt or insolvent, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his salary or remuneration for their benefit; or
 - (c) fails to attend three consecutive meetings of the Committee without leave of the Chairperson; or
 - (d) becomes permanently incapable of performing the duties of his office; or
 - (e) is convicted of an indictable offence, or an offence against children; or
 - (f) resigns his office by writing under his hand addressed to the Chairperson of the Provincial Lukautim Pikinini Council.

24. FUNCTIONS OF A LOCAL LUKAUTIM PIKININI COMMITTEE.

The Principal roles and functions of the Local Lukautim Pikinini Committee are to formulate policies towards preventing and responding to violence, abuse, neglect, exploitation and discrimination against all children and accordingly, shall -

- (a) investigate and inquire into any matters affecting children at the local community or Local Level Government area and to report and advise the Provincial Lukautim Pikinini Council or the Local-Level Government for consideration and report to the appropriate authorities; and
- (b) give advice and guidance in the rationalization and co-operation of services designed to promote the child welfare at the local community or Local Level Government area so as to achieve the most effective utilization of those services.

PART IV. - ADMINISTRATION.

Division 1. - Office of the Director of Lukautim Pikinini.

25. OFFICE OF THE DIRECTOR OF LUKAUTIM PIKININI.

The Office of the Director of Lukautim Pikinini is hereby established.

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26. APPOINTMENT OF DIRECTOR.

(1) The Director of Lukautim Pikinini shall be appointed, suspended and dismissed in such manner as is specified in the *Regulatory Statutory Authorities (Appointment of Certain Offices) Act 2004*.

(2) The Director shall be appointed for a period of four years and subject to Subsection (3), is eligible for re-appointment.

(3) A person shall not be appointed to the Office of the Director for more than two consecutive terms.

27. FUNCTIONS OF THE DIRECTOR.

The functions of the Director are -

- (a) to be responsible for the day-to-day business of the Council and the administration of this Act; and
- (b) to administer the staff and the Lukautim Pikinini Secretariat in an efficient and effective manner and in accordance with the policy and directions of the Council; and
- (c) to be responsible for the control and management of the Pikinini Care Fund Trust Account; and
- (d) to implement the Council's decisions and policies relating to the prevention and response to violence, abuse, neglect, exploitation and discrimination against all children and for that purpose the Director is responsible for -
 - (i) the establishment and maintenance of child protection and family support services; and
 - (ii) promoting a partnership approach between the government, non-government agencies, families, corporations, private sector and the communities, in taking responsibility for and dealing with children who are in need of special care or protection under this Act; and
 - (iii) helping communities to set up programs for the protection of children and for the prevention or reduction of the incidence of abuse; and
 - (iv) providing assistance to voluntary agencies engaged in the provision of services designed to advance the well-being of children and young persons; and
 - (iv) collaborating with departments and agencies whose activities are designed to advance the well-being of children and young persons; and

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- (v) promoting the development of coordinated strategies for the care and protection of children and for the provision of support services directed towards strengthening and supporting families; and
- (vi) developing procedures and protocols with government departments, non-government organizations and community groups to promote the care and protection of children, and to ensure that these procedures and protocols are implemented and regularly reviewed; and
- (vii) involving children and their families in processes that affect them and making services and information available to them; and
- (ix) raising community awareness about child rights and child protection issues through the preparation and dissemination of information on child protection services and actions necessary to ensure the safety and well-being children; and
- (x) undertaking or encouraging research, education and training on child protection issues; and
- (xi) establishing and maintain a central registry or database on child abuse, neglect and exploitation; and
- (xii) reviewing, evaluating and monitoring the functions, operations and the administration of this Act; and
- (xiii) performing functions, duties and responsibilities prescribed or required under this Act and any other law; and
- (xiv) performing functions, duties and responsibilities as directed by the National Lukautim Pikinini Council; and
- (xv) creating awareness of international best practices and international instruments in relation to child protection;
- (e) investigate alleged breaches of this Act; and
- (f) inspect centers and establishments providing child care to ensure that the minimum standards of care as required by this Act and other by authorities established in accordance with this Act are being complied with; and
- (g) inspect prison areas where children are kept; and
- (h) recommend to the Council for the issuing and revoking of licenses; and
- (i) ensure that all children under his care have a birth certificate; and
- (j) all other functions prescribed under this Act; and
- (k) any other function as may be prescribed under any other law in force from time to time.

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28. DELEGATION.

The Director may, by instrument, delegate to a person or authority all or any of his powers, functions and authority under this Act (except this power of delegation).

Division 2. - Lukautim Pikinini Secretariat.

29. LUKAUTIM PIKININI SECRETARIAT.

(1) A Lukautim Pikinini Secretariat is hereby established.

(2) The Lukautim Pikinini Secretariat comprises -

- (a) the Director who is the head of the Secretariat; and
- (b) such number of Child Protection Officers and Community Development Officers; and
- (c) a legal officer; and
- (d) such number of other officers as may be considered necessary for the effective performance of his duties and implementation of this Act.

(3) The officers of the Secretariat referred to in Subsection (2)(c) shall be appointed by the Director after consultation with the Departmental Head of the Department responsible for personnel management matters.

30. TERMS AND CONDITIONS OF EMPLOYMENT OF THE DIRECTOR AND OFFICERS OF THE SECRETARIAT.

Subject to the *Salaries and Conditions Monitoring Committee Act 1998*, the salaries and other conditions of employment of -

- (a) the Director shall -
 - (i) be as determined by the Minister after considering of recommendation of the National Lukautim Pikinini Council; and
 - (ii) be similar to the salaries and other conditions of employment determined for other statutory office-holders appointed by the National Executive Council; and
- (b) the officers of the Secretariat shall be as determined by the National Lukautim Pikinini Council.

31. APPOINTMENT OF CHILD PROTECTION OFFICERS.

(1) The Director after consultation with the Departmental Head of the Department responsible for personnel management matters, shall appoint officers to be Child Protection Officers for the purposes of this Act.

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(2) For the purpose of this section, any number of serving Community Development Officers may be recognized as, and work with, Child Protection Officers.

(3) A recognition under Subsection 2 shall be in writing and in the Form prescribed for this purpose.

(4) Subject to the appropriate approval, Child Protection Officers may be eligible for annual risk and hardship allowances.

32. FUNCTIONS OF CHILD PROTECTION OFFICERS AND COMMUNITY DEVELOPMENT OFFICERS.

The functions of the Child Protections Officers and the Community Development Officers are to prevent and respond to violence, abuse, neglect, exploitation and discrimination against all children and in that regard, the officers are responsible for -

- (a) protecting children from harm; and
- (b) working with families, communities and other social service providers to prevent, alleviate and remedy the personal, social and economic conditions, that might place children and families at risk; and
- (c) providing, or co-ordinating the provision of guidance, counseling and other family support services aimed at assisting parents to fulfill their parental responsibilities; and
- (d) investigating allegations or evidence that children may be in need of protection; and
- (e) preparing plans of care for children found to be in need of protection; and
- (f) developing and providing services to families to promote the integrity of families, before and after intervention pursuant to this Act; and
- (g) supervising children assigned to their supervision pursuant to this Act; and
- (h) providing care for children in the care and custody of the Director pursuant to this Act; and
- (i) taking reasonable measures to make known in the community the services that are provided under this Act and any other law; and
- (j) identifying, raising awareness and working with communities to change harmful social, economic and customary practices; and
- (k) any other powers, functions and authorities delegated or prescribed under this Act or the regulations.

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33. APPOINTMENT OF COMMUNITY CHILD PROTECTION VOLUNTEERS.

(1) Subject to Subsection (2), the Director may appoint persons to be Community Child Protection Volunteers to carry out such duties as are prescribed for the purposes of this Act.

(2) Prior to appointments under Subsection (1), Community Child Protection Volunteers shall be selected in the manner and criteria that are acceptable to the Director and shall be recommended and endorsed by the appropriate Provincial Lukautim Pikinini Council.

- (3) The Director shall issue to Community Child Protection Volunteers -
- (a) authority cards indicating the nature of their appointments; and
 - (b) terms of references detailing specific duties and responsibilities.

PART V. - PIKININI COURT.

34. ESTABLISHMENT OF PIKININI COURTS.

(1) The Minister, acting on advice of the Chief Magistrate, may, by notice in the National Gazette, establish Pikinini Courts.

(2) The Minister acting on the advice of the Chief Magistrate, shall by notice in the National Gazette -

- (a) determine the area in and for which a Pikinini Court may exercise its jurisdiction and name by which the Court may be referred to; and
- (b) appoint a justice to be the magistrate of a Pikinini Court; and
- (c) subject to Subsection (3), appoint such persons as he thinks proper to be members of a Pikinini Court; and
- (d) appoint a person to be the Clerk of a Pikinini Court.

(3) Members of a Pikinini Court appointed under Subsection (2)(c) may include, Welfare Officers and members of the community.

35. EXERCISE OF JURISDICTION OF THE PIKININI COURT.

(1) Subject to this section, the jurisdiction of a Pikinini Court shall be exercised by the Magistrate of the Court and one member of the Court appointed under Section 34(2)(b).

(2) Where it is not possible or convenient for the Magistrate of a Pikinini Court to attend a sitting of that Pikinini Court, a magistrate of any other Courts other than a Village Court may attend and act in his place.

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36. DECISION OF PIKININI COURT.

- (1) Subject to this Act, the Pikinini Court -
- (a) shall in respect of all child protection cases, exercise the powers and authorities possessed by the District Court; and
 - (b) shall hear and determine all complaints and applications under this Act.

(2) Where the persons sitting as a Pikinini Court are divided in opinion as to the opinion to be given on a question, the question shall be decided accordingly to the opinion of the Magistrate.

37. JURISDICTION OF DISTRICT COURT.

(1) Subject to this Act, after the establishment of a Pikinini Court, no District Court has jurisdiction within the area of a Pikinini Court in respect of matters within the jurisdiction of the Pikinini Court.

- (2) Subsection (1), does not prejudice the powers of the District Court to -
- (a) take a complaint or application; or
 - (b) issue a summons; or
 - (c) grant, issue or endorsed an access orders, emergency protection orders or any other orders under this Act or any other laws.

- (3) Where -
- (a) no Pikinini Court has been established to exercise the jurisdiction under this Act over a particular area, a District Court may exercise in that area the jurisdiction of a Pikinini Court as if it were a Pikinini Court; and
 - (b) a Magistrate of a District Court is satisfied that -
 - (i) circumstances exist that prevent the Magistrate of a Pikinini Court from acting in relation to a particular matter under this Act; and
 - (ii) in the interests of justice he should act in the place of the Magistrate of the Pikinini Court,he may act in and in relation to the matter as if he had been appointed to be the Magistrate of the Pikinini Court.

(4) The powers of a Magistrate exercising jurisdiction under this section is limited to making only interim orders until such time a Pikinini Court Magistrate makes a permanent order in relation to the matter for which the interim order was made.

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38. SITTING OF PIKININI COURT.

- (1) The Pikinini Court shall be held -
- (a) in such places as the Minister for Justice acting on advice of the Chief Magistrate, directs; and
 - (b) in a building approved or appointed by the Minister for Justice, acting on advice by the Chief Magistrate, for the holding of a Pikinini Court.

(2) The Minister for Justice, acting on advice of the Chief Magistrate, may approve or appoint a magistrate's office or building used for court proceedings other than proceedings of a Pikinini Court to be a building for holding a Pikinini Court.

(3) Where an office or building, is approved or appointed under Subsection (2), for the holding of a Pikinini Court, proceedings of a Pikinini Court may only be held in that office or building, at a time when the ordinary business of the office or the ordinary court business of the building is not being transacted.

(4) Subject to this Act, proceedings in Pikinini Courts shall follow the provisions of the *Evidence (Amendments) Act* (Chapter 48).

39. PUBLICITY OF PROCEEDINGS.

(1) A Pikinini Court may order a person not directly interested in a hearing or trial by the Pikinini Court not to remain or enter a room or a place in which the hearing or trial is being held, or remain within the hearing of the Court.

(2) A person who remains in or enters a room or place or remains within the hearing of the Court is in contravention of an order under Subsection (1) is guilty of an offence.

Penalty: A fine not exceeding K1,000.00 or imprisonment for a term not exceeding 12 months.

(3) A person who publishes a report of the proceedings before a Pikinini Court is guilty of an offence, unless -

- (a) the Court expressly authorizes the publishing; or
- (b) the publishing is done by a person in the performance of his official duties under this Act or any other Act.

Penalty: A fine not exceeding K500.00 or imprisonment for a term not exceeding 12 months.

PART VI. - ESTABLISHMENT OF PIKININI CARE FUND.

40. ESTABLISHMENT OF PIKININI CARE FUND.

(1) There shall be established a "Lukautim Pikinini Trust Fund" to be operated and managed by the Lukautim Pikinini Council and the Director.

