

No. 45 of 2015.

Lukautim Pikinini Act 2015.

Certified on: 11:03:16 .



No. of 2015.

Lukautim Pikinini Act 2015.

ARRANGEMENT OF SECTIONS.

PART I. - PRELIMINARY.

1. Compliance with constitutional requirements.
2. Interpretation -
 - “affiliation”
 - “care”
 - “caregiver”
 - “child”
 - “child in care”
 - “child in need of protection”
 - “child labour”
 - “Child Protection Officer”
 - “child protection volunteers”
 - “child with a disability”
 - “child with special needs”
 - “committee”
 - “confinement expenses”
 - “Council”
 - “Court”
 - “Custody”
 - “Director”
 - “discrimination”
 - “early childhood care and development centre”
 - “family member”
 - “Fund”
 - “guardianship”
 - “in-kind”
 - “license”
 - “licensed place”
 - “magistrate”
 - “maintenance”
 - “Maintenance Order”
 - “Minister”
 - “near relative”
 - “Office”
 - “out-of-home care”
 - “parent”
 - “parental responsibility”
 - “Pikinini Bung”
 - “place of safety”

“primary care-giver”
“Provincial Council”
“spouse”
“the Regulations”
“this Act”
“well-being”.

3. Act binds the State.

PART II. - OBJECTIVES AND PRINCIPLES OF THE ACT.

4. Objectives of the Act.
5. Principles of the Act.
6. Rights of the child.
7. Right of child to live with parents.
8. Duty to maintain a child.
9. Exercising parental responsibility.

PART III. - OFFICE FOR CHILD AND FAMILY SERVICES, ETC.

Division 1. - Power and Functions of the Minister.

10. Directions by Minister.
11. Request by Minister.

Division 2. - Office for Child and Family Services.

12. Establishment of the Office for Child and Family Services.
13. Powers of the Office for Child and Family Services.
14. Functions of the Office for Child and Family Services.
15. Keeping of register.

Division 3. - National Child and Family Services Council.

16. National Child and Family Services Council.
17. Powers of the Council.
18. Functions of the Council.
19. Vacation of office.
20. Deputy Chairperson of the Council.
21. Meetings of the Council.
22. Delegation.
23. Annual and other reports.

Division 4. - Provincial Child and Family Services Council.

24. Provincial Child and Family Services Council.
25. Functions of the Provincial Child and Family Services Council.
26. Meetings of the Provincial Child and Family Services Council.

Division 5. - District Child and Family Services Committees.

27. District Child and Family Services Committee.

28. Functions of District Child and Family Services Committee.

PART IV. - ADMINISTRATION.

Division 1. - The Director.

29. Director.
30. Functions of the Director.
31. Vacation of office of Director.
32. Public Service rights of the Director to continue.
33. Delegation.

Division 2. - Staff.

34. Other staff.

Division 3. - Child Protection Officers.

35. Gazettal of Child Protection Officers.
36. Power of Child Protection Officers.
37. Appointment of Child Protection Volunteers.

PART V. - CHILD IN NEED OF PROTECTION.

Division 1. - Reporting and Investigation.

38. Duty to report.
39. Restriction on civil action.
40. Malicious reports.
41. Confidentiality of information.
42. Investigation procedures and processes.

Division 2. - Search Warrant.

43. Warrant to search.
44. Removal of a child.

Division 3. - Emergency Protection Powers.

45. Interpretation of Division 3.
46. Child in immediate danger.
47. Abandoning a child.
48. Taking an abandoned child.
49. Lost or run away child.
50. Parents to be notified.
51. Temporary custody.
52. General responsibilities of the Director.

PART VI. - CHILD LABOUR.

- 53. Exposure or exhibition.
- 54. Child labour.

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

- 55. Order for transfer.

PART VIII. - CHILD FRIENDLY PRACTICES IN PRISONS AND POLICE CUSTODY.

- 56. Accommodation of mothers with children.
- 57. Notification of pregnant woman or child.
- 58. Care of child.
- 59. Child with a parent in prison.
- 60. Pregnant woman inmate.
- 61. Review of circumstances.
- 62. Pregnant and breastfeeding remandees.

PART IX. - LICENSING AND INSPECTION OF EARLY CHILDHOOD CARE CENTRES, ETC.

- 63. Interpretation of Part IX.
- 64. Application of Part IX.
- 65. Licensing of early childhood care centres, etc.
- 66. Application for and issuance of licences.
- 67. Licence fee.
- 68. Minimum standards.
- 69. Registration and qualification of staff of licensed centres.
- 70. Register to be kept in licensed centres.
- 71. Removal of a child from a licensed place.
- 72. Inspection of centre.
- 73. Non-compliance with conditions of licence, etc.
- 74. Unlicensed place.
- 75. Notice of death of child.
- 76. Form, service, etc., of notices, etc., to Office.

PART X. - ESTABLISHMENT OF CHILD PROTECTION TRUST FUND.

- 77. The Child Protection Trust Fund.

PART XI. - GENERAL OFFENCES.

- 78. Offences against children in care.
- 79. Failure to discharge duties.
- 80. Harmful customary practices.
- 81. Child with disabilities.
- 82. Sale of children.

83. Pregnant women.
84. Obstruction of persons:
85. False representation as employee.
86. Child marriage

PART XII. - FAMILY COURT.

Division 1. - Family Court.

87. Establishment of Family Court.
88. Jurisdiction of the Family Court.
89. Decision of Family Court.
90. Sitting of Family Court.
91. Initiating proceedings.
92. Summons or warrant on complaint.

Division 2. - Family Court Hearings.

93. Child protection hearing.
94. Placement considerations.
95. Proceedings of the court.
96. Publicity of proceedings.

Division 3. - Child Protection Orders.

97. Finding a child in need of protection.
98. Care plan for a child.
99. Orders.
100. Allowance.

Division 4. - Parenting Orders (Custody).

101. Application for parenting orders.
102. Considerations by the court.
103. Best interests of the child.

Division 5. - Appointment of Guardians.

104. Appointment and responsibilities of a guardian.

Division 6. - Affiliation Proceedings.

105. Application of Division 6.
106. Court proceedings after birth of child.
107. Confinement expenses.

Division 7. - Maintenance Orders.

108. Maintenance of a child.
109. Maintenance of a spouse.
110. Duration of maintenance order.

- 111. Funeral expenses of child.
- 112. Time limits.

Division 8. - Proceedings for Adopted Child.

- 113. Court proceedings for adopted child.
- 114. Orders in relation to adopted child.

Division 9. - Appeals.

- 115. Appeals.

PART XIII. - RECIPROCAL ARRANGEMENT.

- 116. International arrangement.

PART XIV. - MISCELLANEOUS.

Division 1. - Indemnity and Assets.

- 117. Indemnity.
- 118. Transfer of assets.

Division 2. - Application of other laws.

- 119. Application of other laws.

PART XV. - REPEAL, SAVINGS AND TRANSITIONAL.

Division 1. - Regulations.

- 120. Regulations.

Division 2. - Repeal.

- 121. Repeal.
- 122. Child Welfare Act.
- 123. Child Welfare Council.
- 124. Director and the welfare officers.
- 125. Actions, etc., not to abate.
- 126. Orders, etc., to continue, etc.



No. of 2015.

AN ACT

entitled

Lukautim Pikinini Act 2015,

Being an Act to protect and promote the rights and well-being, generally, of all children regardless of race, nationality, religion, sex, ability or disability and repeal of the *Child Welfare Act* (Chapter 276) and the *Lukautim Pikinini (Child) Act 2009*, 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 1. - PRELIMINARY.

1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.

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; and
- (b) freedom of assembly and association conferred by Section 47; and
- (c) the right to privacy conferred by Section 49; and
- (d) the right to freedom of movement conferred by Section 52; and
- (e) the right of equality of citizens conferred by Section 55,

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 -

- (f) 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
- (g) 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. INTERPRETATION.

