



REPUBLIC OF KIRIBATI

(No. 6 of 2013)

I assent

Audo Tung
Beretitenti

17 May, 2013

CHILDREN, YOUNG PEOPLE AND FAMILY WELFARE ACT

Commencement

2013

MADE by the ManeabaniMaungatabu and assented to by the Beretitenti

PART 1: PRELIMINARY

Short Title

1. This Act may be cited as the Children, Young People and Family Welfare Act 2012.

Interpretation

2. In this Act, unless the context otherwise requires—

"caregiver" means a person, whether or not related to the child or young person, with whom the child or young person lives and who takes primary responsibility for meeting the daily care and needs of a child or young person;

"child" means a person who is under the age of 14 years;

"child or young person in need of care and protection" means a child or young person—

- (a) who has been orphaned, abandoned or is without parental care and appropriate arrangements have not been made for his or her care;
- (b) who has been harmed, or is at risk of harm, as a result of any one or more of the following —
 - (i) physical abuse;
 - (ii) sexual abuse or sexual exploitation;
 - (iii) emotional abuse;
 - (iv) neglect; or
 - (v) harsh or exploitive labour that interferes with the child or young person's health, development or schooling;

and the child or young person's parents have not protected, or are unlikely or unable to protect, the child or young person from that harm;

"Court" means a Magistrates' Court;

"Director" means the Director of the Ministry responsible for child and family welfare;

"emotional abuse" means acts or omissions causing or likely to cause mental or emotional suffering of a child or young person, including patterns of belittling, denigrating, threatening, scaring, ridiculing, or other non-physical forms of degrading or rejecting treatment;

"family" in relation to a child or young person, means -

- (a) a parent, grandparent, step-parent, brother, sister, uncle, aunt or cousin of the child or young person, whether by birth or adoption;
- (b) the primary care-giver of the child or young person; and
- (c) any other person with whom the child or young person has developed a psychological or emotional attachment, which significantly resembles a family relationship;

"Minister" means the Minister responsible for child and family welfare;

"Ministry" means the Ministry responsible for child and family welfare;

"neglect" means inattention or omission on the part of a caregiver to provide for the development of a child or young person in relation to health, education, emotional development, nutrition, shelter and safe living conditions, in the context of resources reasonably available to the family, and that causes harm to the child or young person's health or physical, mental, moral or social development.

"parent" means

- (a) the father of a child or young person, whether by birth or adoption;
- (b) the mother of a child or young person, whether by birth or adoption;
- (c) a guardian or person to whom custody of a child or young person has been granted by a court or by an agreement, or
- (d) a caregiver who acts or carries out responsibilities of a father or mother;

"physical abuse" means any act of violence or maltreatment that results in physical wounds or bodily injury;

"place of safety" means a shelter, health care facility, private home or any other place approved by the Director to receive and temporarily care for a child or young person;

"Secretary" means the Secretary of the Ministry responsible for child and family welfare;

"sexual abuse or sexual exploitation" includes --

- (a) the involvement of a child or young person in sexual activity that he or she -
 - (i) does not fully comprehend;
 - (ii) is unable to give informed consent to; or
 - (iii) for which the child or young person is not developmentally prepared and cannot give consent;

- (b) the inducement or coercion of a child or young person to engage in any unlawful sexual activity;
- (c) the involvement of a child or young person in prostitution; and
- (d) the use of a child or young person in pornographic performances and materials.

“social welfare officer” means an appropriately qualified social welfare officer of the Ministry;

“wellbeing” in relation to a child or young person, includes the care, development, health and safety of the child or young person;

“young person” means a person who has attained 14 years but is under 18 years of age.

Objects of the Act

3. The objects of this Act are to —

- (a) strengthen families and promote the wellbeing of children and young people;
- (b) acknowledge the primary role of parents, families and communities in safeguarding and promoting the wellbeing of children and young people, and to encourage and support them in carrying out that role;
- (c) strengthen positive traditional practices that promote and provide care and protection for children and young people;
- (d) strengthen and develop community structures which can assist and promote children and young people's wellbeing and development;
- (e) promote and support caring attitudes and responses for children and young people in the community so that risks to their wellbeing are identified and necessary care, support and protection is provided promptly;
- (f) make provision for the care and protection of children and young people in circumstances where their parents, families and communities are unable to do so.

Principles for Care and Protection of Children and Young People

4. Children and young people require care, guidance and support to ensure their full development as responsible members of the community. All children and young people are entitled, as far as possible, to grow up in an environment that -

- (a) is nurturing, safe and stable;
- (b) fosters positive relationships with their parents, family members and community;
- (c) promotes their healthy growth and development;
- (d) ensures access to education and skills training;
- (e) provides opportunities for recreation and play;
- (f) promotes pride in and respect for positive I-Kiribati cultural and traditional values;
- (g) fosters the development of a sense of responsibility towards family and community;
- (i) is free from discrimination, violence, abuse, neglect and exploitation.