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- (2) The Fund shall consist of such moneys as are, from time to time, provided -
- (a) by the Parliament as appropriated in the National Budget for children; and
 - (b) from contributions made by individuals, communities, corporations and international donors; and
 - (c) from funds raised under Subsection (3); and
 - (d) from moneys received or collected in accordance with Subsection (4).
- (3) For the purposes of Subsection (2)(c), the National Lukautim Pikinini Council may, from time to time, declare National Fundraising events to raise funds from the public towards the Pikinini Care Fund and to serve the purposes of this Act, and particularly for -
- (a) the placement of children; and
 - (b) the transfer of children; and
 - (c) the continuous education of children under the care of the Director; and
 - (d) the rehabilitation and protection of children; and
 - (e) the training of parents or guardians; and
 - (f) children under special care arrangements; and
 - (g) other arrangements under this Act or the *Adoption of Children Act* (Chapter 275) or related Acts.
- (4) Subject to this section, the Director may charge or collect funds from the following -
- (a) licensing and inspection fees of all Early Childhood Development Centers and Child Care establishments; and
 - (b) adoption of children fees, home report and welfare report fees under the *Adoption of Children Act* (Chapter 275); and
 - (c) registration fees of all Private Child Care Agencies; and
 - (d) registration fees of all establishments of Non Government Organizations and Church-run Out of Home Care Services and general welfare for children established under this Act.
- (5) The Director or any person authorized by the Director, may collect the fees, donations or funds referred to in this section for deposit in the Pikinini Care Fund Trust Account.
- (6) The management of the Pikinini Care Fund Trust Account shall be in accordance with the *Public Finances (Management) Act 1995*.

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PART VII. – PIKININI AND FAMILY SUPPORT SERVICES.

41. CHILD WITH SPECIAL NEEDS.

In this section, unless contrary intention appears, "a child with special needs" is defined as a child -

- (a) who is unlikely to achieve or maintain, or to have the opportunity to achieve or maintain, a reasonable standard of health, education or normal development without the provision of services by the Director; or
- (b) whose parents are without the means of support and cannot meet their child's basic needs; or
- (c) has a disability; or
- (d) who is ill and without any means of support; or who has been orphaned, displaced or traumatized as a result of a natural disaster, conflict or family separation; or
- (e) who is vulnerable to violence, abuse, or exploitation.

42. FAMILY SUPPORT SERVICES.

The Director shall, as far as reasonably possible, provide or facilitate such assistance and services to children and their families as he considers appropriate to -

- (a) prevent violence, neglect, abuse or exploitation, or other failure to meet children's needs; and
- (b) promote every child's well-being and the realization of his full potential; and
- (c) promote and strengthen the ability of parents to fulfill their parental responsibilities; and
- (d) actively involve and promote the full participation of families in identifying and resolving their own problems; and
- (e) provide practical support to children who have been orphaned, displaced or traumatized as a result of a natural disaster, conflict, or family separation, in child friendly settings.

43. DUTY OF DIRECTOR.

The Director shall -

- (a) safeguard and promote the welfare of a child with special needs; and
- (b) so far as is consistent with that duty, promote the upbringing of such a child by his family by providing, or arranging for the provision of, a range of services appropriate to the child's needs.

44. SPECIAL NEEDS AGREEMENT PROCESS.

(1) A parent, guardian, child-friendly place specialized in providing care for children with special needs, or a person who -

- (a) has, in his care, a child with special needs; and

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(b) is unable to provide the services required by the child; may enter into a Special Needs Agreement with the Family Support Service to ensure that the needs and well-being of the child with special needs are met.

- (2) The Special Needs Agreement may -
- (a) include the provision of services by the Family Support Service, the parents and the guardian for a child with special needs; or
 - (b) require a child with special needs to be placed -
 - (i) under supervision; or
 - (ii) in the care, of the Director.

(3) The provision of services under Subsection (2)(a) may include assistance in kind or cash, and will be provided to the child's primary care-giver including a child-friendly place as detailed under the Special Needs Agreement.

(4) Prior to providing any assistance or imposing any conditions in accordance with the terms of the Special Needs Agreement, the Family Support Service shall take into account the special needs of the child concerned and each of his parents or guardians.

- (5) All Special Needs Agreements shall be registered with the Director.

PART VIII. – PIKININI IN NEED OF PROTECTION.

Division 1. - Reporting and Investigation.

45. DUTY OF PROFESSIONALS AND THE PUBLIC TO REPORT.

(1) A person who believes, on reasonable grounds, that a child is a child in need of protection, may notify the Director.

(2) Notwithstanding any other Act, person referred to in Subsection (3), who -

- (a) performs professional duties with respect to a child; and
- (b) in the course of that person's professional, official, or community duties, has reason to believe that the child is a child in need of protection,

shall immediately report the matter to the Director.

(3) For the purposes of Subsection (2)(a), a person who performs professional duties, include -

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- (a) a health care professional, physician, nurse, aid post worker, dentist, psychologist, teacher, school principal, social worker, family counselor, member of the clergy, lawyer, police officer, community based corrections officer, juvenile court officer, correctional services officer, community development officer or community development office worker; or
- (b) an operator or employee of a child-minding center or child care service.

46. RESTRICTION ON CIVIL ACTION.

(1) Subject to Subsection (2), a person who notifies or supplies information to the Director under Section 45, that a child is a child in need of protection -

- (a) is not, by virtue of doing so, be held to have breached any professional etiquette or code, or to have departed from any accepted form of professional conduct; and
- (b) in so far as he has acted in good faith, incurs no civil or criminal liability in respect of the notification or the provision of the information.

(2) A person who maliciously reports or makes a report that is intended to cause distress or annoyance to a person in whose care and custody a child in respect of whom a report is made is guilty of an offence.

Penalty: A fine not exceeding K500.00 or imprisonment for a term not exceeding 3 months, or both.

(3) It is not a defence to a charge under Subsection (2) that the person so charged did not intend his action to cause distress or annoyance to the person affected.

47. CONFIDENTIALITY OF INFORMATION OF CHILD IN NEED OF PROTECTION.

(1) Subject to this Section, the identity of the person who supplied the information shall not be disclosed to any other person, unless the disclosure -

- (a) is made in the course of official duties to another person acting in the course of official duties; or
- (b) is made with the consent of that person; or
- (c) is made by way of evidence adduced in accordance with Subsections (2) and (3).

(2) Subject to Subsection (3) -

- (a) no evidence as to the identity of the person who supplied the information or from which the identity of that person could be deduced, may be adduced in proceedings before a Court, without leave of the Court; and

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- (b) unless such leave is granted, a party or witness in a proceeding shall not be asked, and, if asked, shall not be required to answer, any question that cannot be answered without disclosing the identity of, or leading to the identification of, that person.
- (3) A Court shall not grant leave under Subsection (2), unless -
 - (a) the Court is satisfied that the evidence is of critical importance in the proceedings and that failure to admit or disclose it would prejudice the proper administration of justice; or
 - (b) the person consents to the admission of the evidence in the proceedings.
- (4) An application for leave to adduce evidence under Subsection (2), shall -
 - (a) not, except as authorized by the Court, be heard and determined in public; and
 - (b) be conducted in such a manner as to protect, so far as may be practicable, the identity of the person pending the determination of the application.

48. INVESTIGATION PROCEDURES AND PROCESSES.

- (1) On receipt of information under Section 45, the Director shall -
 - (a) make such investigation as he considers necessary; and
 - (b) take appropriate action to safe guard or promote the safety, welfare and well-being of the child in need of protection, including the following:-
 - (i) by providing or arranging for support services for the child in need of protection and his family; or
 - (ii) by developing, in consultation with the parents or guardian, a voluntary care plan to meet the needs of the child in need of protection and his family; or
 - (iii) by ensuring the protection of the child in need of protection by exercising the emergency protection powers under Division 3; or
 - (iv) by seeking appropriate orders under Division 2.
- (2) Where, on receipt of information, the Director believes on reasonable grounds that -
 - (a) a child is or may be a child in need of protection; and
 - (b) the person who has control and custody of the child refuses to -
 - (i) give or allow the Director access to the child; or
 - (ii) provide the Director with all or any information known to that person that may or could assist the Director in locating the child, the Director may apply to a Court for an order under Division 2.

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Division 2. - Court Process.

49. COURT PROCEDURE TO ISSUE A WARRANT TO SEARCH IN RESPECT OF OFFENCE.

(1) Where it appears to a Magistrate, on complaint made before him on oath, that there are reasonable grounds to believe that, in a house, building, vessel, vehicle or place

- (a) a person is committing an offence against a provision of the Act; or
- (b) a provision of this Act is being contravened,

he may issue a warrant authorizing a Child Protection Officer or a policeman named in the warrant to enter and search at any hour of the day or night, and where necessary by force, a house, building, vessel, vehicle or place specified in the warrant, for the purpose of ascertaining whether there is or has been, in or on the house, building, vessel, vehicle or place, an offence against or a contravention of a provision of this Act.

(2) The Child Protection officer or policeman named in a warrant issued under Subsection (1) may be accompanied by -

- (a) a medical practitioner; and
- (b) unless the Magistrate otherwise directs, the person making the complaint, if he agrees to accompany the Child Protection Officer or policeman.

50. WARRANT TO SEARCH AND ARREST IN RELATION TO SAFETY OF A CHILD.

(1) Where on complaint made on oath by a person who, in the opinion of the Magistrate, is acting in good faith and in the best interests of a child, that there is reasonable cause to believe that the child -

- (a) is a neglected child; or
- (b) has been or is being ill-treated or neglected in a manner that is likely to -
 - (i) cause him unnecessary suffering; or
 - (ii) injurious to his health or welfare,

the Magistrate may issue a warrant authorizing a Child Protection Officer, or a policeman named in the warrant to -

- (c) search for the child and take him to a detain home in, a place of safety, until he can be brought before a court; and
- (d) apprehend any person who, the Child Protection Officer or policeman believes on reasonable grounds, has committed an offence in respect of the child.

(2) A warrant issued under this section -

- (a) may or may not specify the name of a particular child; and

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- (b) shall be addressed to and executed by the Child Protection Officer or a policeman named in the warrant.
- (3) A Child Protection Officer or a policeman authorized by a warrant, may -
 - (a) enter and where necessary by force, any house, building, vessel, vehicle or other place specified in the warrant; and
 - (b) remove a child from that house, building, vessel, vehicle or other place.
- (4) In performing his duties under this section, a Child Protection Officer or a policeman may be accompanied by -
 - (a) a medical practitioner; and
 - (b) unless the Magistrate otherwise directs, the person who made the complaint, if that person so wishes.
- (5) Where a child is brought before the court by virtue of a warrant under this section, the court may -
 - (a) commit the child to the care of a person named by the court; or
 - (b) make sure other orders as to the care of the child as the court thinks fit.

51. RECORD TO BE KEPT BY THE DIRECTOR.

The Director shall keep a record of all reports, actions taken as a consequence of a report, subsequent disposition of and dealings with children to whom such reports and actions relate.

Division 3. - Emergency Protection Powers.

52. INTERPRETATION OF DIVISION 3.

In this Division, unless the contrary intention appears, "officer" means -

- (a) a policeman; or
- (b) a designated Child Protection Officer or any other person, authorized by the Director to exercise the powers under this Division.

53. CHILD IN IMMEDIATE DANGER.

(1) An officer may, without a court order, take charge of a child, if the officer believes, on reasonable grounds, that the child's health or safety is in immediate danger.

(2) For the purpose of Subsection (1), an officer may, by force if necessary, enter any premises or vehicle or board any vessel or aircraft, for the purpose of taking charge of a child, where -

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- (a) the officer believes, on reasonable grounds, that the child's health or safety is in immediate danger; and
 - (b) the person who has control and custody of the child denies the officer access to the child, or no one is available to provide access to the child.
- (3) On taking charge of the child, the officer shall, immediately report the circumstances to the Director, and the officer shall -
- (a) take the child to the Director or to a person or to place of safety designated by the Director; or
 - (b) with the approval of the Director, return the child to its parents or take the child to a person designated by the parents.

54. UNATTENDED OR ABANDONED CHILD.

(1) Where an officer, or a medical or nursing officer in the case of a child who has been abandoned soon after delivery, believes, on reasonable grounds that a child is without adequate supervision, he shall, within 48 hours, report the matter to the Director, and shall -

- (a) take the child to the Director or to a person or place of safety designated by the Director; or
- (b) arrange for temporary home services to be provided for the child until other adequate supervision is available for the child.

(2) The Director shall take all reasonable steps to notify the child's parent of any steps taken under Subsection (1).

55. LOST OR RUNAWAY CHILD.

(1) In this section, unless the contrary intention appears, "the person responsible for the child" means a parent, guardian or primary care-giver of the child.

(2) An officer may take charge of a child where it appears to the officer that the child is lost or has run away from his home.

- (3) On taking charge of the child under Subsection (1), the officer shall -
- (a) notify the Director; and
 - (b) take all reasonable steps to locate the person responsible for the child; and
 - (c) take the child to the Director, or to a person, or place of safety designated by the Director, or arrange for someone to look after the child.

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- (4) Where the person responsible for the child is located, the Director may -
- (a) return the child or facilitate the child's return to that person; or
 - (b) place the child with another person, at the request of the person responsible for the child, and with the consent of that other person.
- (5) Where the child refuses to return to the person responsible for the child, the Director shall -
- (a) place the child with a person or in a place of safety determined by the Director; and
 - (b) arrange for a mediation process between the child and the person responsible for the child.
- (6) Where mediation under Subsection (5)(b) does not result in the child returning to the person responsible for the child, the Director may institute proceedings under Division 4.

56. PARENTS TO BE NOTIFIED OF CHILD'S REMOVAL.

(1) Where the Director or an officer removes a child under this Division, the Director or the officer, as the case may be, shall promptly make all reasonable efforts to notify each parent, of the child's removal.

(2) Unless, it is impracticable to do so, notification for the purpose of Subsection (1), shall be in writing and shall include a statement of the reasons for removing the child.

57. CHILD TO BE UNDER THE CARE OF DIRECTOR.

- (1) Where -
- (a) in accordance with Section 48(1)(b)(iii), a child has been determined to be a child to whom Division 3 applies; or
 - (b) a child has been removed under Sections 53, 54 and 55, the Director has the care of the child until -
 - (i) the child is returned; or
 - (ii) a Court makes an order in relation to the child under Division 4.
- (2) While the child is in the Director's care, the Director may -
- (a) authorize a health care provider to examine the child; and
 - (b) consent to necessary health care for the child if, in the opinion of a health care provider, the health care of the child shall be provided without delay.