In this Act, unless the contrary intention appears -

“affiliation” means the relationship of a child to his biological father or mother;

“care” includes parental responsibility, custody and supervision;

“caregiver” means a person providing an out-of-home care service or employed by that service to care for a child;

“child” means a person including a boy or girl child 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 authorised by the Director;

“child in need of protection” means a child -

- (a) whose one or both parents are dead or incapacitated 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 been, or is likely to be physically harmed, sexually or emotionally abused or sexually exploited by some person other than the child’s parent, and the parent is unwilling or unable to protect the child; or
- (d) who has been, or is likely to be physically harmed because of violence or neglect by the child’s parents or guardian, or who is sexually or emotionally abused by the child’s parents or guardian; or
- (e) whose development is likely to be seriously impaired by treatable condition and the child’s parents refuse to provide or consent to treatment; or
- (f) 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
- (g) who has been consistently subjected to exposure or exhibition that is harmful to the child’s physical or psychological well-being; or
- (h) who is consistently engaged in child labour by some person other than the child’s parent, and the parent is unwilling or unable to protect the child; or
- (i) who is consistently engaged child labour by the child’s parent; or 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, psychological 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; or
- (k) who is involved in child trafficking;

“child labour” means work that deprives a child of his childhood, his potential and his dignity, and that is harmful to his physical and psychological development;

“Child Protection Officer” means a person appointed under Section 35;

“child protection volunteers” means a person appointed under Section 37;

“child with a disability” means a child with physical, psychological or intellectual impairment;

“child with special needs” means a child -

- (a) who is not likely 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 Directors; or
- (b) who is vulnerable or subjected to violence, abuse, neglect or exploitation;

Lukautim Pikinini

- “committee” means the Child and Family Services Committee established at the District;
- “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 of the mother during the period of one month before the birth of the child and during the period three months after the birth of the child; 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;
- “Council” means the National Family Services Council established under Section 16;
- “Court” means the Family Court established under Section 87;
- “Custody,” means parental responsibility;
- “Director” means the Director for Child and Family Services appointed in accordance with Section 29;
- “discrimination” means negative discrimination;
- “early childhood care and development centre” means a centre providing care during the day for children under the age of seven years including, a crèche, day nursery or a baby or child-minding centre;
- “family member” in relation to a child, means -
- (a) a parent, grandparent, step-parent, brother, sister, uncle, aunt or cousin of the child, whether by birth or adoption or affinity; or
 - (b) the child’s guardian or any other person who is responsible for the care and welfare of the child; or
 - (c) the primary caregiver 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;
- “Fund” means the Child Protection Trust Fund established under Section 77;
- “guardianship” means a temporary parental responsibility and care over a child;
- “in-kind” includes providing clothes, providing food, providing transport, making food gardens and fishing for the child;
- “license” means a license under Part IX;
- “licensed place” means a place that is the subject of a license;
- “magistrate” means a magistrate of the Family Court appointed under Section 87(3);
- “maintenance” means provision of adequate means of support for the general upkeep of the child or a spouse including but not limited to the provision of nutrition, clothing, lodging, nursing, medical treatment and education;
- “Maintenance Order” means an order made by a Court under Section 108 or 109 for payment of money by a family member in respect of a child;
- “Minister” means the national Minister responsible for child welfare matters;
- “near relative” means -
- (a) in the case of a child other than a child born outside of marriage - the father, mother, stepfather or stepmother of the child; or
 - (b) in the case of a child born outside of marriage 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

Lukautim Pīkinini

- (c) in the case of any child - a person, not being a person specified in Paragraph (a) or (b) who is liable to maintain the child, including an adopting parent;
- “Office” means the Office for Child and Family Services;
- “out-of-home care” means when a child is removed from his family and lives with some other person(s) or organisation for a short or longer term for his protection and safety;
- “parent” means -
- (a) the mother of a child; or
 - (b) the father of a child; or
 - (c) a step-parent; or
 - (d) an adopted parent; or
 - (e) a primary caregiver; or
 - (f) 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;
- “parental responsibility” in relation to a child, means all the duties, powers, responsibilities and authority which, by law, parents have in relation to children.
- “Pīkinini Bung” means a bi-annual forum for children where children meet and deliberate issues affecting children organised and managed by the Office for Child and Family Services;
- “place of safety” means 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 caregiver” means a guardian, 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 Council” means the Provincial Child and Family Services Council established under Section 24;
- “spouse” means a husband or wife to a lawful marriage;
- “the Regulations” means a Regulation made under this Act;
- “this Act” includes the Regulations;
- “well-being” means 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 fulfilment and the opportunity to realise the rights as provided through domestic laws and international instruments as may apply from time to time.

3. ACT BINDS THE STATE.

This Act binds the State.

PART II. - OBJECTIVES AND PRINCIPLES OF THE ACT.

4. OBJECTIVES OF THE ACT.

The objectives of this Act are -

- (a) to make provision for services and means for promoting the sound physical, psychological 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

Lukautim Pikinini

- (c) to protect, promote and strengthen family; and
- (d) to utilise, strengthen and develop community structures, which provide care and protection for children; and
- (e) to foster collaboration with other departments of government whose activities directly affect the health or well-being of the children; and
- (f) to foster collaboration and assist voluntary agencies and organisations and non-government organisations engaged in the provision of services designed to promote the well-being of children, families and communities; and
- (g) to protect and promote the rights of children; and
- (h) to prevent the ill-treatment, abuse, neglect, and exploitation of children; and
- (i) 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
- (j) 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 services that foster their health, psychological needs, spirituality, self-respect and dignity; and
- (k) to promote research into issues and concerns that affect the well-being and development of children; and
- (l) to give effect to relevant provisions of the *United Nations Convention on the Rights of Children* and other related international conventions; and
- (m) generally, to promote the well-being of children.

5. PRINCIPLES OF THE ACT.

(1) This Act shall be interpreted and administered in accordance with the following principles set out in this Subsection:

- (a) in all actions and decisions made under the Act concerning a particular child the best interests of the child must be the paramount consideration, and where any conflict arises between the interests of the child and another person, the interests of the child are paramount; and
- (b) children have the right to be protected from all forms of abuse, neglect and maltreatment; and
- (c) all children to have equal opportunity and access to education; and
- (d) the preferred environment for the care and upbringing of a child is his own family and the responsibility for the care and protection of children rests primarily with their parents; and
- (e) wherever possible, the relationship between a child and his family should be maintained and strengthened; and
- (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 family; and
- (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 family that is consistent with the paramount concern to protect the child from harm; and
- (h) interventions should be aimed at remedying the harmful situation and providing a plan to return the child to his family, unless to do so is contrary to the child's best interest; and

Lukautim Pikinini

- (i) if a child is temporarily or permanently deprived of his family environment, or cannot be allowed to remain in that environment in his own best interests, the child is entitled to special protection and assistance from the Office for Child and Family Services; and
- (j) where it is necessary to remove a child in need of protection from his family, alternative care for the child within his own family or community and the child's name, identity, language, cultural and religious ties should, as far as possible, be preserved; and
- (k) if a child is placed in the care of the Office for Child and Family Services or other appointed out-of-home care organisations, 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 best interests; and
- (l) wherever a child is able to form his own views on a matter concerning his welfare, he must be given an opportunity to express those views freely and those views are to be given due weight in accordance with the development capacity of the child; and
- (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
- (n) decisions affecting a child must, wherever practicable, be made and implemented as expeditiously as possible, having regard to the child's sense of time; and
- (o) the Social Obligations as reflected in the *Constitution* must be considered in handling any child welfare cases.

(2) To ensure that a child is able to participate in decisions made under this Act that have a significant impact on his life, the Office for Child and Family Services 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; and
- (b) the opportunity to express his views freely according to his abilities; and
- (c) any assistance that is necessary for the child to express those views; and
- (d) information as to how his views will be recorded and taken into account; and
- (e) information about the outcome of any decision concerning the child and a full explanation of the reasons for the decision; and
- (f) an opportunity to respond to a decision made under this Act concerning the child.

(3) 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 a parent or guardian and a secure place as a member of a family; and
- (b) the child's relationship with relatives; and
- (c) the importance of continuity in the child's care and the possible effect on the child of the disruption of that continuity; and

Lukautim Pikinini

- (d) the bonding that exists between the child and the child's parent or guardian; and
- (e) the child's physical, psychological needs, and the appropriate care or treatment to meet those needs; and
- (f) the child's physical, psychological and emotional level of development; and
- (g) the child's cultural, racial and linguistic heritage; and
- (h) the child's views and wishes, if they can be reasonably ascertained; and
- (i) the effect on the child of delay in the disposition of the case; and
- (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; and
- (k) the degree of risk, if any, that justified the finding that the child is in need of protective services; and
- (l) any other relevant circumstances.

(4) It is the duty of a parent, guardian or any person having parental responsibility 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 nutrition, clothing, shelter, immunisation 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 to his health, education, physical, psychological 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.

(5) A parent, the Office for Child and Family Services 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 race, 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.

(6) In applying these principles, due regard must be given to the age and the psychological capacity of the child.

6. RIGHTS OF THE CHILD.

The rights of a child under this Act and other laws and relevant international conventions shall be accorded to a child.

7. RIGHT OF CHILD TO LIVE WITH PARENTS.

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

Lukautim Pikinini

8. DUTY TO MAINTAIN A CHILD.

(1) It shall be the duty of a parent, 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 nutrition; and
- (b) immunisation; 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.