Responsibility of Parents

5. Parents, with the support of family members, have the primary role in safeguarding and promoting the wellbeing of children and young people, and in particular to—
- (a) ensure that they receive prompt and appropriate attention to their immediate needs, including proper feeding, shelter, clothing, immunization and medical attention in times of sickness or injury;
 - (b) ensure their development and general wellbeing;
 - (c) ensure that discipline is carried out in non- abusive ways;
 - (d) encourage them to go to school, participate in cultural activities, and express themselves freely;
 - (e) instil in them knowledge of and respect for positive I-Kiribati cultural and traditional values;
 - (f) protect them from engaging in commercial activities that are harmful to their health, education and moral development;
 - (g) ensure that they grow up in an environment that is free of violence, abuse, neglect and exploitation; and
 - (h) meet any special needs of a child or young person living with disability.

Decision-Making Principles

6. In making a decision or taking any action in relation to a child or young person under this Act, consideration must be given to the following principles –
- (a) every child and young person should be cared for and protected from harm;
 - (b) the preferred environment for the care and upbringing of children and young people is their own family;
 - (c) the child or young person and any relevant family and community members, except if their participation would be detrimental to the safety or wellbeing of the child or young person, should participate fully in deciding what action should be taken to promote the wellbeing and protection of a child or young person;
 - (d) families and communities should be assisted and supported in taking actions to respond to concerns about the wellbeing and protection of a child or young person;
 - (e) decisions should be reached by collaboration and consensus, wherever practicable, and the intervention of the Court should be used only in circumstances where the family and community is unable to appropriately safeguard the child or young person;
 - (f) the safety, wellbeing and best interest of the child or young person shall be a primary consideration;
 - (g) any decision in relation to a child or young person must be appropriate to the age character, condition, status, disability and any other circumstances of the child or young person; and

- (h) the rights of children and young people under the Convention on the Rights of the Child should be promoted and respected to the extent possible.

PART 2: ADMINISTRATION

Duties of the Secretary

- 7. The Secretary is responsible for promoting the development, adoption and evaluation of policies, procedures and services that accord with the objects and principles of this Act, including —
 - (a) leading and coordinating government authorities, non-governmental organisations, women's group, youth groups, church and other faith-based organisations, and other relevant service providers in the provision of social services directed towards strengthening families and communities, maximising the wellbeing of children and young people, and responding to abuse, neglect and exploitation of children and young people;
 - (b) formulating policies, guidelines, plans and standards for child and family welfare services;
 - (c) supporting communities, women's groups, youth groups, church and other faith-based organisations, and non-governmental organisations to develop programmes for the protection of children and young people and the prevention of violence, abuse, neglect and exploitation;
 - (d) providing assistance and advice to families and communities to prevent and address violence, abuse, neglect and exploitation of children and young people;
 - (e) responding to suspected cases of children or young people in need of care and protection and taking such steps as are necessary to ensure the child or young person's wellbeing and protection;
 - (f) monitoring the quality and delivery of child and family welfare services;
 - (g) maintaining an information management system on children and young people;
 - (h) undertaking or encouraging research, education and training on child and family welfare issues; and
 - (i) leading the on-going development of an integrated child and family welfare service system.

Delegation

- 8. The Director may authorise an appropriately qualified officer or employee of the Division to exercise or perform all or any of the powers and duties of the Director under the provisions of this Act.

Agency agreements

- 9. (1) The Secretary may enter into an agreement with a designated organisation or other appropriate person, for the provision of any service that may or must be provided in terms of this Act, by such organisation or person.

- (2) The Secretary may delegate to such organisation or person such powers and duties in terms of this Act as may be required for the proper performance of the service.
- (3) Any Agreement under subsection (1) and delegation under subsection (2) must be in writing and signed by the Secretary and the appropriate organisation or person.

Government agencies may be required to supply information

10. (1) Every government division, agency or statutory body shall, when required, supply to the Director such information as it has in its possession relating to any child or young person where that information is required—
 - (a) for the purposes of determining whether that child or young person is in need of care and protection; or
 - (b) for the purposes of any proceedings under this Act.
- (2) Subsection (1) applies notwithstanding any enactment or rule of law that obliges any person to maintain secrecy in relation to, or not to disclose, any matter, and any compliance with this section is not a breach of the relevant obligation of secrecy or nondisclosure.

Director's request for services from other agencies

11. (1) In deciding what action should be taken to protect and promote the wellbeing of a child or young person, the Director may request a government division or agency to provide services to the child or young person or to his or her family.
- (2) The government division or agency must use its best endeavours to comply with a request made to it under sub-section (1) if it is consistent with its own responsibilities and does not unduly prejudice the discharge of its functions.
- (3) The request under subsection (1) must be in writing and the records and outcome of the service under subsection (2) must be kept by the Ministry.

Police assistance

12. The Director or any social welfare officer may request the assistance of any police officer in the execution of his or her duties under the provisions of this Act and such police officer shall thereupon afford such assistance.