(3) Upon consenting to the health care for the child, the Director shall, where practicable, notify the parent, who at the time of the child's removal, was apparently entitled to custody.

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(4) While the child is in the Director's care, the Director may consent to the child's participation in routine school, social or recreational activities.

Division 4. - Pikinini Protection Hearings.

58. CHILD PROTECTION HEARING.

(1) Where -

- (a) in accordance with Section 48(1)(b)(iii), a child has been determined to be a child to whom Division 3 applies; or
- (b) a child has been removed under Sections 53, 54 and 55, and the Director believes that is not in the child's best interest to return him to his parents, the Director shall, within 48 hours following the removal of the child, make an application to the Pikinini Court for an order under Sections 59 or 68.

(2) Where the Director makes an application to the Court to determine whether a child is in need of protection, the Court shall, as soon as is practicable within 48 hours, hold a child protection hearing and determine whether the child is a child in need of protection.

(3) Subject to this Act, a Court conducting a child protection hearing has power and authority, on its own initiative, to summon any person to attend before it and to testify or produce any document or thing, and to enforce obedience to the summons or orders.

59. TEMPORARY CHILD PROTECTION ORDERS.

Where a Court determines that a child is a child in need of protection, the Court, shall make any one or more of the following orders -

- (a) that the child shall be returned to the care and custody of a parent or guardian; or
- (b) that the child be returned to the care and custody of a parent or guardian, subject to the supervision of the Director or a designated welfare officer and on such reasonable terms and conditions as the Court considers appropriate, including the future taking into care of the child, by the Director, in the event of non compliance by the parent or guardian with any specific terms or conditions; or
- (c) that a parent or guardian or other person shall not reside with or contact or associate in any way with the child; or

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- (d) that the child shall be placed in the care and custody of a person other than a parent or guardian, with the consent of that other person, subject to the supervision of the Director or a designated welfare officer, and on such reasonable terms and conditions as the Court considers appropriate; or
- (e) that the child shall remain or be placed in the care or custody of the Director; or
- (f) that a parent or guardian or other person may have access to the child on such reasonable terms and conditions as the Court considers appropriate and, where an order is made pursuant to Paragraphs (d) or (e), access may be granted to a parent or guardian unless the Court is satisfied that continued contact with the parent or guardian would not be in the child's best interests; or
- (g) that the child or a parent or guardian be referred for psychiatric, medical or other examination or assessment; or
- (h) any other order it considers reasonable, bearing in mind the best interests of the child.

60. PLACEMENT CONSIDERATIONS.

(1) When enforcing the order or orders under Section 59, the Director shall, where practicable, in order to ensure the best interests of the child are served, take into account -

- (a) the desirability of keeping brothers and sisters in the same family unit; and
- (b) the need to maintain contact with the child's relatives and friends; and
- (c) the preservation of the child's cultural, racial and linguistic heritage; and
- (d) the continuity of the child's education and religion.

(2) Where a Court determines that it is necessary to remove the child from the care of a parent or guardian, the Court shall, before making an order for temporary or permanent care and custody under Sections 59 or 68, consider whether it is possible to place the child with a family member, neighbour or other member of the child's community or extended family with the consent of the family member, neighbour or other person.

61. NOTICE TO PARENTS, ETC.

Where possible, at least five days before the date set for the child protection hearing, and in any case prior to a child protection hearing, notice of the hearing shall be served on -

- (a) the child, where the child is 10 years of age or over, unless the Court otherwise orders under Section 62(2); and
- (b) the child's parents or guardian; and
- (c) the child's guardian ad litem.

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62. PARTIES TO THE PROCEEDINGS.

- (1) The parties to the proceedings under this Division are -
 - (a) the Director, and
 - (b) the child's parent or guardian; and
 - (c) the child.

- (2) A child who is -
 - (a) 10 years of age or more; and
 - (b) is the subject of proceedings under this Division, is entitled to receive notice of the proceedings and to be present at the hearing, unless the Court; and
 - (c) is satisfied that being present at the hearing would cause the child emotional harm; and
 - (d) orders that the child not receive a notice of the proceedings and not be permitted to be present at the hearing.

(3) The child shall be represented by his guardian ad Litem, who will act in the best interests of the child.

63. APPOINTMENT OF GUARDIAN AD LITEM.

The Court shall appoint a guardian ad litem or legal counsel for the child party unless it is not necessary or determined otherwise by the Court in each case.

64. PROCEEDINGS OF THE COURT.

In conducting a hearing under this Division, the Court -

- (a) shall conduct proceedings before it in an informal manner; and
- (b) shall proceed without regard to legal forms; and
- (c) shall consider evidence on the balance of probabilities; and
- (d) may inform itself on a matter in such manner as it thinks fit; and
- (e) shall not be bound by strict rules of evidence.

65. PRIVACY AND LIMITATIONS ON PUBLICITY OF PROCEEDINGS.

- (1) A hearing under this Division shall -
 - (a) be held in camera; and
 - (b) be attended only by -
 - (i) the parties to the proceedings; and
 - (ii) any other person by leave of the Court .

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(2) A person who publishes or makes public information that has the effect of identifying a child who -

(a) is a witness at, or a participant in, a hearing; or

(b) in the subject of a proceeding,

under this Act, is guilty of an offence.

Penalty: In the case of -

(a) an individual, a fine not exceeding K2,000.00 or imprisonment for a term not exceeding two years; and

(b) a corporation - a fine not exceeding K10,000.00.

Division 5. - Child Protection Orders.

66. FINDING A CHILD IN NEED OF PROTECTION.

(1) At a protection hearing the Court shall determine whether the child is in need of protection.

(2) Where the Court finds that a child is not a child in need of protection, it shall -

(a) where the child was removed, order the Director if he has not done so, to return the child as soon as possible to the parent or guardian who is apparently entitled to custody; and

(b) terminate any interim arrangement or orders made under Division 4.

(3) Where the Court finds that a child is a child in need of protection, it -

(a) shall consider the plan of care presented by the Director; and

(b) may hear any more evidence the Court considers necessary to help it determine which order may be made.

67. PLAN OF CARE FOR A CHILD

The Court shall, before making an order under Section 68 obtain and consider a plan for the child's care, prepared in writing by the Director of a designated welfare officer, including -

(a) a description of any prior services provided to the child's parents or guardian under Part VII; and

(b) a description of the proposed arrangements for the care and custody or supervision of the child; and

(c) a description of the services to be provided to remedy the condition or situation on the basis of which the child was found in need of protection; and

(d) a statement of the criteria by which the Director shall determine when the child's care and custody or supervision is no longer required; and

(e) an estimate of the time required to achieve the purpose of the Director's intervention; and

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- (f) where the Director proposed to remove the child temporarily from the care of a parent or guardian –
 - (i) an explanation as to why the child cannot adequately be protected while in the care of the parent or guardian, and a description of any past efforts to do so; and
 - (ii) a statement of what efforts, if any, are planned to maintain the child's contact with the parent or guardian; and
- (g) where the Director proposes to remove the child permanently from the care or custody of the parent or guardian, a description of the arrangements made or being made for the child's long-term stable placement; and
- (h) the child's wishes.

68. PERMANENT CHILD PROTECTION ORDERS.

(1) Where the Court finds that the child is a child in need of protection, the Court shall make any one of the following orders, after taking into account the best interest of the child and the Objectives and General Principles under Schedule 1 -

- (a) that the child be returned to, or remains in the custody of, the parent but shall be under the supervision of the Director or his designate for a specified period of up to 12 months;
- (b) that an abusive parent or other person be removed from the child's home;
- (c) that the child be placed in the temporary care and custody of a person under the supervision of the Director or his designate for a specified period in accordance with plan of care prepared under Section 67;
- (d) that the child remains or be placed in the temporary care or custody of the Director for a specified period in accordance with Section 59(e);
- (e) that the child be placed in the permanent care and custody of the Director;
- (f) that a parent or guardian or other person may have access to the child on such reasonable terms and conditions as the Court considers appropriate

and, where an order is made pursuant to Paragraphs (c), (d) and (e), access may be granted to a parent or guardian unless the Court is satisfied that the continued contact with the parent or guardian would not be in the child's best interests.

(2) When an order is made under Subsection (1)(c) or (d), the Court may further order that on the expiry of the order the child shall -

- (a) immediately be returned to the parent; and
- (b) be under the Director's supervision for a further specified period of up to six months.

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(3) The Court may attach to an order under Subsection (1) any terms or conditions recommended by the Director to implement a plan of care prepared under Section 67.

69. RESTRICTIONS ON REMOVAL OF CHILD.

A Court shall not make an order, removing the child from the care of a parent or guardian, unless the Court, is satisfied that less intrusive alternatives, including services to strengthen the ability of the family under Part VII -

- (a) has been attempted and have failed; or
- (b) has been refused by the parent or guardian; or
- (c) would be inadequate to protect the child.

70. RESTRICTIONS ON PERMANENT CARE AND CUSTODY ORDERS.

A Court shall not make an order under Section 68(1)(e), unless -

- (a) the identify or location of parents of the child has not been found, after a diligent search and is not likely to be found; or
- (b) a parent is unable or unwilling to provide adequate care and protection of the child; or
- (c) the nature and extent of the harm the child has suffered or the likelihood that the child will suffer harm, is such, that, having regard to the age of the child, there is unlikely that it would be in the child's best interest to be returned to the parent, within a reasonably foreseeable time; or
- (d) the nature and extent of the harm the child has suffered or the likelihood that the child will suffer harm, is such that, having regard to the age of the child, it would be unlikely that it would be in the best interests of the child to be returned to his parents without additional protective measures outline in the Order.

71. PLACEMENT CONSIDERATIONS.

Where a Court determines that, it is necessary to remove the child from the care of a parent or guardian, the Court shall, before making an order for temporary or permanent care and custody under Sections 59 or 68, consider whether it is possible to place the child with a family member, neighbour or other member of the child's community or extended family with the consent of the family member, neighbour or other person.

72. DUTY OF COURT UPON MAKING ORDER.

Where a Court makes a child protection order, the Court shall -

- (a) when making it's decision, take into account the plan of care prepared in relation to the child; and

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- (b) give the reasons for its decision, including -
 - (i) a statement of the evidence on which the Court based its decision; and
 - (ii) where the order has the effect of removing or keeping the child from the care or custody of the parent or guardian, a statement of the reasons why the child cannot adequately be protected while in the care or custody of the parent or guardian.

73. TERMS OF SUPERVISION ORDERS.

(1) Where a Court makes an order under Section 68(1)(a), (c) or (d), the Court may impose reasonable terms and conditions relating to the child's care and supervision, including any one or more of the following -

- (a) the place of residence of the child and the person with whom the child shall, with the consent of that person, reside;
- (b) a requirement that the Director supervises the child within the residence of the child;
- (c) the frequency of visits at the residence of the child by the Director;
- (d) the assessment, treatment or support services to be provided by the Director, to the child and his parent, guardian or other person having the care and custody of the child;
- (e) that a parent or guardian or other person shall not reside with or contact or associate in any way with the child;
- (f) the terms of access to the child by a parent or guardian or other person;
- (g) the assessment, treatment or services to be obtained by a parent or guardian or other person residing with child;
- (h) the requirement that the Director remove the child if a person does not comply with one or more specified terms or conditions of the order;
- (i) any other terms the Court considers necessary.

(2) Where a Court makes an order under Section 68(1)(a), (c) or (d), the Director has the right to enter the residence of the child to provide guidance and assistance and to ascertain that the child is being properly cared for.

(3) Where the Director -

- (a) removes a child under Subsection (1)(h); and
- (b) takes the child into his care;

he shall, as soon as is practicable, but in any event, within five working days after the removal of the child, apply to a Court for an order under Section 68(1)(d).

(4) The Director shall without any further court order, remove a child who is the subject of an order made under Section 68(1)(a), (c) or (d) or an interim order made under Division 3 where the Director believes on reasonable grounds -

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- (a) that the order or interim order no longer protects the child; or
- (b) that a person has not complied with a term or condition of the order and the Director is required by that order to remove the child if the person does not comply with that term or condition.

(5) The powers under Section 53(2) apply for the purpose of removing a child under this section.

(6) Where the Director removes a child under Subsection (4), he shall make an application to the Pikinini Court, in accordance with Section 58(1) for a variation of the order made under Sections 59 or 68.

74. TERMS OF TEMPORARY CARE AND CUSTODY ORDER

(1) Where a Court makes an order for temporary care and custody under Section 59(1)(c) or (d), the Court may impose reasonable terms and conditions, including any one or more of the following -

- (a) access by a parent or guardian to the child, unless the Court is satisfied that continued contact with the parent or guardian would not be in the best interests of the child;
- (b) access by any other person to the child;
- (c) the assessment, treatment or services to be obtained for the child by a parent, guardian or other person seeking the care and custody of the child;
- (d) the assessment, treatment or services to be obtained by a parent, guardian, or other person residing with the child;
- (e) the circumstances or time when the child may be returned to the parent, guardian or other person under a supervision order;
- (f) any other terms and conditions the Court considers necessary.

(2) Where the Director places a child who is the subject of an order for temporary care and custody under Section 59 (1)(c) or (d), the Director shall, where practicable, in order to ensure the best interests of the child are served, take into account the general principles under Part II and -

- (a) the desirability of keeping brothers and sisters in the same family unit; and
- (b) the need to maintain contact with the child's family and friends; and
- (c) the preservation of the child's cultural, racial and linguistic heritage; and
- (d) the continuity of the child's education and religion.