9. EXERCISING PARENTAL RESPONSIBILITY.

(1) Subject to Subsection (2) a parent shall have parental responsibility for the child.

(2) Where the natural parents of a child are deceased or physically unable to perform parental responsibilities, the parental responsibility may be exercised by relatives of either parents in accordance with -

- (a) custom; or
- (b) by deed or will; or
- (c) by way of a direction of the Director; or
- (d) a Court Order in accordance with this Act.

PART III. - OFFICE FOR CHILD AND FAMILY SERVICES, ETC.

Division 1. - Power and Functions of the Minister.

10. DIRECTIONS BY MINISTER.

The Minister may, after consultation with the Council or otherwise, give to the Council such directions consistent with Government policies and programs and not inconsistent with the provisions of this Act, as he considers fit, as to the exercise and performance by the Council of its powers, duties and functions under this Act, and the Council shall give effect to all such directions.

11. REQUEST BY MINISTER.

The Council shall furnish the Minister with such information with respect to its activities as he may from time to time require.

Division 2. - Office for Child and Family Services.

12. ESTABLISHMENT OF THE OFFICE FOR CHILD AND FAMILY SERVICES.

(1) The Office for Child and Family Services is hereby established.

(2) The Office -

- (a) is a body corporate with perpetual succession; and
- (b) shall have a common seal; and
- (c) may sue and be sued in its name and style.

Lukautim Pikinini

(3) All courts, Judges and persons acting judicially shall take judicial notice of the common seal of the Office affixed to a document and shall presume that it was duly affixed.

13. POWERS OF THE OFFICE FOR CHILD AND FAMILY SERVICES.

The Office shall, in the exercise of its powers under this Act -

- (a) consult with -
 - (i) any government department; or
 - (ii) any government institution, authority, organisation, instrumentality or body; or
 - (iii) any other institution, organisation or body; or
 - (iv) any member of the public,

that in the opinion of the Office, would assist in the protection and welfare of children and manage their affairs; and

- (b) provide advice and information to any government department or governmental institution, authority, organisation, instrumentality or body concerned with proposals for the efficient and effective protection of children and promotion of their well-being; and
- (c) consider any proposal for the best practice and methods relating to the protection and well-being of children that is referred to it; and
- (d) hold seminars and conferences on issues relating to children and their rights; and
- (e) undertake research and study programs in order to provide itself with material on which to base its recommendations on the best methods and practices in dealing with children and their issues; and
- (f) obtain information on children protection and promotion systems of other countries as a means of providing ideas for the development of children protection systems of Papua New Guinea; and
- (g) make guidelines to establish District Child and Family Services Committees; and
- (h) introduce standard operating procedures and other guidelines relating to the management, protection and promotion of the well-being of children; and
- (i) establish a national network of child protection centres; and
- (j) charge or collect fees -
 - (i) for licensing and inspection; and
 - (ii) for home study report and welfare reports of children; and
 - (iii) for other services provided by the Office where appropriate; and
- (k) develop and promote programs to protect and strengthen families; and
- (l) do all things necessary or convenient to be done for or in connection with the performance of its functions.

14. FUNCTIONS OF THE OFFICE FOR CHILD AND FAMILY SERVICES.

The functions of the Office are -

- (a) providing family services including promoting and protecting the well-being of children and families; and
- (b) formulating programs and policies for family services; and
- (c) administration of the Council; and
- (d) administration of this Act and other related legislation; and
- (e) the management of the Fund; and
- (f) organising and facilitating the Pikinini Bung for children; and
- (g) inspect centres providing child care, jails and police cells.

Lukautim Pikinini

15. **KEEPING OF REGISTER.**

- (1) The Office shall keep a register of -
- (a) children in need of protection; and
 - (b) licensed early childhood care and development centres; and
 - (c) licensed out-of-home care centres; and
 - (d) licences issued to individuals and organisations dealing with children under this Act.

(2) A person may inspect the register by applying to the Director in writing and paying the prescribed fee.

Division 3. - National Child and Family Services Council.

16. **NATIONAL CHILD AND FAMILY SERVICES COUNCIL.**

- (1) The National Child and Family Services Council is hereby established.
- (2) The Council shall consist of -
- (a) the Head of Department responsible for community development and child welfare matters or his nominee, who shall be the Chairperson; and
 - (b) the Head of the Department responsible for justice matters or his nominee; and
 - (c) the Chief Magistrate or his nominee; and
 - (d) the Public Solicitor or his nominee; and
 - (e) the Police Commissioner or his nominee; and
 - (f) the Head of the Department responsible for education matters or his nominee; and
 - (g) the Head of the Department responsible for health or his nominee; and
 - (h) the Head of Department responsible for treasury matters or his nominee; and
 - (i) the Chairperson of the Papua New Guinea Chamber of Commerce or his nominee; and
 - (j) the Chairperson of the Papua New Guinea Council of Churches or his nominee; and
 - (k) the President of the National Council for Women or her nominee; and
 - (l) a representative of licensed early childhood care and development centres; and
 - (m) a representative of the out-of-home care centres.

(3) The Director is an *ex-officio* member of the Council.

(4) The members referred to Subsection (2)(i) to (m) shall be appointed by the Minister and hold office for three years and are eligible for reappointment.

(5) The members of the Council referred to in Subsection (2)(i) to (m) may be paid such allowances as are determined under the *Boards (Fees and Allowances) Act 1955*.

(6) A person who has been convicted of 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.

17. POWERS OF THE COUNCIL.

- (1) The powers of the Council are -
- (a) to monitor and enforce this Act; and
 - (b) to regulate policies for preventing and responding to violence, abuse, neglect, exploitation and discrimination against all children; and
 - (c) to advise the Minister on issues relating to the operations of the Act; and
 - (d) to report to the Minister on matters related to children and family services in the country; and
 - (e) to issue and revoke licenses in accordance with Part VIII of this Act; and
 - (f) to protect and promote families and their well-being; and
 - (g) to solicit funding for and authorise the conduct of research or reviews of the performance of such other work consistent with the objectives of this Act; and
 - (h) to monitor and make decisions on the use of monies from the Fund; and
 - (i) to investigate and prosecute where appropriate any complaints relating to an abuse of a child; and
 - (j) to organise, fund and facilitate the bi-annual Pikinini Bung; and
 - (k) to approve guidelines for out-of-home care centres, early childhood care and development centres, foster care homes and such other matters as are deemed necessary by the Council.

- (2) The Council may exercise powers conferred on it by other laws.

18. FUNCTIONS OF THE COUNCIL.

The Council may perform the following functions:

- (a) to make provision for services and means for promoting the sound physical, psychological 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 utilise, 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 organisations and non-government organisations engaged in the provision 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 services that foster their health, psychological needs, spirituality, self-respect and dignity; and
- (j) to promote and protect families to provide conducive environments for the protection and well-being of children; and
- (k) to promote research into issues and concerns that affect the well-being and development of children; and

Lukautim Pikinini

- (l) to receive and deliberate on matters affecting children identified by children at the Pikinini Bung; and
- (m) to give effect to relevant provisions of the *United Nations Convention on the Rights of Children* and other related international conventions; and
- (n) generally, to promote the well-being of children and families.

19. VACATION OF OFFICE.

A member of the Council referred to in Section 16(2) (i) to (m) vacates his office if -

- (a) he dies; or
- (b) fails to attend three consecutive meetings of the Council without leave of the Chairperson; or
- (c) becomes permanently incapable of performing his duties; or
- (d) is convicted of an offence; or
- (e) resigns his office by writing under his hand addressed to the Minister.

20. DEPUTY CHAIRPERSON OF THE COUNCIL.

The Council shall at its first meeting immediately after its constitution appoint among its members the Deputy Chairperson.

21. MEETINGS OF THE COUNCIL.

- (1) The Council shall meet not less than three times in a year.
- (2) The Chairperson shall, at any time, on request by at least five members of the Council, convene a meeting of the Council.
- (3) At a meeting of the Council -
 - (a) the Chairperson shall preside; and
 - (b) in the absence of the -
 - (i) Chairperson, the Deputy Chairperson shall preside; and
 - (ii) Chairperson and the Deputy Chairperson, the members of the Council shall elect one of their member to preside at the meeting; and
 - (c) seven members is 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 and Code of Ethics.

22. DELEGATION.

The Council may by instrument, delegate to the Director, or a Provincial Child and Family Services Council, or a Committee any of its functions under this Act (except this power of delegation).

23. 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 affairs of children in the country.

Lukautim Pikiini

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

Division 4. - Provincial Child and Family Services Councils.

24. PROVINCIAL CHILD AND FAMILY SERVICES COUNCIL.

(1) A Provincial Child and Family Services Council shall be established in every province.

(2) The Minister may on the recommendation of the Council establish and appoint members of the Provincial Council.