Obstruction

13. Any person who obstructs the Director or any social welfare officer in the execution of his or her duties under this or any other written law is guilty of an offence and on conviction shall be liable to a fine of \$5,000.00 or to imprisonment not exceeding one year or to both such fine and imprisonment.

PART 3: WELLBEING AND PROTECTION OF CHILDREN AND YOUNG PEOPLE

Division 1 – Promoting Wellbeing and Preventing Abuse

Strengthening Families and Communities

14. (1) The Director shall lead and coordinate the development of programmes and services to support I-Kiribati families in partnership with government agencies, non-

governmental organisations, church and other faith-based organisations, and community leaders.

- (2) Programmes and services shall be directed at -
- (a) promoting the wellbeing of children and young people and preventing violence, abuse neglect and exploitation;
 - (b) strengthening the capacity of families and communities to identify risks to a child or young person's wellbeing and to address them through early intervention; and
 - (c) encouraging families and communities to seek assistance from social welfare authorities when family problems cannot be resolved by the community.

Prevention Services

15. The Secretary shall coordinate prevention measures to promote the wellbeing and protection of children and young people, including -
- (a) promoting community discussion and awareness of issues relating to the wellbeing and protection of children and young people;
 - (b) raising public awareness on the dangers and consequences of child abuse, neglect and exploitation;
 - (c) promoting respect for I-Kiribati values and traditions that encourage caring attitudes and behaviours towards children and young people;
 - (d) reinforcing positive caring and protective practices by parents, families and communities; and
 - (e) developing appropriate parenting skills and the capacity of parents to ensure the wellbeing and best interests of their children.

Early Intervention Services

16. The Secretary shall promote the progressive development of early intervention services to-
- (a) strengthen community mechanisms for ensuring the wellbeing and protection of children and young people;
 - (b) work with families, communities and other service providers to prevent, alleviate and remedy conditions that might place children and young people at risk;
 - (c) build the capacity of families and communities to identify and respond appropriately to children and young people who are vulnerable or at risk;
 - (d) help families to recognise problems early on and equip them to seek appropriate support;
 - (e) provide families with information to enable them to access support services; and
 - (f) prevent the recurrence of problems in the child or young person's family and reduce the negative consequences of risk factors through appropriate support services.

Division 2 - Reporting and Referrals

Requests for Assistance

17. Where a parent of a child or young person is having difficulties meeting his or her responsibilities under section 5, the parent, child or young person may request assistance from a social welfare officer.

Reporting concerns about the wellbeing of a child or young person

18. (1) Any person who has a significant concern for the wellbeing of a child or young person may report the matter to the Director, a social welfare officer or a police officer.
- (2) Any person who is aware of a child or young person in need of care and protection may report the matter to the Director or social welfare officer or a police officer.

Anonymity

19. A report under section 18 may be made anonymously.

Protection of person reporting

20. (1) Where a person makes a report or discloses information concerning a child or young person pursuant to this Act -
- (a) no civil, criminal, or disciplinary proceedings shall lie against that person; and
 - (b) the making of a report or disclosure of information does not constitute a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct, unless the information was disclosed in bad faith.
- (2) Subsection (1) applies notwithstanding any enactment, or any rule of law, that obliges any person to maintain secrecy in relation to, or not to disclose, any matter, and any compliance with that section is not a breach of the relevant obligation of secrecy or nondisclosure

Inter-Agency Referrals and Coordination

21. The Director is responsible for establishing ways to ensure timely referrals, information sharing and coordination of all service providers relating to —
- (a) identifying and assessing particular cases of children or young people who may be in need of care and protection; and
 - (b) taking action to ensure a child or young person's wellbeing and protection.

Police to notify the Director

22. (1) A police officer to whom a report has been made in terms of section 18 or who becomes aware of a child or young person in need of care and protection must—
- (a) ensure the safety and wellbeing of the child or young person concerned if the child or young person's safety or wellbeing is at risk; and
 - (b) as soon as possible notify the Director or a social welfare officer.

- (2) if a child or young person reported to be in need of care and protection under section 8 is not in immediate danger, the police officer to whom the report was made must notify the Director or social welfare officer as soon as possible for the Ministry's intervention and action.

Referral of children and young people by the Court for investigation

- 23.** (1) If it appears to any Court in the course of proceedings that a child or young person involved in or affected by those proceedings is in need of care and protection, the Court must order that the question of whether the child or young person is in need of care and protection be referred to the Director for an assessment contemplated in Division 3 of this Part.
- (2) A Court issuing an order in terms of subsection (1) may also order that the child or young person be placed in a temporary safe place if it appears to the Court that this is necessary for the safety and wellbeing of the child or young person.