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75. DURATION OF ORDERS FOR THE TEMPORARY CARE AND CUSTODY.

The period of duration of an order under Section 59(1)(c) or (d), for temporary care and custody shall not exceed -

- (a) where the child that is the subject of the order is under three years of age at the time of the application commencing the proceedings - three months; and
- (b) where the child that is the subject of the order is three years of age or more but under the age of 10 years - six months; and
- (c) where the child that is the subject of the disposition hearing is ten years of age or more - 12 months.

76. EXTENSION OF SUPERVISION ORDERS AND TEMPORARY ORDERS.

(1) Where the circumstances that caused the child to be a child in need of protection is unlikely to improve within a reasonable time, the Director may, before the order expires, apply to the Court for an extension of -

- (a) a supervision order; or
- (b) a temporary care and custody order.

(2) At least 5 days before the date set for hearing of the application, under Subsection (1), the notice of the time, date and place of the hearing shall be served on -

- (a) the child, if the child is 10 years of age or over; and
- (b) the child's parents or guardian; and
- (c) the child's guardian ad litem; and
- (d) any person who has custody of the child under the temporary custody order; and
- (e) any part to the proceedings in which the Court made the temporary custody order.

(3) Where a Court is satisfied that the circumstances that caused the child to be declared a child in need of protection are likely to improve within a reasonable time, the Court may, in the child's best interests order -

- (a) the child and the person, whom the child is to be transferred to, have consented to the transfer of custody; and
- (b) the Court is satisfied that it is in the child's best interests.

77. TOTAL PERIOD OF TEMPORARY CUSTODY.

(1) In the section, unless the contrary intention appears, "initial order" means a temporary custody order under Section 59(d) or (e).

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(2) The total period during which a child may be in the temporary custody of the Director or a person other than the child's parent shall not -

- (a) where the child who was the subject of the initial order was under 5 years of age on the date of that order - exceed 12 months from the date of the initial order and custody order is made; and
- (b) where the child who was the subject of the initial order was 5 years of age or over but under 10 years of age on the day of that order - exceed 18 months from the date of the initial order until the child is returned to the parents or a permanent care and custody order if made; and
- (c) where the child who was the subject of the initial order was 10 years of age or over on the date of that order - exceed 24 months from the date of the initial order until the child is returned to the parents or a permanent care and custody order is made.

(3) On application, a Court may extend, by a specified period, a time limit under Subsection (2), if the Court considers it in the child's best interests to do so.

78. SUPERVISION OF CHILD AFTER TEMPORARY CUSTODY ORDER ENDS.

(1) Before a temporary care and custody order expires, the Director may apply to a Court for an order that the Director supervise the child's care for a specified period up to 12 months after the child is returned to the parent entitled to custody.

(2) At least 5 days before the date set for hearing of the application under Subsection (1), notice of the hearing must be served on the following:-

- (a) the child, where the child is 10 years of age or over; and
- (b) the child's parents or guardians; and
- (c) the child's parents or guardians; and
- (d) any person who has custody of the child under the temporary custody order; and
- (e) any party to the proceeding in which the Court made the temporary custody order.

(3) A Court may, in the child's best interests order the Director to supervise the child's care for a specified period up to 12 months.

79. CHANGES TO SUPERVISION, TEMPORARY CUSTODY AND ACCESS ORDERS.

(1) Where circumstances have changed significantly since the order was made, any party may apply to the court for a change to -

- (a) a supervision order; or

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- (b) a temporary care and custody order; or
- (c) an access order.

(2) At least 5 days before the date set for hearing of the application, notice of the hearing must be served on the following:-

- (a) the Director; and
- (b) the child, where the child is 10 years of age or over; and
- (c) the child's guardian ad litem; and
- (d) the child's parents or guardian; and
- (e) any person who has custody of the child under temporary custody order; and
- (f) where the application is to vary an access order - any person having access to the child by an order under Section 81.

(3) Before making an order under Subsection (4), the Court shall consider -

- (a) whether the circumstances have changed since the previous order was made; and
- (b) whether the plan for the child's care the court applied in its decision has been or is being carried out; and
- (c) what is the least intrusive alternative that is in the child's best interests; and
- (d) whether the requirements of Subsection (5) have been met.

(4) On the hearing of an application under this section, the Court may -

- (a) vary or annual the order made under Section 68, including any term or condition that is part of that order; or
- (b) order that the order terminates on a specified future date; or
- (c) make a further or another order in accordance with Section 68, subject to the time limits specified in Section 76(4) for supervision orders and in Section 75 for orders for temporary care and custody.

(5) Where a Court reviews an order for temporary care and custody, the Court may make a further order for temporary care and custody unless the court is satisfied that the circumstances justifying the earlier order for temporary care and custody are unlikely to change within a reasonably foreseeable time not exceeding the remainder of the applicable maximum time period pursuant to Section 77, so that the child can be returned to the parent or guardian.

(6) Where the court finds that circumstances have not changed significantly since the order was made, the court may confirm the order.

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80. CONSEQUENCES OF PERMANENT CARE AND CUSTODY ORDER.

Where the court makes an order for permanent care and custody under Section 68(1)(e), the Director is the legal guardian of the child and as such has all the rights, powers and responsibilities of a parent or guardian for the child's care and custody.

81. ORDER FOR ACCESS.

(1) Subject to Subsection (2), where an order for permanent care and custody is made, the Court may make an order for access by a parent or guardian or other person.

(2) The Court shall not make an order under Subsection (1) unless the Court is satisfied that -

- (a) permanent placement in a family setting has not been planned or is not possible and the access by the person applying for the order will not impair the child's future opportunities for such placement; or
- (b) the child is at least 10 years of age and wishes to maintain contact with the person applying for the order; or
- (c) the child has been or will be placed with a person who does not wish to adopt the child; or
- (d) some other special circumstances justifies making an order for access.

82. WHEN A PERMANENT CUSTODY ORDER ENDS.

A permanent custody order expires when -

- (a) the child reaches 18 years of age; or
- (b) the child is adopted; or
- (c) a Court cancels the continuing custody order; or
- (d) custody of the child is transferred under Section 79.

83. TRANSFER OF CUSTODY TO A PERSON WHO IS NOT A PARENT.

(1) The Director may apply to a Court to permanently transfer the custody of a child who is in the permanent care and custody of the Director to a person other than the child's parent.

(2) At least 5 days before the date set for hearing of the application, notice of the hearing must be served on the following:-

- (a) the Director;
- (b) the child, where the child is 10 years of age or over; and
- (c) the child's guardian ad litem;
- (d) the child's parents or guardians;
- (e) the persons whom the child;
- (f) where the application is to vary an access order - any person having access to the child by an order under Section 81.

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(3) The Court may permanently transfer custody of a child from the Director to a person other than the child's parent where -

- (a) the child and the person, whom the child is to be transferred to, have consent to the transfer of custody; and
- (b) the Court is satisfied that it is in the child's best interests.

84. EFFECT OF A TRANSFER OF CUSTODY UNDER SECTION 83.

When an order is made transferring custody of a child under Section 83 -

- (a) the person to whom custody is transferred becomes the guardian of the child and the guardian of the estate of the child; and
- (b) the order does not affect the child's rights relating to inheritance or succession to property.

85. APPEALS.

(1) The Court, in its discretion, may -

- (a) reserve for the consideration of the National Court any question of law arising on or out of the hearing or determination of an information, complaint, or application under this Act; and
- (b) state a special case for the opinion of the National Court.

(2) There shall be an appeal to the National Court from any conviction, order of adjudication of a Court under this Act.

(3) The procedure and the law relating to appeals from District Court apply, so far as they are applicable, to an appeal from a Court under this section, whether by way of special case otherwise.

PART IX. – PIKININI IN CARE OF THE DIRECTOR.

86. GENERAL RESPONSIBILITIES OF THE DIRECTOR.

(1) Notwithstanding any other law relating to the guardianship or custody of children, where an order is made placing a child in the permanent care of the Director, the Director is responsible for the care and well-being of the child, and for the property of the child, until such time as the child ceases to be in the Director's care in accordance with Section 82.

(2) Subject to this Act, the Director may, from time to time, make provision for the care of a child who is under the temporary or permanent care and custody of the Director under this Act, in any of the following way -

- (a) to placing the child, or permitting the child to remain, in the care of a member of the child's family;

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- (b) by placing the child in the care of an approved foster parent or any other suitable person;
- (c) by placing the child in any other child-friendly place approved by the Director under this Act;
- (d) by making arrangements of the education of the child;
- (e) by making arrangements, including admission to hospital, for the medical or dental examination or treatment of the child or for such other professional examination or treatment as may be necessary or desirable;
- (f) by making such other provision for the care of the child as the circumstances of the case may require.

(3) In making provision for the care of a child in the permanent care and custody of the Director, the Director shall, where appropriate, have regard to the desirability of securing settled and permanent living arrangements for the child.

(4) When making any decision as to the care of a child under Subsection (2), the Director shall consider the child's best interests and the general principles under Part II and shall take into account the child's wishes, if they can be reasonably ascertained.

(5) The Director shall give priority to placing the child -

- (a) with a member of the family; or
- (b) where it is not contrary to the child's best interests -
 - (i) in a location where the child can maintain contact with the family, friends, and members of the child's community; or
 - (ii) in the same family unit as the child's brothers and sisters; or
 - (iii) in a location that ensures continuation of the child's linguistic, cultural and religious heritage; or
 - (iv) in a location that will allow the child to continue in the same school.

(6) The Director shall ensure that the rights of a child in this care under Section 80 are respected.

87. MAINTENANCE PAYMENTS.

The Director may, out of moneys appropriated by Parliament for this purpose, and on such conditions as may be prescribed, contributed towards the maintenance of a child placed, in accordance with this Act, with a caregiver of foster parent.

88. RIGHTS OF CHILDREN IN CARE.

(1) All children, both male and female, in the care of the Director shall have the right -

- (a) to be fed, clothed and nurtured according to community standards; and

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- (b) to be informed about their plans of care; and
- (c) to be consulted and to express their views, according to their abilities, an significant decisions affecting them; and
- (d) to reasonable privacy and to possession of their personal belongings; and
- (e) to be free from corporal punishment; and
- (f) to be informed of the standard of behavior expected by their caregivers and of the consequences of not meeting their caregivers' expectations; and
- (g) to receive medical and dental care when required; and
- (h) to participate in social and recreational activities, if available and appropriate, and according to their abilities and interests; and
- (i) to receive the religious instruction and to participate in the religious activities of their choice; and
- (j) to receive guidance and encouragement to maintain their cultural heritage; and
- (k) to protection from all forms of violence, abuse, neglect, exploitation and discrimination; and
- (l) to education appropriate to their age, their aptitude and their ability; and
- (m) to a regular view of their placement and care and development plan.

(2) Any person who, without reasonable excuse, obstructs or denies any child of these rights in guilty of any offence.

Penalty: A fine of K500.00 or imprisonment for a term not exceeding six months or both.

(3) It is the duty of the Director to ensure that all children under care know their rights and responsibilities and how their rights can be claimed.

89. LIABILITY OF CERTAIN NEAR RELATIVES FOR MAINTENANCE.

- (1) For the purposes of this section "father" -
 - (a) includes, in the case of an adopted child, the husband of and adopting mother; and
 - (b) means, in the case of a child born outside of marriage, and who is not adopted, a person admitting himself to be, or adjudged by a court to be, the father of the child; and
 - (c) if the father is dead and the mother is dead or unable to pay for all the cost of maintaining the child, on the stepfather (if any) of the child; and
 - (d) if the mother is dead and the father is dead or unable to pay for all the cost of maintaining the child, on the stepfather (if any) of the child.

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- (2) For the purpose of this section, "mother" -
- (a) includes, in the case of an adopted child, the wife of any adopting father; or
 - (b) means, in the case of a child born outside of marriage who is not adopted, a person admitting herself to be, or adjudged by a court to be, the mother of the child; or
 - (c) if the mother is dead and the father is dead or unable to pay for all the cost of maintaining the child, on the stepmother (if any) of the child; or
 - (d) if the father is dead and the mother is dead or unable to pay for all the cost of maintaining the child, on the stepmother (if any) of the child.

(3) The Director may complain to a Court that a person who is liable to pay for or contribute towards the cost of maintaining a child in the care of the Director is able to but refuse to do so.

(4) On complaint under Subsection (3), the Court may summon the person specified in the complaint to appear before a Court at a time and place appointed in the summons to show cause why he should not pay for or contribute towards the past or future maintenance of the child.

90. ORDER FOR PAYMENT OF MAINTENANCE.

Where, on the hearing of a complaint under Section 89(3), the Court is satisfied that a person -

- (a) is a near relative of and is liable to contribute towards the cost of the maintenance of the child; and
- (b) is able to pay for or contribute towards the cost of the past or future maintenance of the child but refuses to do so, the Court may order the person to pay to the Director -
 - (i) such sum for or towards the cost of the past maintenance of the child, not being maintenance of the child after the child has attained the age of 18 years, as the Court thinks appropriate; or
 - (ii) such weekly sum for or towards the cost of the future maintenance of the child for such period until the child attains the age of 18 years as the court thinks appropriate; or
 - (iii) to do both, Paragraph (a) and (b).

91. CERTAIN ALLEGATIONS IN COMPLAINT PRIMA FACIE EVIDENCE.

Subject to Section 90, on the hearing of an application in respect of the maintenance of a child in the care of the Director, an allegation in the complain that -

- (a) the person complained against is liable under Section 89, and is able to pay for, or contribute towards, the cost of the maintenance of the child; or

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(b) a specified sum -
 (i) has been expended on; or
 (ii) is due or owing for or in respect of the cost of the maintenance of the child, is *prima facie* evidence of the matter alleged.