(3) The Provincial Council shall consist of -

- (a) the Provincial Administrator or his nominee, who shall be the Chairperson of the Council; and
- (b) the Senior Provincial Magistrate or his nominee; and
- (c) the Provincial Police Commander or his nominee; and
- (d) the head of the Provincial Health Authority or his nominee; and
- (e) the Provincial Education Advisor or his nominee; and
- (f) the Provincial Child Protection Officer; and
- (g) the President of the Provincial Council of Women or her nominee; and
- (h) a representative of licensed early childhood care and development centres; and
- (i) a representative of the out-of-home care centres; and
- (j) a representative of the churches.

(4) The names of the members shall be gazetted upon confirmation of membership to the Provincial Council.

(5) A member of the Provincial Council under Subsection (3)(g) to (j) holds office for a period of three years, and is eligible for reappointment.

(6) A member of the Provincial Council under Subsection (3)(g) to (j) vacates his office, if he -

- (a) dies; or
- (b) fails to attend three consecutive meetings of the Provincial Council without leave of the Chairperson; or
- (c) becomes permanently incapable of performing the duties of his office; or
- (d) is convicted of an offence; or
- (e) resigns his office by writing under his hand addressed to the Minister.

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

(8) The Provincial Government shall provide professional, secretarial, other services, facilities and funding or otherwise as may be reasonably required to enable the Provincial Council to perform its functions effectively.

Lukautim Pikiinini

25. FUNCTIONS OF THE PROVINCIAL CHILD AND FAMILY SERVICES COUNCIL.

Subject to any direction of the National Child and Family Services Council, the functions of the Provincial Council are -

- (a) to implement and administer the provisions of this Act in the province in which it has been established; and
- (b) to prevent and respond to violence, abuse, neglect, exploitation and discrimination against all children; and
- (c) to advise the National Child and Family Services Council, the Director and the Provincial Government on children and family services in the province; and
- (d) to advise the Provincial Government on any child and family matters referred to it by the National Child and Family Services Council; and
- (e) to advise and report to the Provincial Government on the workings, generally, of the Provincial Council and the District Committees.

26. MEETINGS OF THE PROVINCIAL CHILD AND FAMILY SERVICES COUNCIL.

(1) A Provincial Council shall meet not less than three times in a year.

(2) Subject to this Act, the Provincial Council may prescribe its own procedures.

(3) At its first meeting, the Provincial Council shall appoint one of its members as the Deputy Chairperson.

(4) The Provincial Council shall provide an annual report to the National Child and Family Services Council before the end of December each year.

(5) The Provincial Council shall on request, furnish a report to the Director outlining the activities of the Provincial Council or any matter referred to it by the National Child and Family Services Council.

Division 5. - District Child and Family Services Committees.

27. DISTRICT CHILD AND FAMILY SERVICES COMMITTEE.

(1) The Provincial Council may, on the request by the District, establish a Child and Family Services Committee for the District.

(2) The Committee shall consist of -

- (a) the District Administrator or his nominee, who shall be the Chairperson; and
- (b) the District Child Protection Officer, and
- (c) such other members, not exceeding six, appointed by the Provincial Council.

(3) The Provincial Council shall, within one month of the establishment of the Committee under Subsection (1), report the establishment of the Committee to the National Child and Family Services Council.

(4) Subject to this Act, the procedures at meetings of the Committee shall be as determined by the Committee, including the appointment of its Deputy Chairperson.

Lukautim Pikitini

- (5) The District Development Authority shall provide professional, secretarial, other services, facilities and funding or otherwise as may be reasonably required to enable the Committee to perform its functions effectively.
- (6) The Committee shall provide an annual report to the Provincial Council before the end of December each year.
- (7) The Committee shall on request, furnish a report to the Provincial Council outlining the activities of the Committee in the district or any matter referred to it by the Provincial Council.
- (8) A member of the Committee under Subsection (2)(c) vacates his office if he -
- (a) dies; or
 - (b) fails to attend three consecutive meetings of the Committee without leave of the Chairperson; or
 - (c) becomes permanently incapable of performing the duties of his office; or
 - (d) is convicted of an indictable offence, or an offence against children; or
 - (e) resigns his office by writing under his hand addressed to the Chairperson of the Provincial Council.

28. FUNCTIONS OF DISTRICT CHILD AND FAMILY SERVICES COMMITTEE.

The functions of the Committee are -

- (a) to formulate policies towards preventing and responding to violence, abuse, neglect, exploitation and discrimination against all children; and
- (b) to investigate and inquire into any matters affecting children at the local community or District and to report and advise the Provincial Council and the Member of Parliament for the District for consideration and report to the appropriate authorities; and
- (c) to give advice and guidance in the rationalisation and co-operation of services designed to promote the child welfare at the District so as to achieve the most effective utilisation of those services.

PART IV. - ADMINISTRATION.

Division 1. - The Director.

29. DIRECTOR.

- (1) There shall be the Director of the Office for Child and Family Services who -
- (a) shall be appointed by the Head of State, acting on advice, by notice in the National Gazette; and
 - (b) shall be appointed for such period, not exceeding four years, as the Head of State, acting on advice, determines; and
 - (c) is eligible for reappointment.
- (2) The Director is the Chief Executive Officer of the Office.
- (3) The terms and conditions of service of the Director shall be as determined by the Salaries and Remuneration Commission pursuant to Section 216A(3)(d) (*Salaries and Remuneration Commission*) of the *Constitution*.

Lukautim Pikinini

(4) For the purposes of this section, the office of the Director is an office to which Division III.2 (*Leadership Code*) of the *Constitution* applies.

30. FUNCTIONS OF THE DIRECTOR.

- (1) The Director shall -
- (a) manage the secretariat of the Office for Child and Family Services; and
 - (b) provide assistance to Provincial Child and Family Services Council; and
 - (c) perform such other functions and duties as are, from time to time, directed by the National Child and Family Services Council; and
 - (d) manage the Office for Child and Family Services in accordance with the policy and direction of the National Child and Family Services Council; and
 - (e) advise the National Child and Family Services Council on any matter concerning the Office for Child and Family Services referred to him by the National Child and Family Services Council; and
 - (f) shall generally carry out and perform the duties required of him under this Act and his contract of employment.

(2) The Director may, by instrument in writing, delegate all or any of his functions or powers (other than this power of delegation) to a person and shall report any delegation under this section to the National Child and Family Services Council.

31. VACATION OF OFFICE OF DIRECTOR.

- (1) If the Director -
- (a) becomes permanently incapable of performing his duties; or
 - (b) resigns his office by writing under his hand addressed to the Head of State; or
 - (c) engages, without the consent of the Head of State, acting on advice, in any paid employment outside the duties of his office; or
 - (d) becomes bankrupt, 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 remuneration for their benefit; or
 - (e) is convicted of an offence punishable by death or imprisonment for one year or longer and, as a result of the conviction, is under sentence of death or imprisonment,

his appointment as Director automatically terminates.

(2) The Head of State, acting on advice, may at any time terminate the appointment of the Director for inability, inefficiency, incapacity or misbehaviour.

32. PUBLIC SERVICE RIGHTS OF THE DIRECTOR TO CONTINUE.

(1) If an officer of the Public Service is appointed to be the Director, his service as the Director shall be counted as service in the Public Service for the purposes of determining his rights (if any) in respect of -

- (a) leave of absences on the ground of illness; and
- (b) furlough or pay in lieu of furlough (including pay to dependents on the death of the officer).

(2) The office of the Director is an office to which the provisions of the *Public Services (Management) 2014* apply in relation to leave to serve under another Act.

Lukautim Pikiinini

33. DELEGATION.

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

Division 2. - Staff.

34. OTHER STAFF.

(1) Subject to Subsection (2) any staff (other than the Director) required for the purposes of this Act shall be officers or employees of the Public Service.

(2) Any person may be employed by the Office for Child and Family Services on contract or otherwise, for the purposes of the Office.

Division 3. - Child Protection Officers.

35. GAZETTAL OF CHILD PROTECTION OFFICERS.

(1) The National Child and Family Services Council shall recommend names on the advice of the Director, of persons for approval by the Minister as Child Protection Officers for the purposes of this Act.

(2) For the purpose of this section, any serving welfare officers and persons performing similar functions may be appointed as Child Protection Officers.

(3) A Child Protection Officer may be eligible for annual risk and hardship allowances.

(4) An appointment under this section shall continue until revoked or otherwise determined by the Council in consultation with the Director.

36. POWER OF CHILD PROTECTION OFFICERS.

(1) The powers of the Child Protection Officer are to prevent and respond to violence, abuse, neglect, exploitation and discrimination against all children.

(2) The powers referred to under Subsection (1) includes the power to prevent violence under the *Family Protection Act 2013*.