Division 3 - Assessment and Intervention Planning

Powers Relating to Assessments

- 24.** (1) Where the Director receives a request for assistance or information that raises concerns about a child or young person's wellbeing, the Director shall cause any inquiries to be made that the Director considers reasonably necessary for the purpose of determining whether intervention of the Director is necessary in the best interest of the child or young person.
- (2) Without limiting the generality of subsection (1), the Director may take reasonable steps to assess the circumstances of the child or young person and his or her home environment, including -
- (a) visiting the child or young person's home;
 - (b) interviewing the child or young person, the child or young person's parents, and any other person with an interest in, or knowledge of, the care, wellbeing or development of the child or young person;
 - (c) making inquiries about the child or young person and his or her circumstances; and
 - (d) requesting information from any person or any government division, agency or body.
- (3) Where the person who has custody of the child or young person refuses to allow the Director access to the child or young person, the Director may exercise his or her authority under Division 4.

Taking of Action by the Director

- 25.** (1) If the Director decides that actions should be taken to ensure the child or young person's wellbeing or protection, the Director may do any one or more of the following -
- (a) provide, or arrange for the provision of, advice or support services for the child or young person and his or her family;
 - (b) develop, in consultation with the parents, the child or young person, and where appropriate family and community members, an agreed plan to ensure the child or young person's wellbeing and protection;

- (c) ensure the protection of the child or young person by exercising the Director's emergency protection powers as referred to in Division 3 of this Part;
 - (d) refer the matter to a police officer if it appears that a criminal offence has been committed in relation to the child or young person; and
 - (e) seek appropriate care and protection orders from the Court.
- (2) The Director may decide to take no action if the Director considers that proper arrangements have been made for the wellbeing and protection of the child or young person and the circumstances that led to the report have been or are being adequately dealt with.

Intervention Planning

- 26.** (1) To the extent practicable, the Director must ensure that -
- (a) the child or young person and any relevant family members participate in deciding what actions should be taken to ensure the wellbeing and protection of the child or young person; and
 - (b) decisions are reached by collaboration and consensus.
- (2) In determining what actions should be taken to ensure the wellbeing or protection of a child or young person, the director must, unless it would be contrary to the best interest of the child or young person, arrange or cause to be arranged a family mediation to -
- (a) consider the child or young person's care and protection needs; and
 - (b) agree on a plan to meet those needs and ensure the child or young person's wellbeing and protection.
- (3) Depending on the nature of the concern and the child or young person's best interest, the Director may involve any of the following persons in the family mediation--
- (a) the child or young person;
 - (b) the child or young person's parents;
 - (c) other members of the child or young person's family;
 - (d) community and religious leaders;
 - (e) relevant service providers; and
 - (f) any other person whose involvement, in the opinion of the Director, would be of assistance in developing an agreed plan.
- (4) If a child or young person does not take part in a family mediation, the Director must take all reasonable steps to-
- (a) find out the views and wishes of the child or young person;
 - (b) make the views and wishes of the child or young person known to the persons taking part in the family mediation; and
 - (c) ensure that the views and wishes of the child or young person are considered in reaching any agreement.

Agreed Care and Protection Plans

- 27.** (1) An agreed plan for the care and protection of a child or young person developed in accordance with Section 26 may include any provisions considered appropriate to ensure the wellbeing and protection of the child or young person, including one or more of the following -

- (a) advice, encouragement or counselling for the child or young person;
 - (b) family counselling or parenting advice for the parents of the child or young person;
 - (c) regular monitoring and supervision of the child or young person by a social welfare officer or other specified person;
 - (d) attendance of a parent for counselling or treatment for alcohol, drug or other substance abuse;
 - (e) participation of a parent in programmes aimed at improving parenting skills;
 - (f) prohibiting a specified person, including a parent, from entering the place where the child or young person lives or from having any contact with the child or young person;
 - (g) agreement that the child or young person is to live in the home of a family member or other person approved by the Director.
- (2) Where appropriate, an agreed plan for the care and protection of a child or young person should engage members of the family and community, including family elders, religious leaders, community leaders, members of a church or other faith-based organisation, or other service providers in the provision of support to the child or young person and his or her parents.
- (3) Any agreed care and protection plan must -
- (a) be in writing;
 - (b) be approved by the Director; and
 - (c) include provision for how progress and compliance will be monitored.

No Agreement

- 28.** Where the Director has reasonable grounds to believe that a child or young person may be in need of care and protection and —
- (a) no agreement can be reached on a plan to ensure the wellbeing and protection of the child or young person; or
 - (b) the agreement proposed is not, in the opinion of the Director, adequate to ensure the wellbeing and protection of the child or young person; or
 - (c) the provisions of an agreement have not been complied with;
- the Director may apply to the Court for a care and protection order in accordance with Division 5.

Division 4 - Emergency Protection Power

Warrant to take a child or young person to safety

- 29.** (1) A magistrate may issue a warrant authorizing a social welfare officer or police officer to bring a child or young person to a place of safety if the magistrate is satisfied on the basis of a social welfare officer's sworn information that there are reasonable grounds to believe that -
- (a) the child or young person is in need of care and protection; and
 - (b) a less restrictive course of action is not available or will not adequately protect the child or young person.