92. PROOF OF PATERNITY.

(1) On the hearing of an application against a person in respect of the maintenance of a child, an allegation in the complaint that the person is the father of the child is not evidence of the matter alleged, but a Court hearing the application may, subject to Subsection (2), adjudge him to be the father of the child and make an order against him under this Part.

- (2) A person shall not be adjudged to be the father of the child -
 (a) on the evidence of the mother, unless her evidence is corroborated in some material particular; or
 (b) where the evidence adduced indicates that it is impossible or unlikely that he is the father of the child.

93. OFFENCES IN RELATION TO CHILDREN IN CARE OF THE DIRECTOR.

A person who -

- (a) commits violence, abuse, neglect and or exploitation or injuries to a child in the care of the Director; or
(b) counsels or causes, or attempts to cause, a child in the care of the Director to be withdrawn, escape or run away from the out-of-home care place or from the charge of a person with whom the child has been placed; or
(c) knowing a child to have been so withdrawn, to have so absconded or escaped or to be absent -
 (i) harbours or conceals the child; or
 (ii) prevents the child from returning to the child's out-of-home care place, charge or custody; or
(d) where he is the caregiver of a child in the care and custody of the

Director -

- (i) neglects, ill-treats or abuses the child; or
(ii) fails to observe, perform or keep a condition or agreement that is contained in a contract that he has entered into in relation to the child and that be the terms of the contract he has bound himself or agreed to observe, perform or keep; or

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- (iii) obstructs or denied the well-being of the child, is guilty of an offence.

Penalty: A fine not exceeding K2,000.00 or imprisonment for a term not exceeding 12 months or both.

PART X. - EMPLOYMENT OF CHILDREN.

94. EMPLOYMENT OF CHILDREN UNDER SPECIAL CIRCUMSTANCES.

(1) Subject to Subsection (2), a child who is of the age of 15 years but below 18 years, may be engaged or encouraged into part-time or temporary employment or unpaid work -

- (a) to raise moneys to reasonably contribute towards his own development and that of his family; or
(b) under special circumstances and subject to such conditions or agreements approved by the Director.

(2) Employment of a child under Subsection (1) shall -

- (a) be for a specific period or periods approved by the Director; or
(b) not require the child to be in a environment that is hazardous to him; and
(c) be in accordance with the principles of this Act.

(3) An employer or person who permits a child to be engaged in such work shall submit to the Director -

- (a) the name, sex and age of the child, and
(b) the period or periods of engagement; and
(c) the name of the immediate supervisor of the child; and
(d) the form and amount of remuneration paid to the child.

(4) An employer or a person who contravenes or fails to comply with Subsection (2) or (3) is guilty of an offence.

Penalty: A fine not exceeding K2,000.00 or imprisonment for a term not exceeding six months, or both.

95. CHILD EXPOSURE OR EXHIBITION.

(1) In this Section, unless the contrary intention appears, "exposure or exhibition" means to cause, organize or arrange for children to parade, model, participate in fashion or other shows, exhibitions, beauty contests or otherwise presented to the public whether for monetary gain or not.

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(2) A care-giver licensed under Part XIV of this Act shall apply and obtain the prior written approval of the Director before presenting or otherwise exposing or exhibiting a child to the public in connection with any show or even.

(3) The Director may refuse to approve an application under Subsection (2) if, in the opinion of the Director, the proposed exposure or exhibition is exploitative of in any case not in the best interest of the child.

(4) A person who engages, cause or otherwise arranges for a child to be exposed or exhibited in contravention of Subsection (2) is guilty of an offence.

Penalty: A fine not exceeding K1,000.00 or imprisonment for a term not exceeding 6 months or both.

(5) A care-giver who presents, engages, exposes or otherwise arranges for a child in this care to so presented shall, in addition to any penalty imposed on him under Subsection (4), be required to show cause as to why his license should not be revoked in accordance with this Part failing which the license shall be revoked forthwith.

(6) The Council shall meet and consider the show cause letter at its first meeting after the date of receiving the letter and its decision is final.

96. HARMFUL CHILD LABOR.

(1) A person who causes or permits a child to be engaged in employment -

- (a) in conditions that are likely to be hazardous to the child; or
- (b) that interferes with the child's education; or
- (c) that is harmful to the health or physical, mental, spiritual or social development of the child, is guilty of an offence.

Penalty: A fine not exceeding K5,000.00 or imprisonment for a term not exceeding five years, or both.

(2) A parent or a person, having the care of a child, who aids or abets a person in the contravention of Subsection (1), is guilty of an offence.

Penalty: A fine not exceeding K5,000.00 or imprisonment for a term not exceeding five years, or both.

(3) For an employer or company who causes or permits a child to be engaged in harmful child labour or employment is guilty of an offence.

Penalty: A fine not exceeding K10,000.00 or imprisonment for a term not exceeding 10 years or both.

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PART XI. - TRANSFER OF CHILDREN FROM CORRECTIVE INSTITUTIONS TO OUT-TO-HOME CARE PLACEMENTS UNDER THIS ACT.

97. ORDERS FOR TRANSFER.

(1) The Director shall, where he considers it to be in the best interests of the child, apply to the Juvenile Court to get an order to transfer a child from a Corrective Institution or Police lock-up to an institution or other places or persons appointed by the Director.

(2) A child transferred under Subsection (1) shall remain in the care of the Director or place or person or person to which the child is transferred for the balance of his sentence and is subject to the discipline and routine of that home, place or person.

(3) An order under this section is authority for the care of the child in a place or person to whom it relates until the expiration of the residue of his sentence.

(4) Where the Director is satisfied that a child transferred to a place or any other place or to person appointed by the Director -

(a) is not profiting or benefiting from the discipline and instruction of the place or person; or

(b) for any other reason is not a suitable person for care in the place or by the person, the Director may, order the child to be transferred -

(i) where the person is a child below the age of 18 years - to a juvenile institution established under the *Juvenile Courts Act 1991*; or

(ii) where the person is above the age of 19 years - to a correctional institution declared under the *Correctional Services Act 1995*, to serve the remainder of his original sentence and thereupon the person ceases to be subject to this Act.

(5) This section does not affect the operation of any law relating to the remission of sentences.

PART XII. - CHILDREN OF MOTHERS AND PREGNANT WOMEN IN PRISON OR POLICE CUSTODY.

98. INTERPRETATION OF PART XII.

In this Part, unless it is inappropriate to do so, "union child" means the state of being pregnant from conception to when the child is born.

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99. ESTABLISHMENT OF CHILD-FRIENDLY PLACES IN PRISONS.

There shall be established in a prison, a child-friendly place for children under the age of three years for whom no alternative arrangement suitable to the needs of the child, as approved by the Director, is available or can be made, and who need to be with the mother during the period the mother is required to remain in prison.

100. PROVISION OF CHILD-CARE, ETC., IN PRISON.

(1) A child shall be entitled to proper care, medical attention, immunization, and nutrition during the time he remains with the mother in prison.

(2) The Commissioner of Corrective Institutions or his delegate shall, as soon as practicable using the fastest available medium of communication, notify the Director of the arrival of a mother inmate with a child under the age of three years. -

(3) Every step shall be taken to enable the mother to feed and care for the child at times set by the Director in consultation with the Commissioner of Corrective Institutions.

(4) For purposes of Subsection (3), the times allowed for the mother to spend with her child shall be deemed as labour.

(5) A person who obstructs or otherwise prevents a mother from coming into contact with her child or obstructs or otherwise prevents the Director from performing his functions in accordance with this Section is guilty of an offence.

Penalty: Fine not exceeding K500.00 or imprisonment for a term not exceeding six months, or both.

101. REVIEW OF CIRCUMSTANCES.

(1) The Director may, with or without consulting the Commissioner of Corrective Institutions enter the child-friendly place established in accordance with this Part to -

- (a) review the circumstances concerning the continued presence of the child at the child-friendly place; or
- (b) inspect the health state, safety, and general environment of the child-friendly place; or
- (c) determine the degree of compliance with the times set for the mother to be in contact with her child to feed and care for it.

(2) Such review shall take place at least once every six months or more should the need arise.

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102. PREGNANT WOMEN IN DETENTION.

(1) A pregnant female inmate shall be entitled to proper medical attention, rest, nutrition and shall otherwise not be subject to a form of labour that will, or is likely to, endanger the unborn child or the continuation of normal pregnancy.

(2) A person who endangers the health of the pregnant female, the unborn child or the continuation of normal pregnancy is guilty of an offence

Penalty: A fine not exceeding K2,000 or imprisonment for a period not exceeding two years, or both.

(3) A person who, without just cause or recklessly, fails to comply with these provisions is guilty of an offence.

Penalty: A fine not exceeding K2,000.00 or imprisonment for a term not exceeding six months, or both.

103. INDIRECT ABUSE OF CHILDREN OF MOTHERS AND PREGNANT WOMEN IN POLICE CUSTODY.

(1) A lactating mother of a child under the age of three years, and being held in a police lock-up, remand place or center, or a detention center is entitled, and shall be permitted, to continue to feed and provide care at times set, and a place identified, by the Director in consultation with the Commissioner of Police or Commissioner of Corrective Institutions as the case may be.

(2) A pregnant female held in a place described under the preceding Subsection (1) shall be treated in such manner as would not unduly endanger the welfare or well-being of the unborn child.

(3) A person who, without just cause or recklessly, fails to comply with these provisions is guilty of an offence.

Penalty: A fine not exceeding K2,000.00 or imprisonment for a term not exceeding six months, or both.

PART XIII. - AFFILIATION PROCEEDINGS.

104. INTERPRETATION OF PART XIII.

(1) In this Part, unless the contrary intention appears -

"child" means a child born outside of marriage;

"Court" includes a District Court;

"Magistrate" includes a Magistrate of a District Court;

"man" means a male person who is not married to the complainant at the time of the making of the complaint.

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(2) In this Part, unless the contrary intention appears, a reference to a birth shall be read with the necessary date of confinement, as including a reference to, or to the date of, a still-birth or a miscarriage other than a willful abortion.

(3) In any proceedings under this Part, an allegation in a complaint that a specified person was at the time of the making of the complaint over the age of 18 years shall, in the absence of proof to the contrary, be deemed to be proved.

(4) A Court shall not make an order under this section to pay for or towards maintenance of a child or confinement expenses in respect of an illegitimate child -

(a) on the evidence of the mother, unless her evidence is corroborated in some material particular; or

(b) if the evidence adduced indicates that it is impossible or unlikely that the defendant is the father of the child.

105. AFFILIATION PROCEEDINGS BEFORE BIRTH OF CHILD.

(1) Where a woman is pregnant by a man (other than her husband is married) who has not made adequate provisions for the payment of confinement expenses in connection with the birth of the child, a complaint may be made in accordance with this section, before a Magistrate -

(a) by the woman; or

(b) with the consent of the woman by -

(i) the Director; or

(ii) a person authorized in writing by the Director to make a complaint under this Part.

(2) A complaint under this section -

(a) shall be -

(i) in writing; and

(ii) on oath; and

(b) shall state -

(i) that the woman is pregnant; and

(ii) the name of the man by whom she is pregnant; and

(iii) that the man by whom she is pregnant is over the age of 18 years and has not made adequate provision for the payment of the confinement expenses in connection with the birth of the child.

106. AFFILIATION PROCEEDINGS AFTER BIRTH OF CHILD.

(1) Where the father or mother of a child has left him without names of support, a complaint may be made in accordance with this section before a Magistrate -

(a) by the mother or father of the child, as the case may be; or

(b) by the Director; or

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(c) by a person authorized in writing by the Director to make a complaint under this Part.

- (2) A complaint under this section -
- (a) shall be -
 - (i) in writing; and
 - (ii) on oath; and
 - (b) shall state -
 - (i) the name of the mother of the child; and
 - (ii) the name of the child; and
 - (iii) the name of the father of the child; and
 - (iv) that the person named as the father or mother of the child is over the age of 18 years and has left the child without means of support.

107. SUMMONS OR WARRANT ON COMPLAINT.

- (1) Where -
- (a) a complaint is made under Sections 105 or 106; and
 - (b) the complainant produces evidence on oath, either oral or on affidavit, in corroboration of the same material particular as the paternity or maternity of the child, the Magistrate before whom the complaint is made may -
 - (c) summon the person complained against to appear before a court to answer the complaint; or
 - (d) if satisfied that the circumstances require it, issue a warrant for his apprehension.

108. ORDER FOR PAYMENT OF CONFINEMENT EXPENSES.

Where a Court hearing a complaint under Sections 105 or 106 is satisfied -

- (a) by the evidence of a medical practitioner, or by the certificate of a medical practitioner admitted as evidence with the consent of the defendant, that the woman is pregnant; and
- (b) that the defendant -
 - (i) is the person by whom the woman is pregnant; and
 - (ii) is over the age of 18 years, the court may order the defendant to pay, to the complainant's bank account nominated by the Director or a welfare officer, for confinement expenses such sum not exceeding K1000.00 in cash or in kind, as the court thinks proper.

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109. ORDER FOR PAYMENT OF MAINTENANCE AFTER BIRTH.