(3) A person who exercises and performs the power and functions of a Child Protection Officer, without being appointed under this Division is guilty of an offence.

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

37. APPOINTMENT OF CHILD PROTECTION VOLUNTEERS.

(1) The National Child and Family Services Council may on the advice of the Director appoint persons to be child protection volunteers to carry out such duties as are prescribed for the purposes of this Act.

(2) An appointment under this section shall continue until revoked or otherwise determined by the Council in consultation with the Director.

Lukautim Pikinini

PART V. - CHILD IN NEED OF PROTECTION.

Division 1. - Reporting and Investigation.

38. DUTY TO REPORT.

(1) A person who believes, on reasonable grounds, that a child is in need of protection may notify the Office for Child and Family Services.

(2) Apart from reporting under Subsection (1), such person should take whatever steps necessary to assist the child.

(3) Notwithstanding anything in any other law, a person referred to in Subsection (4), 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 in need of protection,

shall immediately report the matter to the Office.

(4) A person who performs professional duties, includes but is not limited to -

- (a) a health care professional, psychologist, teacher, school principal, social worker, family counsellor, member of the clergy, lawyer, police officer, community based corrections officer, juvenile justice officer, correctional services officer, community development officer or community development office worker; or
- (b) an operator or employee of a early childhood care and development centre.

(5) The Office may institute a civil proceeding against a professional for failure to report.

39. RESTRICTION ON CIVIL ACTION.

A person who notifies the Office under Section 38, shall not be held to have breached any professional etiquette or code, or to have departed from any accepted form of professional conduct, and does not incur civil or criminal liability in respect of the notification.

40. MALICIOUS REPORTS.

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 is kept 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 six months, or both.

41. CONFIDENTIALITY OF INFORMATION.

The identity of the person who notifies the Office under Section 38, shall not be disclosed to any other person without the person's consent or leave of the Court.

42. INVESTIGATION PROCEDURES AND PROCESSES.

(1) On receipt of information under Section 38 the Office may conduct such investigation as it considers necessary.

Lukautim Pikinini

(2) The investigation shall include a Child Protection Safety Assessment and a Safety Placement Decision.

(3) The Office may notify the child's parent of such investigation or report.

Division 2. - Search Warrant.

43. WARRANT TO SEARCH.

(1) Subject to Section 46, an application for a search warrant may be made by the Director under the *Search Act 1977* where there are reasonable grounds to believe that, in a house, building, vessel, vehicle or place a provision of this Act is being contravened.

(2) In any search carried out by police or any other person concerning a child, a Child Protection Officer shall accompany the search team.

44. REMOVAL OF A CHILD.

(1) Where as a result of a search under Section 43 an offence is found to be proved, the child and his belongings may be immediately removed to a place of safety.

(2) A child removed under Subsection (1) shall be moved to a place of safety authorised by the Director.

(3) Where the child requires medical or psychosocial support, the Director shall ensure that such support is provided to the child.

Division 3. - Emergency Protection Powers.

45. INTERPRETATION OF DIVISION 3.

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

- (a) a police officer; or
- (b) a Child Protection Officer,

authorised by the National Child and Family Services Council to exercise the powers under this Division.

46. 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), the officer may, by reasonable force if necessary, enter any premises or vehicle or board any vessel or aircraft, for the purpose of taking charge of a child, where -

- (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, within 24 hours, report the circumstances to the Office for Child and Family Services and the officer shall -

- (a) take the child to a place of safety designated by the Director; or

Lukautim Pikinini

- (b) with the approval of the Director, return the child to its parents or take the child to a person designated by the parents.

47. ABANDONING A CHILD.

A parent that abandons a child and where the life of the child is, or is likely to be, endangered, or his health is, or is likely to be, permanently injured without any reasonable excuse is guilty of an offence.

Penalty: Imprisonment for a term not exceeding five years.

48. TAKING AN ABANDONED CHILD.

(1) A person other than the Office for Child and Family Services who removes an abandoned child from a hospital nursery is guilty of an offence.

Penalty: Imprisonment for a term not exceeding six months.

(2) A person other than the Director or his delegate who authorises the removal of an abandoned child from a hospital nursery is guilty of an offence.

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

(3) Notwithstanding Subsections (1) and (2), where a person, in the case of a child who has been abandoned soon after delivery, believes, on reasonable grounds, that the child is without parental care, he shall, within 48 hours, report the matter to the Office for Child and Family Services, and shall -

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

(4) The Office for Child and Family Services shall take all reasonable steps to notify the child's parent of any steps taken under Subsection (3).

(5) Where a person fails to comply with Subsection (3), he is guilty of an offence.

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

49. LOST OR RUN AWAY CHILD.

(1) 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.

(2) On taking charge of the child under Subsection (1), the officer shall -

- (a) notify the Office for Child and Family Services; and
- (b) take all reasonable steps to locate the parent; and
- (c) take the child to a place of safety designated by the Director, or arrange for someone to look after the child.

Lukautim Pikinini

(3) In the case of a person who has possession of a lost or run away or abandoned child, he shall immediately notify the Office for Child and Family Services.

- (4) Where the parent is located, the Office for Child and Family Services may -
- (a) return the child or facilitate the child's return to the parent; or
 - (b) place the child with another person, at the request of the parent, and with the consent of that other person.

(5) Where the child refuses to return to the parent, the Office for Child and Family Services shall -

- (a) place the child with a person or in a place of safety designed by the Director; and
- (b) arrange for a mediation process between the child and the parent.

(6) Where mediation under Subsection (5)(b) does not result in the child returning to the person responsible for the child, the Office for Child and Family Services may institute proceedings under Part XII, Division 2.

50. PARENTS TO BE NOTIFIED.

(1) Where the Office for Child and Family Services or a police officer removes a child under this Division, the Office for Child and Family Services or the police 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.

51. TEMPORARY CUSTODY.

- (1) Where -
- (a) a child has been determined to be a child to whom Division 3 applies; or
 - (b) a child has been removed under Sections 46,
- the Office for Child and Family Services has the care of the child until -
- (c) the child is returned; or
 - (d) a Court makes an order in relation to the child under this Act.

- (2) Subject to Subsection (1), the Director may -
- (a) authorise a health care provider to examine the child; and
 - (b) if in the opinion of a health care provider the health care of the child must be provided without delay, consent to necessary health care of the child.

(3) The Office for Child and Family Services may notify the parent of the examination conducted under Subsection (2).

52. 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 the child reaches the age of 18 years.

Lukautim Pikinini

(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) by placing the child, or permitting the child to remain, in the care of a member of the child's family; or
- (b) by placing the child in the care of an approved foster parent or any other suitable person; or
- (c) by placing the child in any other child-friendly place approved by the Director under this Act; or
- (d) by making arrangements for the education of the child; or
- (e) by making arrangements for medical examination and treatment of a child in accordance with Section 51(2); or
- (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.

PART VI. - CHILD LABOUR.

53. EXPOSURE OR EXHIBITION.

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

(2) A caregiver licensed under Part IX 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.

(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 exploitive of the child or is not in the best interests of the child.

(4) A caregiver who engages causes 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 K2,000.00 or imprisonment for a term not exceeding 12 months, or both.

54. CHILD LABOUR.

(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 safety, health or physical, mental, spiritual or social development of the child,

is guilty of an offence.

Lukautim Pikiinini

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) 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: Where -

- (a) the employer is an individual, a fine not exceeding K5,000.00 or imprisonment for a term not exceeding five Years, or both; or
- (b) the employer is a corporation, a fine not exceeding K10,000.00.

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

55. ORDER 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 who is transferred to a place or any other place or to a person appointed by the Director -

- (a) is not profiting or benefiting from the discipline and instruction of the place or person; or
- (b) 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 to a juvenile institution established under the *Juvenile Justice Act 2013* to serve the remainder of his original sentence and 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 VIII. - CHILD FRIENDLY PRACTICES IN PRISONS AND
POLICE CUSTODY.**

56. ACCOMMODATION OF MOTHERS WITH CHILDREN.

A mother and her child under three years living with her in prison shall be accommodated in a separate facility within the prison.

57. NOTIFICATION OF PREGNANT WOMAN OR CHILD.

The Commissioner of Corrective Institutions or his delegate shall, as soon as practicable, notify the Office for Child and Family Services of the reception of a pregnant woman or mother inmate with a child under the age of three years.

58. CARE OF CHILD.

A child shall be entitled to the care necessary to promote healthy early childhood development during the time he remains with the mother in prison.

59. CHILD WITH A PARENT IN PRISON.

(1) Where a mother is breast-feeding a child and that child resides outside of the prison arrangements shall be made to allow the child access to the mother for the purpose of breast-feeding.