- (2) A person authorized by warrant under this section may at any time enter any premises or vehicle or board any vessel specified in the warrant, by force if necessary, and may search for and remove the child or young person.

Child or young person in immediate danger

30. (1) A social welfare officer or police officer may, without a warrant, remove a child or young person to a place of safety if the officer believes on reasonable grounds that -
 - (a) the child or young person's health or safety is in immediate danger; and
 - (b) there would be a substantial risk to the child or young person's health or safety during the time necessary to obtain a warrant under section 29.
- (2) A person exercising authority under this section may enter any premises or vehicle or board any vessel where it is reasonably believed that the child or young person may be, and may search for and remove the child or young person, by force if necessary.
- (3) A police officer exercising authority under this section shall as soon as possible notify the Director or a social welfare officer.

Police Assistance

31. The Director or a social welfare officer exercising the authority given by this Division may call for the assistance of a police officer.

Care of the child or young person by the Director

32. Where a child or young person has been taken to a place of safety pursuant to this Division, the child or young person is in the care of the Director until -
 - (a) the child or young person is returned; or
 - (b) a Court makes an order in relation to the child or young person under section 33.

Interim Care and Protection Order

33. (1) Where a child or young person has been taken to a place of safety under this Division, the Director shall, as soon as practicable, make an application to the Court for an interim care and protection order.
- (2) An interim care and protection order may include any conditions the Court considers necessary in the best interests of the child or young person, including-
 - (a) return of the child or young person to his or her parent, with or without conditions;
 - (b) placement of the child or young person in the care of a family member or any other person approved by the Director;
 - (c) authorising a medical examination of the child or young person;
 - (d) prohibiting any specified person from entering the home or place where the child or young person lives or from having any contact with the child or young person; and
 - (e) providing for interim maintenance of the child or young person.

- (3) An interim care and protection order remains in force until a final order has been made under Division 5.

Circumstances when no interim order required

- 34.** Where a child or young person has been taken to a place of safety under sections 29 or 30, an application for an interim care and protection order is not required and any application that has been commenced may be discontinued by the Director if the Director -
- (a) reaches an agreement with a parent of the child or young person that the Director considers adequate to protect the child or young person; or
 - (b) considers that circumstances have changed so that the child or young person is no longer in need of emergency protection and the Director returns the child or young person to the parent.

Division 5 - Court Care and Protection Orders

Application for care and protection order

- 35.** An application to the Court for a care and protection order for a child or young person may be made by—
- (a) the Director or a designated social welfare officer; or
 - (b) with the leave of the Court, any other person.

Expedited Proceedings

- 36.** When the application is filed, the registrar of the Court shall ensure that the time and place for hearing the application is immediately fixed, having regard to the principle that it is in the best interest of the child or young person for the application to be heard as early as possible.

Parties to the Proceedings

- 37.** (1) The following are parties to a proceeding under this Part -
- (a) the applicant;
 - (b) if the applicant is not the Director—the Director;
 - (c) the child or young person;
 - (d) each parent of the child or young person; and
 - (e) any other person who is the care giver for the child or young person.
- (2) An application for a care and protection order shall be served on the parties to the proceedings in accordance with the rules of the court.
- (3) Where the Court is of the opinion that it would be in the best interest of the child or young person to have independent legal representation, the Court must refer the matter to the Office of the People’s Lawyer.

Child Protection Hearings

- 38.** (1) A hearing under this Part
- (a) is civil in nature;
 - (b) may be conducted with as little formality and legal technicality as the circumstances of the case permit;

- (c) must be conducted in a manner conducive to the active participation of all persons involved in the proceedings, including the child or young person, and in language that is appropriate to the child or young person's age and understanding;
 - (d) must be held in private and attended only by persons directly involved in the proceedings;
 - (e) must, as far as is practicable, be held-
 - (i) at a different time or at a different place from the usual time or place for sittings of the court relating to criminal matters; and
 - (ii) in a room that is furnished and designed in a manner aimed at putting children and young people at ease; and
 - (f) must be concluded as expeditiously as possible in order to minimise the effect of the proceedings on the child or young person and the family.
- (2) The Chief Justice may from time to time make rules of court for regulating practice and procedure in proceedings under this Act, and the provisions of any other written law that regulate procedure in civil cases shall have effect subject to the provisions of this Act and of any rules so made.