(1) Where court hearing a complaint under Section 105 or 106 is satisfied that -

(a) the child is born outside of marriage; and

(b) the defendant -

(i) is the father or mother of the child; and

(ii) is over the age of 18 years; and

(iii) has left the child without means of support,

the court may order the defendant to pay to the Director, weekly or fortnightly, such sum for or in-kind maintenance of the child, as the Court thinks proper, having regard to -

(iv) means, and earning capacity of the parents of the child; and

(v) the conduct of the parties insofar as it relates to (a) and in relation to the discharge of parental responsibilities; and

(vi) the age and any special needs of the child; and

(vii) the number of dependents, other than the child, of the defendants; and

(viii) the needs of the defendant; and

(ix) existing outgoings of the child's parents; and

(x) any existing customary, moral or legal financial obligations of the parents; and

(xi) any other matter the courts thinks proper.

(2) A Court ordering a defendant to pay for the maintenance of a child under Subsection (1) may at the same time order the defendant to pay to the complainant's bank account a sum of K1000.00 for confinement expenses, as the court thinks proper.

(3) Subject to Subsection (1)(ii), in proceedings under this Part, the Court shall consider the needs of the child and its best interests to be the paramount consideration and shall otherwise have no regard to the conduct of the parties.

110. DURATION OF ORDER FOR MAINTENANCE.

(1) An order for maintenance under Sections 105 or 106 -

(a) is not enforceable until notice of the date of birth of the child is served on the defendant; and

(b) applies to the maintenance of the child from the date of birth of the child until -

(i) the child dies; or

(ii) the order is discharged by a court of competent jurisdiction; or

(iii) the child attains the age of 18 years, whichever first occurs.

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(2) An order for maintenance may continue beyond 18 years of age if, in the opinion of the Court, there are special circumstances including his education, medical and other special needs, and having regard in particular to Part II and the General Principles prescribed in Schedule 1 to this Act, that justify the making of or continuation of such an order for the child's benefit.

111. DISPOSAL OF MONEY PAID FOR CONFINEMENT EXPENSES.

- (1) Subject to Subsection (2), the Director shall -
- (a) retain any sum paid under Section 108 until the child is born and then apply the sum towards payment of the confinement expenses; and
 - (b) apply the sum paid under Section 109(1) towards payment of the confinement expenses; and
 - (c) apply any sum paid to him under Subsections 108 or 109 towards payment of the cost of the maintaining the child under this Act.

(2) Where any doubt or question arises as to the disposal of money paid for confinement expenses or maintenance order under this Part, a Court may, on application by the Director or the mother of the child, by order give directions as to the disposal of the money.

112. ORDER ON ADMISSION OR PROOF OF POSSIBLE PARENTAGE IN CERTAIN CASES.

(1) Where, at the hearing of a complaint in respect of the maintenance of an illegitimate child, a male person admits or says that he had sexual intercourse with the mother of the child in such circumstances that, in the opinion of the Court, he may possibly be the father of the child, the Court may, on the hearing and without complaint made for the purpose

- (a) order him to pay to the Director, weekly or fortnightly, a sum for or towards maintenances of the child; and
- (b) if it thinks proper, at the same time order him to pay to the Director a sum for or towards confinement expenses in respect of the child, but an order shall not be made under this Subsection unless the male person is given an opportunity to be heard by the Court in respect of the making of the order.

(2) An order may be made under Subsection (1) against each of any number of male persons.

(3) Without limiting the powers of a Court to make any other order this Act, where, on the hearing of a complaint in respect of the maintenance of an illegitimate

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child, it is proved to the satisfaction of the Court that the defendant had sexual intercourse with the mother of the child so that, in the opinion of the Court, the defendant may possibly be the father of the child, and the defendant is over the age of 18 years, the Court may -

- (a) order him to pay to the Director, weekly or fortnightly, a sum for or towards maintenance of the child; and
 - (b) if it thinks proper, at the same time order him to pay to the Director a sum for or towards confinement expenses in respect of the child.
- (4) An order made under this section shall be deemed to be -
- (a) an order made under Section 109(1), if the order is an order to pay for or towards maintenance of the child; or
 - (b) an order made under Section 109(2), if the order is an order to pay for or towards confinement expenses in respect of the child.
- (5) The amount of sum ordered by a Court to be paid under this section to the Director -
- (a) weekly for or towards maintenance of an illegitimate child; or
 - (b) for or towards confinement expenses in respect of an illegitimate child,
- shall be such as the Court thinks just, but so that neither the total of the sums ordered to be paid weekly under this Act for or towards maintenance of the child or the total of the sums ordered to be paid under this Act for or towards confinement expenses in respect of child or the sum to be paid for confinement expenses in respect of the child that the Court would have ordered if the hearing had been the hearing of a compliant under Section 106 and the person against whom the order is made had been the defendant at the hearing.
- (6) A Court shall not make an order under this section to pay for or towards maintenance of an illegitimate child or confinement expenses in respect of an illegitimate child -
- (a) on the evidence of the mother, unless her evidence is corroborated in some material particular; and
 - (b) if the evidence adduced indicates that it is impossible or unlikely that the male person concerned is the father of the child.
- (7) Where an application is made to a court for the making of an order under this section and the court refuses the application, the court shall make a memorandum of the refusal.

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113. COMPLAINT BY DIRECTOR OR AUTHORIZED PERSONS ON GROUND OF POSSIBLE PARENTAGE.

(1) The Director or a person authorized in writing by the Director to make a complaint under this Part may make a complaint against a male person over the age of 18 years at the time of the making of the complaint alleging that he had sexual intercourse with the mother of an illegitimate child in such circumstances that he may possibly be the father of the illegitimate child.

(2) Magistrate may -

- (a) summon a male person against whom a complaint is made under Subsection (1) to appear before a Court and show cause why he should not pay for or towards -
 - (i) part or future maintenance of the illegitimate child; and
 - (ii) confinement expenses in respect of the illegitimate child; or
- (b) if satisfied that the circumstances require it, issue a warrant in the first instance for his apprehension.

(3) If, at the hearing of the complaint, the Court is satisfied that the person complained against-

- (a) had sexual intercourse with the mother of the illegitimate child in such circumstances that he may possibly be the father of the child; and
- (b) was over the age of 18 years at the time of making of the complaint, the Court may -
- (c) order him to pay to the complaint, weekly, a sum for or towards maintenance of the child; and
- (d) if it thinks proper, at the time order him to pay to the complaint's bank account a sum for or towards confinement expenses in respect of the child.

(4) A complaint or an order under this section may be made against each of any number of male persons.

(5) An order made under this section shall be deemed to be -

- (a) an order made under Section 109(1), if the order is an order to pay for or towards maintenance of the child; or
- (b) an order made under Section 109(2), if the order is an order to pay for or towards confinement expenses in respect of the child.

(6) A Court hearing a complaint under this section may vary an order made under this Act for the payment of -

- (a) a sum weekly for or towards maintenance of the child; or

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- (b) a sum for or towards confinement expenses in respect of the child.
- (7) The amount of a sum ordered by a Court to be paid under this section -
 - (a) weekly for or towards maintenance of an illegitimate child; or
 - (b) for or towards confinement expenses in respect of an illegitimate child.
- (8) A Court shall not make an order under this section to pay for or towards the maintenance of an illegitimate child or confinement expenses in respect of an illegitimate child -
 - (a) on the evidence of the mother, unless the evidence is corroborated in some material particular; or
 - (b) if the Court is satisfied that at the time when the child was conceived the mother was a common prostitute; or
 - (c) if the evidence adduced indicates that it is impossible or unlikely that the male person concerned is the father of the child.
- (9) In any proceedings under this section, an allegation in a complaint that a specified person was at the time of making of the complaint over the age of 18 years, shall be deemed, in the absence of proof to the contrary, to be proved.

114. FUNERAL EXPENSES OF ILLEGITIMATE CHILD.

When an illegitimate child dies, a Court may, on application by the Director or the mother of the child, by order -

- (a) direct a person admitting himself or adjudged by a Court to be the father of the child to pay such sum to the Director as the Court thinks reasonable for or towards the funeral expenses of the child; and
- (b) direct the Director as to the disposal of that sum.

115. FAILURE TO COMPLY WITH ORDER.

(1) On written complaint and on oath being made to a Magistrate by the complainant, or by the Director or a person authorized in writing by the Director to make a complaint under this Part, that a person against whom an order relating to confinement expenses, maintenance or funeral expenses has been made under this Act -

- (a) has failed to comply with the order; or
- (b) is attempting to leave the country without making arrangements satisfactory to the Director for future payments under the order, the Magistrate may -

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- (c) summon the person complained against to appear before a Court to answer the complaint; or
- (d) if satisfied that the circumstances require it, issue a warrant in the first instance for the apprehension of the person complained against.

(2) If at the hearing of a complaint under this section the court is satisfied that the person complained against has failed to comply with the order, or is attempting to leave the country without making arrangements satisfactory to the Director for future payments under the order, the court may -

- (a) commit the person complained against to prison for a period not exceeding 12 months; or
- (b) require the person complained against to find security satisfactory to the court that -
 - (i) he will in future comply with the order; or
 - (ii) he will not leave the country without making arrangements satisfactory to the Director for future payments under the order.

(3) A Court may commit to prison for a period not exceeding 12 months, a person required to find security under Subsection (2)(b) if he does not find security satisfactory to the Court.

116. MONEY DUE UNDER LAPSED MAINTENANCE ORDER.

The lapse of an order for maintenance under this Act does not affect the liability of the person against whom the order was made to pay any money due under the order at the time the order lapsed.

117. TIME LIMIT.

(1) A claim for maintenance under this Act shall not be instituted after six years following the birth of a child except by leave of court.

(2) Leave of the court shall not be granted unless special circumstances exist to justify the Court exercising jurisdiction over such claim.

(3) In considering if special circumstances exist for the purpose of Subsection (2), the court shall take into account -

- (a) the best interests of the child; and
- (b) the child's wishes; and
- (c) the cost of providing care for the maximum well-being of the child including the cost of education, medical expenses and accommodation; and

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- (d) the means and financial circumstances of the parents since the birth of the child; and
- (e) the conduct of the parents in relation to the discharge of their parental responsibilities in accordance with Schedule 1.5 of this Act; and
- (f) the reasonableness or otherwise of any reason for not making a claim within six years; and
- (g) the presence of an opportunity to make a claim as soon as possible after the birth of the child concerned; and
- (h) the reasonableness or otherwise of expecting the defendant to pay maintenance in the circumstances; and
- (i) the likely negative effect such a claim or payment of maintenance may have on any family relationship that may have been formed by either parent since the child's birth; and
- (j) any other matter the court considers relevant.

(4) Nothing in this section allows proceedings to be instituted after the child has reached the age of 10 years.

**PART XIV. - LICENSING AND INSPECTION OF EARLY
CHILDHOOD DEVELOPMENT AND CARE CENTRES,
PRIVATE CHILD CARE ESTABLISHMENT AND NON
GOVERNMENT ORGANIZATION AND CHURCH RUN
CHILDREN SERVICES.**

118. INTERPRETATION OF PART XIV.

In this Part, unless the contrary intention appears -

"license" means a license under Section 120;

"licensed place" means a place that is the subject of a license.

119. APPLICATION OF PART XIV.

This Part does not apply to -

- (a) a hospital licensed under Section 125 of the Medical Registration Act 1980; or
- (b) any case where a person having the care of a child is -
 - (i) a relation by blood of the child; or
 - (ii) a person to whom the custody of the child has been given by a Court or by a deed or will; or
 - (iii) a person in whose care the child has been placed under this Act; or
- (c) a preschool, an elementary school, or a similar institution as conducted under the Education Department, International Education Agency, or as permitted school.

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**120. LICENSING OF EARLY CHILDHOOD CARE CENTERS,
ESTABLISHMENT AND SERVICES.**

- (1) A person in charge of a place established to be used -
 - (a) for the reception and care of a child or children under the age of seven years;
 - (b) for the purposes of conducting an early childhood care and development service, out-of-home care services serving the age group as specified in Paragraph (a) and children under the age of 18 years who are in need of protection; or
 - (c) for the reception and care of children under the age of 18 years, shall be licensed in accordance with this Part.

(2) A person in charge of a place specified under Subsection (1) that is not already licensed shall, within three months after the coming into force of this Act, obtain a license for that purpose.

(3) A person who fails, without just cause, to comply with the requirement of Subsection (2) is guilty of an offence and liable to be punished in accordance with Section 128 of this Act.

121. APPLICATION FOR AND ISSUANCE OF LICENSES.

(1) The person in charge of a place referred to under Section 129 shall apply to the Director for a license in respect of the place.

(2) An application for a license shall include the following certificates, references and reports -

- (a) a report by a certified medical practitioner; and
- (b) character and criminal clearance report by Police; and
- (c) a reference from a church leader or village or ward councilor; and
- (d) a certificate by the Building Board; and
- (e) a health inspection report; and
- (f) a fire inspection report,

as to the fitness of the applicant and the suitability and safety of the proposed site of establishment.

(3) A report under Subsection (2)(b) shall include information relating to the place of birth, origin and nationality of the applicant if he is a non-citizen.

(4) The Director shall, upon receiving an application under Subsection (1), ensure that an inquiry is made respecting the application and a report furnished by the person authorized by the Director for the purpose.

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(5) On receiving a report under Subsection (3), the Director shall recommend to the Council to either grant or refuse the license.

(6) In cases of applications from Provinces, the Director shall consult the relevant Provincial Lukautim Pikinini Council in making the recommendation under Subsection (4).

(7) The Council shall, unless it is satisfied that the application fails to meet all the requirements set under this Part in establishing an early childhood development and care place, grant a license.

(8) A decision by the Council is final and is not subject to review except by a court of competent jurisdiction.

- (9) A license shall be -
- (a) in the prescribed form; and
 - (b) subject to such conditions and requirements as may, in any particular case, be considered necessary or proper.