(2) A child with a parent in prison shall be allowed access to the parent unless a Court orders otherwise.

60. PREGNANT WOMAN INMATE.

(1) A pregnant inmate shall be entitled to proper medical attention, rest, nutrition and shall not be subject to any 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 inmate, the unborn child or the continuation of normal pregnancy, is guilty of an offence.

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

61. REVIEW OF CIRCUMSTANCES.

(1) The Director shall, in consultation with the Commissioner of Corrective Institutions enter a prison to -

- (a) review the circumstances of the child continuing to live in the prison; or
- (b) review the compliance of the prison with child-friendly practices in accordance with this Part; and
- (c) have access at all reasonable times to all parts of the child-friendly place.

(2) The review shall take place at least annually but may be done more than once should the need arise.

62. PREGNANT AND BREASTFEEDING REMANDEES.

(1) A mother of a child under the age of three years being held in lawful custody is entitled to continue to feed and provide care at a place conducive to the child's health and safety.

Lukautim Pikinini

(2) A pregnant remandee shall be treated in a manner as would not endanger the welfare or wellbeing of the unborn child.

**PART IX. - LICENSING AND INSPECTION OF EARLY
CHILDHOOD CARE CENTRES, ETC.**

63. INTERPRETATION OF PART IX.

In this Part, unless the contrary intention appears -

“licence” means a licence under Section 66; and

“licensed place” means a place that is the subject of a license.

64. APPLICATION OF PART IX.

This Part does not apply to -

(a) a hospital licensed under the *Medical Registration Act 1980*; or

(b) a relation by blood of a child placed with them under this Act; or

(c) a person given custody of a child through a Court or by a deed or a will; or

(d) a preschool, an elementary school, or a similar institution as conducted under the Education Department, International Education Agency or as a permitted school.

65. LICENSING OF EARLY CHILDHOOD CARE CENTRES, ETC.

A person in charge of -

(a) an early childhood care and development centre; or

(b) an out-of-home care service,

shall be licensed in accordance with this Part.

66. APPLICATION FOR AND ISSUANCE OF LICENCES.

(1) The person in charge of a place referred to under Section 65 shall -

(a) apply in writing; and

(b) lodge the prescribed application fee,

to the Council, through the Office for Child and Family Services, for a licence in respect of the place.

(2) The Director shall, upon receiving an application under Subsection (1) -

(a) conduct an inspection of the place within 21 days from the date of receipt of the application; and

(b) compile a report with his recommendation to the Council.

(3) On receiving a report under Subsection (2), the Council shall within 21 days approve or reject the application.

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

(5) A licence shall -

(a) be in the prescribed form; and

(b) be subject to such conditions and requirements as may, in any particular case, be considered necessary or proper, and penalties may also be imposed to enforce such conditions; and

Lukautim Pikiini

(c) specify -

- (i) the purpose for which it is granted; and
- (ii) the maximum number of children who-
 - (A) in the case of a residential child care establishment, may be received and cared for in the establishment; and
 - (B) in the case of a crèche, day nursery or child minding centre, may attend the centre.

(6) A licence remains in force for 12 months unless cancelled or varied by the Council.

(7) The particulars of a variation under this section shall be endorsed on the licence.

(8) A licence issued by the Investment Promotion Authority is not a license to conduct a centre under this Act.

(9) Where a person licensed under this section -

- (a) wishes to operate another centre; or
- (b) ceases to operate the centre nominated in the licence and wishes to establish a centre in another location,

the person must apply for a new licence for the new centre.

(10) A person licensed under this section who intends to change the place of residence of a child care establishment or centre shall notify the Director six months prior to the actual relocation.

67. LICENCE FEE.

Upon approval of a licence under Section 68, an initial fee, as determined by the Council, from time to time, shall be charged for the first two years of the licence, and thereafter an annual renewal fee, not higher than the initial fee as determined by the Council, from time to time.

68. MINIMUM STANDARDS.

(1) The Office 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 centres, and in out-of-home care.

(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 Office to ensure compliance with the standards.

(3) A failure to comply with these standards or with any directive by the Office in accordance with this section may result in the suspension or revocation of the licence.

69. REGISTRATION AND QUALIFICATION OF STAFF OF LICENSED CENTRES.

(1) A person employed in an early childhood care and development centre, and out-of-home care licensed under this Part shall be qualified as prescribed from time to time by the Office.

(2) A person who fails to comply with the requirements of this section may have his licence suspended or revoked.

Lukautim Pikiini

70. REGISTER TO BE KEPT IN LICENSED CENTRES.

(1) The person in charge of an early childhood care and development centre shall keep a register in the prescribed form for each child enrolled in the centre.

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

(3) A person in charge of an early childhood care and development centre shall keep a daily log of every child attending the centre in the prescribed form.

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

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

71. REMOVAL OF A CHILD FROM A LICENSED PLACE.

(1) No child may be removed from an early childhood care and development centre without the approval of the parent of the child or a person authorised by the parent, except where the child is being removed under the emergency protective powers in this Act.

(2) No child may be removed from an out-of-home care centre without the approval of the Office, except under the emergency protective powers in this Act or in accordance with Sections 73 and 74.

(3) A person who fails to comply with a 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.

72. INSPECTION OF CENTRE.

(1) A Child Protection Officer may at any time, enter a licensed centre and inspect it and the children present at the time, and the person in charge of the centre shall afford all reasonable access and support for the inspection.

(2) The Office shall conduct an annual inspection of a licensed centre and determine whether the centre is continuing to comply with its licencing standards.

(3) A fee, as determined from time to time by the Council, shall be charged for the annual inspection of a licensed centre.

(4) The annual inspection fee may be waived at the discretion of the Director.

(5) In making an inspection under Subsection (1) or (2), the Child Protection Officer or other person authorised by the Director to conduct the inspection may, if he thinks fit, be accompanied by a health inspector, a police officer, and a building inspector or any one of them.

Lukautim Pikinini

73. NON-COMPLIANCE WITH CONDITIONS OF LICENCE, ETC.

(1) Where, on an inspection of a licensed centre, it appears that a condition or requirement of the licence is not complied with, the Office may give written directions to the person in charge to ensure compliance with the condition or requirement, failing which the licence may be revoked.

(2) Where the licensed centre is an out-of-home care service, on the cancellation of the licence, the Office shall -

- (a) restore the child to his parents; or
- (b) place the child in another out-of-home care centre.

74. UNLICENSED PLACE.

(1) The person in charge of a place referred to in Section 66 that is not licensed under that section 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) Where a person is convicted of an offence against Subsection (1) in respect of an unlicensed place, any child who is placed at that place shall be removed from it and taken to a child-friendly place as determined by the Office.

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

- (a) be restored to his parents; or
- (b) be placed in another out-of-home care service.

75. NOTICE OF DEATH OF CHILD.

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

(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 magistrate, whether an inquiry respecting the cause of death is necessary.

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

76. FORM, SERVICE, ETC., OF NOTICES, ETC., TO OFFICE.

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 Office 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 X. - ESTABLISHMENT OF CHILD PROTECTION TRUST FUND.

77. THE CHILD PROTECTION TRUST FUND.

- (1) There shall be established a Child Protection Fund.
- (2) The monies from the Child Protection Fund shall be used solely for supporting child safety and protection and prevention programs.
- (3) The Government shall annually allocate an appropriate amount of money to the Child Protection Fund.
- (4) The Child Protection Fund shall be managed by the National Child and Family Services Council as prescribed.
- (5) The National Child and Family Services Council shall report to the Minister on the operation and management of the Fund.
- (6) The Management of the Fund's Account shall be in accordance with the *Public Finances (Management) Act 1995*.

PART XI. - GENERAL OFFENCES.

78. OFFENCES AGAINST CHILDREN IN CARE.

- (1) A person who -
 - (a) abuses, neglects, ill-treats as exploits; or
 - (b) commits violence and causes injuries to a child in his care; or
 - (c) counsels, causes or attempts to counsel or cause a child in his care to be withdrawn; or
 - (d) counsels, causes or attempts to counsel or cause a child in his care to escape or run away from the out-of-home care or from the care of a person with whom the child has been placed; or
 - (e) knowing a child to have been withdrawn or to have escaped as referred to in Paragraph (d) -
 - (i) harbours or conceals the child; or
 - (ii) prevents the child from returning to the child's out-of-home care,is guilty of an offence.
- (2) If a person referred to in Paragraph (d) is a caregiver who -
 - (a) neglects, ill-treats, exploits or abuses the child; or
 - (b) fails to observe, performs or keep a condition or agreement that is contained in a care-plan that he has entered into in relation to a child and that by the terms of the care-plan he has bound himself or agree to observe, performs or keep; or
 - (c) obstructs or denies the well-being of the child,that person is guilty of an offence.
- (3) A person found guilty under this section is liable to a fine not exceeding K5,000.00 or imprisonment for a term not exceeding two years or both.