Report by the Director

- 39.** (1) The Court shall, before making an order under this Part, obtain and consider a plan for the care and protection of the child or young person prepared in writing by the Director.
- (2) A plan prepared under subsection (1) must include –
- (a) results of any attempts, pursuant to section 26, to develop an agreed plan to address the child or young person's care and protection needs;
 - (b) a description of the proposed arrangements for the care, custody or supervision of the child or young person;
 - (c) a description of the services to be provided to remedy the condition or situation on the basis of which the child or young person was found in need of care and protection;
 - (d) an estimate of the time required to achieve the purpose of the Director's intervention;
 - (e) where the Director proposes to temporarily remove the child or young person from a person's care –
 - (i) an explanation of why the child or young person cannot be adequately protected while in the person's care, and a description of any past efforts to do so; and
 - (ii) a statement of what efforts, if any, are planned to maintain the child or young person's contact with the person; and
 - (f) where the Director proposes to remove the child or young person from a person's custody permanently, a description of the arrangements made or being made for the child or young person's long-term stable placement.

Views of the child or young person

- 40.** (1) The Court must take such measures as are reasonably practicable, taking into account the age and developmental capacity of the child or young person, to

ensure that the child or young person has the fullest opportunity to participate in the proceedings.

- (2) The Court shall, before making an order under this Part, give the child or young person an opportunity to express his or her views, and shall give those views due consideration having regard to the age and understanding of the child or young person.

Criteria for making care and protection orders

41. The Court may make an order for the care and protection of a child or young person if the Court is satisfied that —

- (a) the child or young person is in need of care and protection;
- (b) intervention through a court order is necessary to ensure the care and protection of the child or young person; and
- (c) making the order is in the best interest of the child or young person.

Types of care and protection orders

42. (1) In exercising its authority under section 41, the Court may make one or more of the following orders it considers to be appropriate in the circumstances—

- (a) a supervision order, placing the child or young person and the parent under the supervision of a social welfare officer or other person designated by the Court;
 - (b) a restraining order —
 - (i) prohibiting a person from entering the home or place where the child or young person lives;
 - (ii) limiting access of a person to the child or young person;
 - (iii) prohibiting a person from having any contact with the child or young person;
 - (c) a temporary custody order placing the child or young person in the custody of —
 - (i) a family member; or
 - (ii) other suitable person approved by the Director, subject to the supervision of the Director, and on such reasonable terms and conditions as the Court considers appropriate; or
 - (d) a permanent custody order granting custody of the child or young person to —
 - (i) a family member or other suitable person approved by the Director; or
 - (ii) the Director.
- (2) The Court must not make a care and protection order that has the effect of removing a child or young person from the care of his or her parent unless satisfied that less disruptive alternatives would be inadequate to protect the child or young person.
 - (3) The Court shall not make a permanent custody order under paragraph (d), unless —
 - (a) the identify or location of the parents of the child or young person has not been found, and are not likely to be found;

- (b) a parent is unable or unwilling to resume custody of the child or young person; or
 - (c) the nature and extent of the harm the child or young person has suffered is such that it is unlikely that it would be in the child or young person's best interest to be returned to the parent, within a reasonably foreseeable time.
- (4) In making an order under Paragraph (c) or (d), the Court must give priority to placing the child or young person with a family member, or if that is not consistent with the child or young person's best interest, placing the child or young person –
- (a) with a member of the child or young person's community;
 - (b) in a location where the child or young person can maintain contact with relatives and friends;
 - (c) in a location that will allow the child or young person to continue in the same school.

Supervision Orders

- 43.** (1) A supervision order shall be for a specified period of not more than 12 months.
- (2) In making a supervision order, the Court may impose reasonable terms and conditions in relation to the care and supervision of the child or young person, including –
- (a) the guidance, support and assistance to be provided to the parent and the child or young person by the Director or any other person or organisation;
 - (b) the participation of the parent in counselling, or a specified treatment or rehabilitation programme where this is necessary for the wellbeing or protection of the child or young person; and
 - (c) the right of the Director or a social welfare officer or other designated person to visit, assist and advise the child or young person.

Restraining Order

- 44.** In making a restraining order, the Court may order the person to enter into a recognizance, with or without sureties, in an amount the Court thinks necessary and reasonable.

Temporary Custody Order

- 45.** (1) A temporary custody order shall be for a specified period not exceeding 12 months.
- (2) In making a temporary custody order, the Court may impose reasonable terms and conditions in relation to the care and wellbeing of the child or young person, including –
- (a) access by a parent to the child or young person, unless the Court is satisfied that continued contact with the parent would not be in the best interests of the child or young person;
 - (b) the guidance, support and assistance to be provided to the child or young person by the Director or any other person or organisation; and

- (c) the guidance, support and assistance to be made available to the child or young person's parents to address the condition or situation that necessitated the child or young person's removal from their custody.

Permanent custody orders

- 46.** (1) When an order is made placing a child or young person in the permanent custody of the Director or other suitable person -
- (a) that person becomes the sole guardian of the child or young person;
 - (b) the order does not affect the child or young person's rights respecting inheritance or succession to property.
- (2) Where permanent custody has been granted to the Director, the Director -
- (a) shall make appropriate arrangements for the care of the child or young person ; and
 - (b) may consent to the child or young person's adoption.