(10) A license remains in force until cancelled by the Council or its delegate but any provision of the license relating to the maximum number of children who may be

- (a) received and cared for; and
- (b) attending the day nursery or early childhood development and care may be varied by the Director.

(11) Particulars of a variation under Subsection (10) shall be endorsed on the license.

122. LICENSE FEE.

Upon approval of a license under Section 120, an initial fee, as determined by the Council from time to time, shall be charged for the first two years of the license, and thereafter an annual renewal fee, not higher than the initial fee as determined by the Council from time to time.

123. MINIMUM STANDARDS.

(1) The Director shall cause to be established such minimum standards as may be considered necessary or proper from time to time, and shall be stated as such, for the benefit of children in early childhood care and development places.

(2) A person in charge of a licensed place under this Part shall comply with the minimum standards referred to under Subsection (1) or with any reasonable direction by the Director to ensure compliance with the standards.

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(3) Failure to comply with these standards or with any directive by the Director in accordance with this Section may result in the suspension or revocation of the license.

124. REGISTRATION AND QUALIFICATION OF CHILD CARE-GIVERS.

(1) A person employed as a child care-giver at a place licensed under this Part shall be qualified as prescribed from time to time and registered with the Lukautim Pikinini Council.

(2) A person who fails to comply with the requirements of Subsection (1) is guilty of an offence.

Penalty: A fine not exceeding K500.00 or imprisonment for a term not exceeding three months, or both.

(3) A person in charge of a place licensed under this Part who employs a person in contravention of Subsection (1) is guilty of an offence.

Penalty: A fine not exceeding K1,000.00 or imprisonment for a term not exceeding six months, or both.

(4) A person found guilty under Subsection (3) may, in addition to the penalty that may be imposed as prescribed under that provision, be dealt with under Section 127 of this Act.

125. REGISTER TO BE KEPT IN CENTRE.

(1) The person in charge of a licensed center must keep a register in the prescribed form in which he must immediately enter -

- (a) the name, sex and age of each child received; and
- (b) the date when the child was received; and
- (c) such other particulars as are prescribed.

(2) A register kept under Subsection (1) must be produced by the person in charge at all reasonable times on demand by the Director for this purposes, and may be examined and if the Director or officer making the demand thinks fit, copies of entries in it may be made.

(3) Immediately after the removal of a child from a licensed center, whether before or on attaining the age of seven years, the person in charge must -

- (a) enter in the register kept under this section -
 - (i) the time of the removal; and
 - (ii) the name and address and calling or occupation of the person to whom the child is delivered; and

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- (iii) if the person to whom the child is delivered is married woman, the address and husband; and
- (b) forward notice of the removal to the Director.

(4) A person who fails to comply with the provision of this Section is guilty of an offence.

Penalty: A fine not exceeding K500.00 or imprisonment for a term not exceeding six months or both.

126. INSPECTION OF CENTERS.

- (1) For the purposes of -
 - (a) conducting an inquiry into and reporting under Section 121 respecting a place; or
 - (b) ensuring that the prescribed conditions and requirements are complied with in respect of a licensed center, a Child Protection Officer may at any time, enter the place or center and inspect it and the children who are enrolled in it, and the person in charge of the place or center shall afford all reasonable facilities for the inspection.

(2) In making an inspection, the Child Protection Officer may, if he thinks fit, be accompanied by a health inspector, a commissioned officer of the Police Force, and a building inspector or any one of them.

(3) An annual inspection fee of K1,000.00 shall be paid to the Director upon the completion of or prior to an annual inspection by a Child Protection Officer or any person authorized by the Director.

127. NON-COMPLIANCE WITH CONDITIONS OF LICENSE, ETC.,.

(1) Where, on an inspection of a licensed center, it appears that a condition or requirement of the license or of this Act is not complied with, the Director may give written directions to the person in charge to ensure compliance with the condition or requirement, failing which the license may be revoked by a Council.

(2) The person in charge of licensed center who fails to comply with a direction under Subsection (1) is guilty of an offence.

Penalty: A fine not exceeding K1,000.00 or imprisonment for a term not exceeding 12 months, or both.

(3) Where a person is convicted of an offence under Subsection (2), the Council that convicts him may revoke the license, if it has not already been revoked.

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- (4) On the cancellation of the license, a Court may direct that a child who is enrolled at the center which is the subject of the license cancellation -
- (a) be restored to the custody of a parent; or
 - (b) be released to the care of the Director to be dealt with as a ward; or
 - (c) be released to the care of some other person.

128. CONDUCTING OF AN UNLICENSED PLACE.

(1) The person in charge of a place referred to in Section 120(1) that is not licensed under that section is guilty of an offence.

Penalty: A fine not exceeding K10,000.00 or imprisonment for a term not exceeding 2 years, or both.

(2) Where a person is convicted of an offence against Subsection (1) in respect of a place that is of the nature referred to in Section 120(1), any child who is placed at that place shall be removed from it and taken to a child friendly place as determined by the Director.

(3) Where a child is removed to a child friendly place under Subsection (2), he shall remain there until the Director decides that he -

- (a) be restored to the custody of his parent; or
- (b) be released to the care of the Director; or
- (c) be released to the care of some other person.

129. NOTICE OF DEATH OF CHILD.

(1) The person in charge of a licensed place shall, immediately after the death of a child in that place give notice of the death to the officer in-charge at the nearest police station and the Director.

(2) Any person who fails to comply with Subsection (1) is guilty of an offence.

Penalty: A fine not exceeding K500.00 or imprisonment for a term not exceeding six months or both.

(3) An officer-in-charge of police to whom notice of death is given under Subsection (1) shall make inquiry and report to the coroner or, if the exigencies of the case so require, to a justice, whether an inquiry respecting the cause of death is necessary.

(4) The Director shall, upon receiving a notice under Subsection (1), cause it to be registered with the Civil Registry.

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130. FORM, SERVICE, ETC., OF NOTICES, ETC., TO DIRECTOR.

Where by the provisions of this Part, a person is required to forward a notice to, or to effect a registration of particulars with, the Director, the notice or particulars of registration shall -

- (a) be in writing; and
- (b) unless delivered personally by that person, be forwarded by registered post.

PART XV. - RECIPROCAL ARRANGEMENT WITH OTHER COUNTRIES.

131. ARRANGEMENT WITH OTHER COUNTRIES AS TO CARE ETC., OF CHILDREN.

(1) In this section, unless the contrary intention appears, "child" includes a child under the care of Director under this Act and the Section 23 of the *Adoption of Children Act* (Chapter 275).

(2) The Minister may, by arrangement or agreement from time to time with the relevant authority of another country, commit into the care of the authority who is under the law of that country, who is brought to, or resorting to, Papua New Guinea, as though the child were one to whom the provisions of this Act applies and thereupon the provisions of this Act apply accordingly.

(3) Where the Director is satisfied that the other country has enacted provisions substantially similar to the provisions of this Act, he may, by arrangement or agreement with the responsible authority of that country (as appropriate), procure the committal to the case of the authority, of a child taken to, or resorting to, that country.

PART XVI. - OFFENCES GENERALLY IN RELATION TO LUKAUTIM PIKININI.

132. FAILURE TO PROVIDE FOOD, ETC.,

A person (whether or not he is the parent of the child) who, without reasonable excuse, fails to provide adequate and proper food, clothing, lodging, nursing and medical aid, education, protection and welfare for a child in his care, is guilty of an offence.

Penalty: A fine of K2,000.00 or imprisonment for a term of 12 months, or both.

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133. ILL-TREATMENT OF CHILDREN.

(1) A person whose conduct results in, or appears likely to result in, or should have known would result in -

- (a) the physical injury or sexual abuse of a child; or
- (b) a child suffering emotional or psychological harm of such a kind that the emotional and intellectual development of the child is, or is likely to be, significantly damaged; or
- (c) the physical development or health of a child being significantly harmed; or
- (d) a child suffering from discrimination,

is guilty of an offence.

Penalty: A fine of K2,000.00 or imprisonment for a term of 2 years or both.

(2) The same complainant may charge a person -

- (a) with all or any of the offences of assault, ill-treatment, or exposure of the child, together or separately; and
- (b) with committing all or any of those offences in such a manner that bodily suffering or permanent or serious injury to the health of the child has resulted, or appears likely to result,

alternatively or together, but if two or more of those offences are charged together the person charged is not liable to a separate penalty for each.

134. FAILURE TO DISCHARGE DUTIES.

(1) If a parent etc., fails, without reasonable excuse, to discharge his/her duties in accordance with Schedule 1.5 of this Act, the Director shall inquire into the circumstances of this failure by way of discussions with parents etc., so as to put in place arrangements to prevent the continuation of the failure.

(2) Failure to comply with any arrangement concluded under Subsection (1) or with any directions of the Director in relation to the implementation of that arrangement is guilty of an offence.

Penalty: A fine not exceeding K500.00 or imprisonment for a term not exceeding six months or both.

135. OBSTRUCTION OF PERSON.

A person who either directly or indirectly hinders, obstructs, delays, assaults, or threatens a person with violence in the exercise of that person's functions under this Act is guilty of an offence.

Penalty: A fine not exceeding K500.00 or imprisonment for a term not exceeding twelve months, or both.

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136. FALSE REPRESENTATION AS EMPLOYEE.

A person, not being an employee or delegate of the Department, who assumes or uses the designation of such employee or delegate or falsely represents himself to be officially associated in any capacity with the Department is guilty of an offence.

Penalty: A fine not exceeding K500.00 or imprisonment for a term up to 12 months, or both.

137. PERSONS WITH CRIMINAL RECORD NOT TO WORK WITH CHILDREN.

(1) For the purposes of this Section, "child related employment" means any of the following kind that primarily involves direct contact with children where that contact is not directly supervised, whether paid or unpaid, including -

- (a) employment involving protecting children from harm;
- (b) employment in child-care centers, child-minding centers, and residential child-care centers;
- (c) employment in day nurseries or kindergarten;
- (d) employment in out-of-home-care services for children;
- (e) employment involving fostering or other child care;
- (f) employment involving the provision of counseling or other support services for children;
- (g) employment involving recreational activities for children.

(2) A person who employs or otherwise engages or obtains employments or otherwise engages himself in contravention of this Section is guilty of an offence.

Penalty: A fine not exceeding K500.00 or imprisonment for a term not exceeding six months, or both.

138. FAILURE TO CONDUCT CHILD PROTECTION HEARING.

A person who fails, without reasonable excuse, to conduct or enable the conduct of, a child protection hearing in accordance with Section 58 is guilty of an offence.

Penalty: A fine not exceeding K500.00 or imprisonment for a term not exceeding six months, or both.

139. CARE OF CHILD ON DETERMINATION OF CHARGES FOR OFFENCES IN RELATION TO HIM.

Where steps have been taken under this Act to secure the safety or well-being of a child and a charge against a person for an offence in respect of the child has been heard and determined, the Court before which the charge is brought may, at any time, make any order that it thinks proper for the care of the child.

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PART XVII. - MISCELLANEOUS.

Division 1. - Maintenance Orders.

140. COLLECTION OF MONEYS DUE TO DIRECTOR.

(1) Where a sum of money is due under a maintenance order to the Director, a commissioned officer of a Police Force authorized in writing by the Director to do so, may, subject to the order, demand collect and receive the sum from the person liable to pay it.

(2) The receipt of a Receiver of Public of Moneys is a sufficient discharge for money paid under Subsection (1).

141. VARIATION, ETC., OF MAINTENANCE ORDERS.

- (1) Where a maintenance order is in force under this Act -
- (a) the Director; or
 - (b) the complainant; or
 - (c) the mother or father of the child in respect of whom the order is in force; or
 - (d) person liable to pay money under the order,
- may apply to a court for alteration, variation, suspension or discharge of the order.
- (2) An application under Subsection (1) shall be by way of complaint -
- (a) in writing; and
 - (b) on oath; and
 - (c) stating the names of the complainant, the child and all persons liable to pay for or contribute towards the maintenance of the child.
- (3) A Magistrate before whom a complaint is made under this section may summon all or an of the persons stated in the complaint to be liable to pay for or contribute towards the maintenance of the child to appear before a Court at a time and place named in the summons.
- (4) A complaint under this section may be heard by -
- (a) the Court which made the original order; or
 - (b) the Court nearest to the place of residence or a person liable to make payments under the order, if that Court is satisfied that increased convenience would result to the parties by its hearing the complaint.
- (5) At the hearing of a complaint under this section the Court may alter, vary, suspend or discharge the order or make a new order as it thinks just in light of refresh evidence adduced.

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142. ENFORCEMENT OF MAINTENANCE ORDERS.

- (1) Where -
 - (a) an order for the past and future maintenance of a child has been made under this Act; and
 - (b) default has been made by the defendant in making the payments directed by the order; and
 - (c) an amount of more than K20.00 is due under the order, the Director or his delegate may apply to a Court for a certificate as to the amount due under the order at the date of the certificate.

- (2) Where, after hearing the application, the Court is satisfied as to the matters specified in Subsection (1)(a), (b) and (c), the Court may grant a certificate.

- (3) The Director may file the certificate or cause it to be filed in a Court.

- (4) Where a certificate has been filed in a Court under Subsection (3), the Court shall enter judgment for the person to whom the defendant is ordered to make payment under the order for maintenance for -
 - (a) the amount stated to be due in the certificate; and
 - (b) the fees paid for the certificate and for the filing of the certificate and entering judgment.

- (5) A judgment entered under Subsection (4) may be enforced in any manner in which a final judgment in civil proceeding may be enforced in a Court.

Division 2 - Miscellaneous Penal Provisions.