Lukautim Pikinini

79. FAILURE TO DISCHARGE DUTIES.

(1) If a parent fails, without reasonable excuse, to discharge his duties in accordance with Section 6, 7 or 8 of this Act, the Office shall inquire into the circumstances of this failure by way of discussions with the parents, etc., so as to put in place arrangements to prevent the continuation of the failure.

(2) A parent who fails to comply with any arrangement concluded under Subsection (1) or with any directions of the Office in relation to the implementation of that arrangement is guilty of an offence.

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

80. HARMFUL CUSTOMARY PRACTICES.

A person commits an offence if he unlawfully subjects a child to a social or a customary practice that is harmful to a child's well-being as guided by the principle of the best interests of the child.

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

81. CHILD WITH DISABILITIES.

The parents or any other person having custody, of a child with a disability, 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 integration for equal opportunities to education.

82. SALE OF CHILDREN.

(1) A person who sells or intends to sell a child for his personal gain is guilty of an offence.

Penalty: Imprisonment for a term not exceeding five years.

(2) A person who -

- (a) solicits the sale of a child; or
- (b) accepts or intends to accept proceeds of the sale; or
- (c) receives the child upon payment made,

is guilty of an offence.

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

83. PREGNANT WOMEN.

(1) A pregnant woman shall be protected at all times until the delivery of her child.

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

Penalty: A term of imprisonment not exceeding two years.

Lukautim Pikinini

84. OBSTRUCTION OF PERSONS.

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 K2,000.00 or imprisonment for a term not exceeding 12 months, or both.

85. FALSE REPRESENTATION AS EMPLOYEE.

A person who falsely represents himself to be officially associated in any capacity with the Office is guilty of an offence.

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

86. CHILD MARRIAGE

A person who, by act or omission, facilitates the marriage of a child, either by custom or by law, is guilty of an offence.

Penalty: Imprisonment for a term not exceeding five years.

PART XII. - FAMILY COURT.

Division 1. - Family Court.

87. ESTABLISHMENT OF FAMILY COURT.

(1) The Minister, may on the advice of the Judicial and Legal Services Commission, may by notice in the National Gazette, establish a Family Court in and for an area specified in the notice.

(2) The jurisdiction of the Family Court under this Act shall be exercised by a Family Court Magistrate.

(3) For the purposes of Subsection (2), all District Court Magistrates shall be deemed as Family Court magistrates.

(4) The Clerk of the Family Court shall be appointed in accordance with the *District Courts Act* (Chapter 40).

(5) The practice and procedure of the District Courts shall apply to the Family Court with relevant modifications where necessary.

88. JURISDICTION OF THE FAMILY COURT.

(1) The Family Court has jurisdiction to hear and determine matters relating to -

- (a) child protection; and
- (b) parenting orders (child custody); and
- (c) maintenance of a child and parent; and
- (d) access to a child; and
- (e) guardianship of a child; and
- (f) adopted child; and

any other powers given under this Act.

Lukautim Pikinini

(2) A law may make provisions for further powers and functions of the Family Court.

89. DECISION OF FAMILY COURT.

Subject to this Act, the Family Court shall -

- (a) in respect of all child protection cases, exercise the powers provided in this Act, and the *District Courts Act* (Chapter 40); and
- (b) hear and determine all complaints and applications under this Act.

90. SITTING OF FAMILY COURT.

Sittings of a Family Court shall be held at such places as are determined in accordance with the *District Courts Act* (Chapter 40).

91. INITIATING PROCEEDINGS.

- (1) A proceeding under this Part shall be instituted by way of a complaint.
- (2) The complaint shall be as prescribed.

92. SUMMONS OR WARRANT ON COMPLAINT.

Where a complaint is made under this Part and the complainant produces evidence on oath, either oral or on affidavit in corroboration of the same material particular as to the paternity or maternity of the child, the magistrate before whom the complaint is made may -

- (a) summon the person complained against to appear before the Court to answer the complaint; or
- (b) if satisfied that the circumstances require it, issue a warrant for his apprehension.

Division 2. - Family Court Hearings.

93. CHILD PROTECTION HEARING.

(1) Where a child to whom Part V of the Act applies, the Director shall, as soon as practicable, make an application to the Court for an order under Section 97.

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

94. PLACEMENT CONSIDERATIONS.

(1) When enforcing an order under this section, the Office for Child and Family Services 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 under Section 97, consider whether it is possible to place the child with a family member, neighbour or other members of the child's community or extended family with the consent of the family member, neighbour or other person.

Lukautim Pikinini

95. PROCEEDINGS OF THE COURT.

- (1) In conducting a hearing under this Part, the Court may -
 - (a) conduct proceedings before it in an informal manner; and
 - (b) proceed without regard to legal forms.

- (2) A hearing under this Part may -
 - (a) be held in camera or otherwise; and
 - (b) be attended only by -
 - (i) the parties to the proceedings; and
 - (ii) any other person by leave of the Court.

(3) The Court may order a person not directly interested in a hearing or trial by the Court not to be present in a place in which the hearing or trial is being held or remain within the hearing of the Court.

(4) A person who enters a room or place or remains within the hearing of the Court in contravention of an order under Subsection (3) is guilty of an offence.

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

96. PUBLICITY OF PROCEEDINGS.

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) is 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 12 months; and
- (b) a corporation - a fine not exceeding K10,000.00.

Division 3. - Child Protection Orders.

97. 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 is satisfied that a child is not a child in need of protection, it shall where the child was removed, order the return of the child to the parent.

- (3) Where the Court is satisfied that a child is a child in need of protection, it -
 - (a) shall consider the plan of care presented by the Office for Child and Family Services; and
 - (b) may hear any more evidence the Court considers necessary to help it determine an appropriate order may be made.

Lukautim Pikiini

98. CARE PLAN FOR A CHILD.

The Court shall, before making an order under Section 97 obtain and consider a plan for the child's care, prepared in writing by the Office.

99. ORDERS.

On an application made to the Court by the Director, the Court may make a temporary or permanent order.

100. ALLOWANCE.

The Office may, out of moneys from the Fund contribute towards the upkeep of a child placed, in accordance with an order under this Act, in an out-of-home care.

Division 4. - Parenting Orders (Custody).

101. APPLICATION FOR PARENTING ORDERS.

(1) This Division deals with an application for and making of parenting orders and general obligations created by parenting orders.

- (2) A parenting order in relation to a child may be applied for, by -
- (a) either or both of the child's parents; or
 - (b) the child; or
 - (c) a grandparent of the child; or
 - (d) any other person concerned with the care, welfare or development of the child; or
 - (e) any guardian, whether appointed under this Act or by will or otherwise; or
 - (f) any person acting in a fiduciary capacity who is, under any will, gift, settlement, or otherwise by law, possessed of any fund for the maintenance or education of the child, or any fund a portion of which may be applied for the maintenance or education of the child.

102. CONSIDERATIONS BY THE COURT.

(1) In deciding whether to make a particular parenting order in relation to a child, the Court must ensure the best interests of the child as the paramount consideration.

(2) In making a decision under this Division, the Court must ensure that the child spends equal time or substantial and significant time with each parent.

(3) If a parenting order provides (or is to provide) that a child's parents are to have equal shared parental responsibility for the child, the Court must -

- (a) consider whether the child spending equal time with each of the parents would be in the best interests of the child; and
- (b) consider whether the child spending equal time with each of the parents is reasonably practicable; and
- (c) if it is, consider making an order to provide (or including a provision in the order) for the child to spend equal time with each of the parents.

(4) The determination of "substantial and significant time" is at the discretion of the Court but includes weekdays and weekends, holidays, occasions in the child's life, occasions in the parents' life and an opportunity for the parent to be part of the child's daily routine.