Maintenance order

- 47.** (1) Where a court has made an order under this Part placing a child or young person in the care or custody of the Director or other person, the Court may order a parent to pay to the Director or to a person designated in the order an amount (in cash or in kind) the Court considers reasonable for the maintenance of the child or young person.
- (2) In deciding the amount of a maintenance order, the Court must take the following into account -
- (a) the needs, means and circumstances of the child or young person;
 - (b) the needs, means, capacity and economic circumstances of the parent; and
 - (c) any other circumstance the Court considers relevant.

When order ends

- 48.** An order placing a child or young person in the care or custody of the Director or other person under this Part ceases to have effect when -
- (a) the child or young person reaches the age of 18 years;
 - (b) the child or young person is adopted;
 - (c) in the case of an interim care or temporary custody order, the order expires; or
 - (d) the Court varies or revokes the order.

Court may vary or revoke order

- 49.** (1) A party to the initial proceedings may apply to the Court to vary or revoke a care and protection order.
- (2) On an application under subsection (1) the Court may, if satisfied that it is in the best interests of the child or young person to do so —
- (a) confirm the order;
 - (b) vary the order or any condition of the order;
 - (c) revoke the order; or
 - (d) revoke the order and make another care and protection order in respect of the child or young person.

Appeals

- 50.** (1) Any party involved in proceedings under this Act may appeal against any order made, or any refusal to make an order, to the court having jurisdiction to hear an appeal against a civil judgement of a magistrates' court.
- (2) The procedure for the conduct of an appeal shall be in accordance with the rules of court relating to an appeal against a civil judgment of a magistrate court, subject to any necessary modification directed by the Court that are in accordance with the principles of this Act.

Offence to contravene care and protection order

- 51.** Any person who violates a care and protection order is guilty of an offence and on conviction shall be liable to a fine of up to \$10,000.00 or to imprisonment not exceeding 18 months or to both such fine and imprisonment.

PART 4: REGISTRATION OF NON GOVERNMENT ORGANIZATIONS AND FAITH-BASED CHILDREN'S SERVICES.

Obligation to register

- 52.** Any individual or organisation providing services to children and young people in need of care and protection must –
- (a) be registered with the Ministry;
 - (b) comply with this Act and any conditions of that registration; and
 - (c) comply with any standards or guidelines established pursuant to this Act.

Standards and Procedures for Registration

- 53.** (1) The Director shall establish procedures for the registration of individuals and organisations providing services to children and young people in need of care and protection.
- (2) The procedures under subsection (1) may include guidance with respect to -
- (a) the form of the application;
 - (b) criteria for approval;
 - (c) inspections and evaluations; and
 - (d) suspension or cancellation of registration.
- (3) An application for registration may be approved or declined by the Minister upon the recommendation of the Director.
- (4) Any registration may be revoked by the Minister upon the recommendation of the Director as to the status and qualification of individuals or organisations to provide the services to children and young people in need of care and protection.

PART 5: MISCELLANEOUS

Prohibition on identifying a child or young person

- 54.** (1) No person shall publish or make public the name or any information that has the effect of identifying a child or young person who is the subject of proceeding under this Act.
- (2) Any person who violates subsection (1) is guilty of an offence and on conviction shall be liable to a fine of \$5,000.00, or to imprisonment not exceeding one (1) year, or to both.

Regulations

- 55.** (1) The Minister may make regulations generally for the purposes of carrying out the provisions of this Act.
- (2) Without limiting subsection (1), regulations may be made for or about the following—
- (a) the qualifications, appointment and duties of the Director, social welfare officers and assistant social welfare officers;
 - (b) procedures for reporting, assessment and intervention planning under Part 3;
 - (c) minimum standards for services to children and young people in need of care and protection;
 - (d) criteria for approving suitable persons to be granted custody of a child or young person pursuant to Division 5.

PART 6: CONSEQUENTIAL AMENDMENTS TO OTHER LAWS

Penal Code Cap 67 is amended.

- 56.** The Penal Code Cap 67 is amended by -
- (a) repealing section 144
 - (b) in section 204, by repealing the figure “15” and substituting it with “18”.
 - (c) in section 205 by repealing the figure “15” and substituting it with “18”.
 - (d) in section 226 subsection (1) and subsection 2(b), by repealing the figure “15” and substituting it with “18”.

Marriage Ordinance Cap 54 is amended.

- 57.** The Marriage Ordinance Cap 54 is amended, in section 7, subsection (1) by inserting the words “ but over 17” after the words “ is under 21.



CHILDREN, YOUNG PEOPLE AND FAMILY WELFARE BILL 2012

EXPLANATORY MEMORANDUM

Child protection and welfare are core principles of the Convention on the Rights of the Child (CRC) to which Kiribati became a State party in 1995. The CRC obliged Kiribati to enact a law to ensure support to parents and families in their responsibility to raise children and protecting them from violence, abuse, neglect and exploitation. In 2008; the Child Protection Baseline study highlighted a need to enact such law. Prior to this law; there was no legally mandated social welfare system to support children who are at risk or are going through violence, abuse, neglect and exploitation. The existing social welfare system was then implemented without legal mandate resulting in unclear social welfare procedure, insufficient assistance and inefficient support to children or families in need of support.