143. FALSE EVIDENCE BY CHILD.

- (1) In a prosecution for an offence or any other proceedings under this Act, a child who knowingly gives false unsworn evidence or makes a false statement is guilty of an offence and, if found guilty, the Children's Court may -
 - (a) order appropriate corrective measures considering the interest of the child; or
 - (b) order the Director to investigate the matter and develop a care plan for the child.

- (2) A Court finding a child guilty of an offence under this section may make such orders as it might make if it had declared the child to be a child in need of protection and requires special protection under this Act and an order so made shall have effect accordingly.

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(3) A prosecution shall not be instituted for an offence under this section without the leave of the Court in which the unsworn evidence was received.

(4) It is a defence to a charge of providing false evidence under Section 143(1) if it can be shown that at the time of giving the false evidence, the child was acting on the instruction or direction of another to which he had no volition to act otherwise.

(5) A person who encourages, directs or otherwise causes a child to provide false evidence as proscribed by the preceding Subsection is guilty of an offence.

Penalty: A fine not exceeding K2,000.00 or imprisonment for a term not exceeding 24 months, or both.

144. FALSE STATEMENTS AS TO PROPERTY ETC.,

A person, who, in an application under this Act, makes a willfully false statement as to his property or income, or the income, property or earnings of a member of his family, or forces a child to provide false statements is guilty of an offence.

Penalty: A fine not exceeding K2,000.00 or imprisonment for a term not exceeding 24 months, or both.

145. DEFENCE ETC.,

(1) It is a defence to a charge of providing false evidence under Section 144(1) if it can be shown that at the time of giving the false evidence, the child was acting on the instruction or direction of another to which he had no volition to act otherwise.

(2) A person who encourages, directs or otherwise or causes a child to provide false evidence as proscribed by the preceding Section is guilty of an offence.

Penalty: A fine not exceeding K1,000.00 or imprisonment for a term not exceeding six months, or both.

146. OBTAINING BENEFITS IMPROPERLY.

(1) A person who makes orally or in writing a false or misleading statement to obtain or increase a benefit or remove or decrease a liability under this Act, whether for himself or for any other person, is guilty of an offence.

Penalty: A fine not exceeding K500.00 or imprisonment for a term not exceeding six months, or both.

(2) A person who receives and retains any money purporting to be paid in respect of a child under the provisions of this Act after the person has become disentitled to receive it is guilty of an offence.

Penalty: A fine not exceeding K500.00 or imprisonment for a term not exceeding six months, or both.

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147. DEFENSE OR REASONABLE EXCUSE.

It is a defense to a charge of an offence against this Act if the person charged satisfies the Court that he had a reasonable excuse for the act or omission that constitutes the offence charged.

Division 3. - General.

148. APPEARANCE, ETC., BY DIRECTOR.

The Director or an officer authorized in writing by the Director to act for him under this section is entitled to appear and be heard at the hearing of -

- (a) a complaint, information, application or proceeding under this Act against or in respect of a child; or
- (b) an appeal in respect of any such matter.

149. INDEMNITY.

(1) No civil proceedings may be commenced against the Director or an officer for or on account of an act, matter or thing done by him, or under his direction, and purporting to be done for the purpose of carrying out the provisions of this Act if the Director or officer acted in good faith and with reasonable care.

(2) No civil proceedings referred to in Subsection (1) may be commenced more than six months after -

- (a) the time when the alleged cause of action arose; or
- (b) the person aggrieved by the act, matter or thing ceased absolutely to be a child to whom this Act applies, whichever last occurs.

(3) Where, pending civil proceedings against the Director or an officer for or on account of an act, matter or thing done by him or under his direction and purporting to be done for the purpose of carrying out the provisions of this Act -

- (a) application to stay the proceedings is made to the Court in which the proceedings are pending or were commenced; and
- (b) the court is satisfied that -
 - (i) there is no reasonable ground for alleging want of good faith or reasonable care; or
 - (ii) the suit or action was commenced out of time,

the Court may stay the proceedings in the suit or action on such terms as to cost or otherwise as the court thinks proper.

150. REVIEW OF ACT.

(1) The Minister shall, after three years from the date of its commencement, review this Act to determine the extent to which -

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- (a) the policy objectives and principles prescribed in the Act remain valid; and
- (b) the terms of the Act remain appropriate for securing those objectives.

(2) A report on the outcome of the review under Subsection (1) shall be tabled in Parliament as soon as possible after the Minister receives it but not later than 12 months after that date.

151. REGULATIONS.

The Head of State, acting on advice, may make regulations, not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed, or that are necessary or convenient to be prescribed, for carrying out or giving effect to this Act, including -

- (a) the functions and duties of the Department responsible for child and family services matters; and
- (b) the qualifications, appointment and duties of the Director, Deputy Director and welfare officers; and
- (c) family support services; and
- (d) the content and preparation of plans of care; and
- (e) the standards and procedures for the licensing, approval, inspection, evaluation, and suspension or cancellation of license or approvals of out of home care placements; and
- (f) minimum stand and approval of out-of-home care placements and licensed places; and
- (g) the reporting and investigation of reports of abuse by persons acting in the course of professional or official duties; and
- (h) the payment of the costs of taking a child into care and the maintenance of a child in care; and
- (i) the payment of the reasonable fees and disbursements of a guardian *ad litem* appointed for a child; and
- (j) the information to be entered in the Child Abuse Register; and
- (k) the procedures for the disclosure of information in the Child Abuse Register to persons requesting such information; and
- (l) procedures for the appointment of, and practice guidelines for guardians *ad litem*; and
- (m) prescribing term and conditions to be included in agreements made under this Act; and
- (n) practice and procedures and forms to be included in the Regulation.

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PART XVIII. - REPEAL, SAVINGS AND TRANSITIONAL.

152. REPEAL.

The *Lukautim Pikinini Act 2007* is hereby repealed.

153. CHILD WELFARE COUNCIL.

Where any Act or subordinate enactment, other than this Act, contains a reference, express or implied, to the Child Welfare Council established under the repealed Act, that reference shall, on and after the coming into operation of this Act, be read and continued as a reference to the National Lukautim Pikinini Council.

154. DIRECTOR AND THE WELFARE OFFICERS.

Until appointments are first made under this Act, the person who immediately before the coming into operation of the Act respectively held positions as -

- (a) the Director of the Child Welfare shall hold the position of Director of Lukautim Pikinini; and
- (b) Welfare Officers and officers, shall hold the equivalent positions under this Act,

and on the terms and conditions of employment which were, immediately before the coming into operation of this Act, applicable to their positions.

155. ACTIONS, ETC., NOT TO ABATE.

Where, immediately before the commencement of this Act, any action or proceeding was pending or existing under the repealed Act, the action or proceedings as the case may be, does not, on the commencement of this Act, abate or discontinue but it may be prosecuted, continued or informed under this repealed Act as if this Act had not come into operation.

156. ORDERS, ETC., TO CONTINUE, ETC.

An order made under the repealed Act and in force immediately before the commencement of this Act shall continue in force after that commencement until is expiry or termination according to its terms or otherwise according to law, and where, after that commencement, any variation to such order is sought, the procedure relating to such variation shall be as contained in this Act which such modifications as may be necessary, as if the original order had been made under this Act.

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SCHEDULES.

SCHEDULE 1

OBJECTIVES AND PRINCIPLES.

1.1 OBJECTIVES.

The objectives of this Act are –

- (a) to make provision for services and means for promotion the sound physical, mental, emotional and social development of children; and
- (b) to provide appropriate assistance to parents in the performance of their parental responsibilities in order to ensure that children receive such care and protection as is necessary for their safety, welfare and development; and
- (c) to utilize, strengthen and develop community structures, which provide care and protection for children; and
- (d) to foster collaboration with other departments of government whose activities directly affect the health or well-being of the children; and
- (e) to foster collaboration and assist voluntary agencies and organizations and non-government organizations engaged in the provisions of services designed to promote the well-being of children, families and communities; and
- (f) to protect and promote the rights of children; and
- (g) to prevent the ill-treatment, abuse, neglect, and exploitation of children; and
- (h) to provide care and protection for children who are suffering abuse, neglect, or exploitation or who are otherwise in need of care and protection; and
- (i) to ensure that all services and facilities responsible for the care and protection of children provide an environment that is free of violence and exploitation and provide service that foster their health, developmental needs, spiritual, self respect and dignity; and
- (j) to promote research into issues and concerns that affect the well-being and development of children; and
- (k) generally, to promote the well-being of children.

1.2. GENERAL PRINCIPLES.

This Act must be interpreted and administered in accordance with the following principles –

- (a) in all actions and decisions made under the Act concerning a particular child the best interest of the child must be the paramount consideration, and where any conflict arises between the interest of the child and another person, the interests of the child are paramount;

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- (b) children have the right to be protected from all forms of the abuse, neglect and maltreatment;
- (c) all children to have equal opportunity and access to education;
- (d) the preferred environment for the care and upbringing of a child is his or her own family and the responsibility for the care and protection of children rest primarily with their parents;
- (e) wherever possible, the relationship between a child and his or her family should be maintained and strengthened;
- (f) where a child is considered to be in need of care or protection, the necessary assistance or support should be provided to the family, wherever practicable, so that the child may remain with his or her family;
- (g) in deciding what action is necessary to protect a child from harm, the course to be followed must be 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;
- (h) interventions should be aimed at remedying the harmful situation and providing a plan to return the child to his or her family, unless to do so is contrary to the child's best interest;
- (i) if a child is temporarily or permanently deprived of his or her family environment, or cannot be allowed to remain in that environment in his or her own best interests, the child is entitled to special protection and assistance from the Director;
- (j) where it is necessary to remove a child in need of protection from his or her family, alternative care for the child within his or her own family or community and the child's name, identity, language, cultural and religious ties should, as far as possible, be preserved;
- (k) if a child is placed in the care of the Director, the child is entitled to maintain close relationships with people significant to the child, including parents, siblings, extended family, peers, family friends and community, unless it is contrary to his or her best interest;
- (l) wherever a child is able from his or her own views on a matter concerning his or her welfare, he or she must be given an opportunity to express those views of freely and those views are to be given due weights in accordance with the development capacity of the child;
- (m) in all actions and decisions made under the Act that significantly affect a child must be taken of the culture, ability, language, and religion of the child; and

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- (n) decision affecting a child must, wherever practicable, be made and implemented as expeditiously as possible, having regard to the child's sense of time;
- (o) the Social Obligation as reflected in the National Constitution of the Independent State of Papua New Guinea must be considered in handling any child welfare cases.

1.3. THE PRINCIPLES OF PARTICIPATION.

(1) To ensure that a child is able to participate in decision made under this Act that have a significant impact on his life, the Director is responsible for providing the child with the following -

- (a) adequate information in a manner and language that he can understand concerning the decisions to be made, the reasons, for intervention, the way in which the child can participate in decision making and any relevant complaint mechanisms;
- (b) the opportunity to express his views freely, according to his abilities;
- (c) any assistance that is necessary for the child to express those views;
- (d) information as to how his views will be recorded and taken into account;
- (e) information about the outcome of any decision concerning the child and a full explanation of the reasons for the decision;
- (f) an opportunity to respond to a decision made under this Act concerning the child.

(2) In application of these principles, due regard must be had to determine the age and the developmental capacity of the child.

1.4. BEST INTERESTS OF CHILD.

Where a person is directed under this Act, to make an order or determination in the best interests of a child, the person shall consider the following circumstances that are relevant -

- (a) the importance for the child's development of a positive relationship with the parent or guardian and a secure place as a member of a family;
- (b) the child's relationship with relatives;
- (c) the importance of continuity in the child's care and the possible effect on the child of the disruption of that continuity;
- (d) the bonding that exists between the child and the child's parent or guardian;
- (e) the child's physical, mental and emotional needs, and the appropriate care or treatment to meet those needs;
- (f) the child's physical, mental and emotional level of development;
- (g) the child's cultural, racial and linguistic heritage;

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- (h) the child's views and wishes, if they can be responsibly ascertained;
- (i) the effect on the child of delay in the disposition of the case;
- (j) the risk that the child may suffer harm through being removed from, kept away from, returned to or allowed to remain in the care of a parent or guardian;
- (k) the degree of risk, if any, that justified the finding that the child is in need of protective services;
- (l) any other relevant circumstances.

1.5 PARENTAL RESPONSIBILITIES.

It is the duty of a parent, guardian or any person having custody of a child to maintain that child and, in particular to -

- (a) safeguard and promote the child's health, development and welfare; and
- (b) provide education and guidance to the child in a manner appropriate to the stage of development of the child; and
- (c) ensure that the child receives adequate diet, clothing, shelter, immunizations and medical attention; and
- (d) protect the child from discrimination, violence, abuse, neglect, exploitation and harmful social or customary practices; and
- (e) protect the child from engaging in employment or any activity that may be harmful or his or her health, education, mental, physical or moral development; and
- (f) ensure that in the temporary absence of a parent, the child shall be cared for by a person known and trusted by the parents or guardians.

1.6 NON DISCRIMINATION.

Parents, the Director and all Child Protection Officers and any other person must ensure that a child is not subject to any form of discrimination on any grounds including the child's or his parent's care, colour, sex, language, religion, political or other opinion, nationality, ethnic or social origin, property, disability, illness and other medical reasons, birth or any other status.

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I hereby certify that the above is a fair print of the *Lukautim Pikinini (Child) Act 2009* which has been made by the National Parliament.

Clerk of the National Parliament.

I hereby certify that the *Lukautim Pikinini (Child) Act 2009* was made by the National Parliament on 18 March 2009 by an absolute majority in accordance with the *Constitution*.

Speaker of the National Parliament.