Lukautim Pikinini

103. BEST INTERESTS OF THE CHILD.

- (1) In determining what is in the child's best interests, the primary considerations are -
- (a) the importance for the child's development of a positive relationship with a parent or guardian and a secure place as a member of a family; and
 - (b) the need to protect the child from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence.
- (2) Additional considerations are -
- (a) any views expressed by the child and any factors (such as the child's maturity or level of understanding) that the Court thinks are relevant to the weight it should give to the child's views; and
 - (b) the nature of the relationship of the child with -
 - (i) each of the child's biological parents; and
 - (ii) other persons (including relatives of the child); and
 - (c) the extent to which each of the child's parents has taken, or failed to take, the opportunity -
 - (i) to participate in making decisions about major long-term issues in relation to the child; and
 - (ii) to spend time with the child; and
 - (iii) to communicate with the child; and
 - (d) the extent to which each of the child's parents has fulfilled, or failed to fulfil, the parent's obligations to maintain the child; and
 - (e) the likely effect of any changes in the child's circumstances, including the likely effect on the child of any separation from -
 - (i) either of his parents; or
 - (ii) any other child, or other person (including relatives of the child), with whom he has been living; and
 - (f) the practical difficulty and expense of a child spending time with and communicating with a parent and whether that difficulty or expense will substantially affect the child's right to maintain personal relations and direct contact with both parents on a regular basis; and
 - (g) the capacity of -
 - (i) each of the child's parents; and
 - (ii) any other person (including relatives of the child), to provide for the needs of the child, including emotional and intellectual needs; and
 - (h) the child's cultural, racial, linguistic and religious heritage; and
 - (i) the principles under Section 5(2) of the Act.

Division 5. - Appointment of Guardians.

104. APPOINTMENT AND RESPONSIBILITIES OF A GUARDIAN.

- (1) A person who is appointed under this section as a child's guardian has parental responsibility for the child.
- (2) A Court may appoint a person to be the guardian of a child -
- (a) if no person has parental responsibility for the child; or
 - (b) if a parenting order that deals with whom a child is to live with has been made in favour of a person who has subsequently died or who cannot be found or refuses to act.

Lukautim Pikinini

(3) A person who has parental responsibility for a child may, by deed or will, appoint any person or two or more persons jointly to be the guardian or guardians of the child after the person's death, and an appointment so made has effect after the person's death in accordance with the appointment.

(4) A court may, on being satisfied that it is in the best interests of a child, remove from office any guardian, whether appointed under the provisions of this Act or by will or otherwise and may also, if it considers it to be in the best interests of the child, appoint another guardian in place of the guardian so removed.

Division 6. - Affiliation Proceedings.

105. APPLICATION OF DIVISION 6.

A proceeding under this Division applies to a child born outside of marriage.

106. COURT PROCEEDINGS AFTER BIRTH OF CHILD.

(1) Where a child has been left without means of support, a complaint may be made, in accordance with this Part in the Family Court -

- (a) by the mother of the child; or
- (b) by the Director; or
- (c) by a person authorised in writing by the Director to make a complaint under this Part; or
- (d) by an affected person by leave of the Court.

(2) A complaint under this section shall -

- (a) be in writing and made on oath; and
- (b) 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 has left the child without means of support; and
- (c) be in the form as prescribed in the *District Courts Act* (Chapter 40).

107. CONFINEMENT EXPENSES.

Where a court issues a maintenance order under Section 108 the Court may order the defendant to pay for confinement expenses at a sum not exceeding K5,000.00 in cash or in kind.

Division 7. - Maintenance Orders.

108. MAINTENANCE OF A CHILD.

(1) Where the Court hearing a complaint under this Part in relation to the maintenance of a child is satisfied on the evidence, it may order the defendant to pay to the complainant a fortnightly sum or in kind as maintenance for the child.

(2) A maintenance order under Subsection (1) also includes an order for the medical and educational expenses of the child.

Lukautim Pikinini

109. MAINTENANCE OF A SPOUSE.

Where the Court hearing a complaint under this Part in relation to maintenance of a spouse who is deserted by the defendant, the Court may order the defendant to pay to the complainant a fortnightly sum or in kind as maintenance for the spouse.

110. DURATION OF MAINTENANCE ORDER.

- (1) An order for maintenance under Section 108 applies until -
- (a) the child dies; or
 - (b) the order is discharged by a Court of competent jurisdiction; or
 - (c) the child attains the age of 18 years,

which ever first occurs.

- (2) An order for maintenance under Section 109 applies until -
- (a) the spouse dies; or
 - (b) the spouse remarries; or
 - (c) it is varied; or
 - (d) the order is discharged or varied by a Court of competent jurisdiction,

which ever first occurs.

(3) 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 Section 5 of this Act, the order may be varied after the child attains 18 years of age.

111. FUNERAL EXPENSES OF CHILD.

Where a child dies, the Court may, on application by a party under this Part, order a person admitting himself or adjudged by the Court to be the father or mother of the child to pay such sum to the applicant as the Court thinks reasonable for or towards the funeral expenses of the child.

112. TIME LIMITS.

Notwithstanding anything in a law, a proceeding commenced under this Part shall not be commenced after the child attains 18 years of age.

Division 8. - Proceedings for Adopted Child.

113. COURT PROCEEDINGS FOR ADOPTED CHILD.

(1) Where a child has been left without means of support, a complaint may be made, in accordance with this section in the Family Court -

- (a) by the mother of the child; or
- (b) by the Director; or
- (c) by a person authorised in writing by the Director to make a complaint under this Part; or
- (d) by an affected person by leave of the Court.

- (2) A complaint under this section shall -
- (a) be in writing and made on oath; and
 - (b) state -
 - (i) the name of the mother of the child; and

Lukautim Pikinini

- (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 has left the child without means of support.
- (c) be in the form as prescribed in the *District Courts Act* (Chapter 40).

114. ORDERS IN RELATION TO ADOPTED CHILD.

The court shall after hearing an application relating to the welfare of an adopted child, make appropriate orders in relation to that child.

Division 9. - Appeals.

115. APPEALS.

(1) A person may appeal to the National Court from any conviction, order or adjudication of the Family Court under this Act.

(2) An appeal against an order of the Family Court shall be lodged with the National Court within 40 days from the date of decision.

(3) Where an appeal is made in accordance with this section, the decision of the Family Court is stayed until the final determination of the appeal by the National Court.

(4) The practice and procedure relating to appeals shall be as prescribed.

PART XIII. - RECIPROCAL ARRANGEMENT.

116. INTERNATIONAL ARRANGEMENT.

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

(2) The Office may, by arrangement or agreement from time to time with the relevant authority of another country, commit into the care of the authority a child, who is brought to, or resorting to, Papua New Guinea, as though the child were subject of an order made under the provisions of this Act.

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

PART XIV. - MISCELLANEOUS.

Division 1. - Indemnity and Assets.

117. INDEMNITY.

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

Lukautim Pikinini

(2) No civil proceedings referred to in Subsection (1) may be commenced more than six years 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.

118. TRANSFER OF ASSETS.

All assets (other than land held by the State) which immediately before the coming into operation of this Act were occupied, held or owned by the Office of Lukautim Pikinini and all obligations and liabilities of the Office of Lukautim Pikinini immediately before the coming into operation of this Act, are, on that coming into operation, transferred to and become the assets, obligations and liabilities of the Office for Child and Family Services.

Division 2. - Application of other laws.

119. APPLICATION OF OTHER LAWS.

Where a child -

- (a) is subject to violence and the matter is covered under the *Family Protection Act 2013*, the provisions of that Act apply; or
- (b) is the subject of criminal proceeding, the provisions of the *Juvenile Courts Act 2013* apply.

PART XV. - REPEAL, SAVINGS AND TRANSITIONAL.

Division 1. - Regulations.

120. 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.

Division 2. - Repeal.

121. REPEAL.

The following pieces of legislations are hereby repealed -

- (a) *Child Welfare Act* (Chapter 276); and
- (b) *Lukautim Pikinini (Child) Act 2009*; and
- (c) *Deserted Wives and Children Act* (Chapter 277); and
- (d) *Infants Act* (Chapter 278).

122. CHILD WELFARE ACT.

Where any Act or subordinate enactment, other than this Act, contains a reference, express or implied, to the *Child Welfare Act* (Chapter 276) and *Lukautim Pikinini (Child) Act 2009*, that reference shall, on and after the coming into operation of this Act, be read and continued as a reference to the *Lukautim Pikinini Act 2015*.

Lukautim Pikinini

123. CHILD WELFARE COUNCIL.

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

124. DIRECTOR AND THE WELFARE OFFICERS.

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

- (a) the Director of the Child Welfare and Lukautim Pikinini, shall hold the position of Director of Family Services; 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.

125. ACTIONS, ETC., NOT TO ABATE.

Where, immediately before the commencement of this Act, any action or proceeding was pending or existing under the repealed Acts, 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 new Act as if this Act had not come into operation.

126. ORDERS, ETC., TO CONTINUE, ETC.

An order made under the repealed Acts and in force immediately before the commencement of this Act shall continue in force after that commencement until its 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 with such modifications as may be necessary, as if the original order had been made under this Act.

I hereby certify that the above is a fair print of the *Lukautim Pikinini Act 2015* which has been made by the National Parliament.

Acting Clerk of the National Parliament.

I hereby certify that the *Lukautim Pikinini Act 2015* was made by the National Parliament on 5 June, 2015 by an absolute majority as required by the *Constitution*.

Speaker of the National Parliament.