This law will strengthen the work of the social welfare officers to avail power to intervene when a child is at risk however it encourages and promotes the importance of families and communities as caregivers and protectors of children and young people against violence, abuse, neglect and exploitation.

This Act is divided into six Parts.

Part 1 deals with preliminary matters and also provides the general objects of the Act and the principles for care and protection of children and young people and in decision-making. The roles of parents as primary caregivers to ensure the wellbeing of their children is also provided in this Part.

Part 2 deals with the Administration roles of the Secretary as Secretary of the Ministry responsible for child and family welfare matters. This Part also provides the roles of the Director as the key person in providing support services to children and young people at risk of violence, abuse, neglect and exploitation and their families. Delegation of powers by the Secretary and the Director is provided and the roles of Social Welfare officers is provided to highlight the importance of their part in providing support to children, young people and families.

Part 3 is divided into five Divisions. Division 1 provides that support programmes to strengthen families and communities shall be conducted in partnership between the government, non-government organisations, church and faith-based organisations and community leaders. Prevention and early intervention services shall be conducted through awareness, promotion, developing and capacity building programmes on the protection and wellbeing of children and young people.

Division 2 provides for reporting and referral strategies. Parents and families may request assistance from the Ministry through the Director but anyone who has concerns or is aware of a child or young person at risk may request and/or report situations. This Division provides that there shall be an inter-agency referral system to be coordinated by the Ministry and any potential reporter shall be

protected of his identification and from litigation. Referral is encouraged from anyone to be made to the Director or the Police and vice versa. Referral may also be made by the court to the Director.

Division 3 provides for assessment and intervention mechanisms to services rendered to children and young people and/or their families. This Division outlined the possible strategies that could be taken by the Director in the event that a situation has been reported. Intervention ranges from advice, counselling, consultation with parents to imposing protection measures or referrals to the Police for intervention. There has to be an agreement reached on the type of intervention to be imposed to address the situation however, there is provision that when agreement cannot be reached; the Director may have to seek endorsement from the court on enforcing the required intervention.

Division 4 provides emergency protection power to issue warrant to the Director, Social Welfare Officer or the Police to intervene and take a child or young person to a place of safety in instances where there is need for immediate care and protection actions to be taken or when less restrictive actions are unavailable or inadequate to protect the child or young person. The Division also provide for Interim Care and Protection Orders by the court where necessary for the interest of the child or young person at risk of violence, abuse, neglect or exploitation.

Division 5 provides for the types of orders that may be given by the court to the Director or Social Welfare Officer. Such orders may be granted to any relevant person part from these officers where the court granted leave to such person. This Division also provides that proceedings shall be expedited by the court in the best interest of the child or young person involved. In all court proceedings, reports from the Director in respect of the matter heard shall be considered by the court. Views of the child or young person involved may be considered depending on their age and developmental capacity and the court shall decide according to the criteria based on the need for protection, intervention by the court and best interest of the child or young person. The Division provides types of orders such as supervision orders, restraining orders, temporary custody orders, permanent custody orders as well as maintenance orders to be available as options for the court - the appropriate type of order will depend on the circumstances of the case heard by the court. This Part also enables appeal avenues to interested parties and a penalty for contravention of court orders - \$10,000 or 18 months imprisonment or both.

Part 4 provides that Non-Government organisations or church/faith-based organisation who provide care and protection services need to register with the Ministry before they could carry-out their services. Upon registration; such entities may operate following the conditions and requirements for service delivery to children and young people in need of their services.

Part 5 imposes a fine of \$5,000 for disclosing the identification of children or young people victims. It also provides the power of the Minister to make regulation required for implementation of care and protection to children and young people and/or assistance to families and the expiration of any order to



place a child or young person in care or custody to be when such children or young people reach 18 years.

Part 6 provides for Consequential Amendments to the Penal Code Cap 67 (section 144, 204, 205 and 226) and the Marriage Ordinance Cap 54 (section 7).

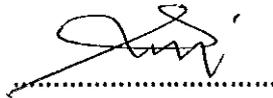
Titabu Tabane

Attorney-General

October 2012

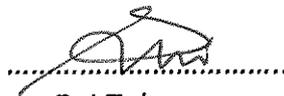
CERTIFICATE OF THE CLERK OF THE MANEABA NI MAUNGATABU

This printed impression of the Children, Young People and Family Welfare Act 2013 has been carefully examined by me with the Bill which passed the Maneaba ni Maungatabu on the 2nd May 2013 and is found by me to be a true and correctly printed copy of the said Bill.



Eni Tekanene
Clerk of the Maneaba ni Maungatabu

Published by exhibition at the Maneaba ni Maungatabu this 17th day of May 2013.



Eni Tekanene
Clerk of the Maneaba ni Maungatabu