



[L.S.-]

I Assent,

James B. Carlisle,
Governor-General.

20th February, 2004.

ANTIGUA AND BARBUDA

No. 29 of 2003

AN ACT to provide for the establishment and functions of a Childcare and Protection Agency, the licensing of childcare facilities, the maintenance of appropriate standards in respect of their operations and for other matters relating to the safety, care and protection of children.

[*26th February, 2004*]

ENACTED by the Parliament of Antigua and Barbuda as follows:

**PART I
PRELIMINARY**

1. This Act may be cited as the Childcare and Protection Act, 2003 and shall come into operation on a date to be appointed by the Minister by Notice published in the *Gazette*.

Short title.

2. (1) In this Act, unless the context **otherwise** requires —

Interpretation and application.

"abuse" includes —

- (a) the physical infliction of injury or harm by a person having authority, care or custody over a child;
- (b) the sexual exploitation of a child, molestation of a child, or the involvement of a child in unlawful sexual activity, prostitution or pornography; and

- (c) any other unlawful act likely to cause psychological harm to a child;

"Agency" means the Childcare and Protection Agency established by section 3;

"child" means a person who has not attained the age of eighteen years;

"childcare facility" means a place where children are cared for and includes a children's home, a foster home, a children's nursery and a pre-school;

"Committee" means the Childcare Protection Policy Committee established by section 5;

"Minister" means the Minister responsible for social services;

"neglect" means the failure or refusal, without reasonable cause, of a person having care of a child to provide the child with basic needs such as food, clothing, shelter, adequate supervision or medical attention.

(2) This Act shall also apply to a person who attains the age of eighteen years while under care or protection in accordance with this Act and is, because of some disability, certified by the Director as being in need of care or protection under this Act on and after attaining that age for such period as may be specified by the Director.

PART II ESTABLISHMENT AND FUNCTIONS OF CHILDCARE AND PROTECTION AGENCY

**Establishment of
Agency.**

3. There is established by this Act an agency of the Government to be known as the **Childcare** and Protection Agency.

**Functions of
Agency.**

4. The functions of the Agency are —

- (a) to monitor private childcare facilities and to provide and maintain childcare facilities in order to promote care and protection for children;

- (b) provide counselling and similar therapeutic services for children in need of care and protection and for the parents and guardians of those children;
- (c) to promote the permanent placement of children at risk, including placement in foster homes, and to promote re-unification with their families;
- (d) to assess applications for foster care, guardianship and adoption and to make recommendations and provide any other assistance to the courts and other authorities involved in determining such applications;
- (e) to make timely interventions in cases where the actions or conduct of a person (whether that person has authority, care or custody of a child) have resulted in, or are likely to give rise to any harm or injury to the child;
- (f) to provide services for the recovery and rehabilitation of children who have suffered **harm** or injury;
- (g) to investigate allegations, reports or complaints of abuse or neglect of children;
- (h) to provide care and protection for children under special vulnerability including orphans, children infected with or affected by **HIV/AIDS** and children with mental or physical disabilities;
- (i) to enforce prescribed standards and other requirements of care for children who are in childcare facilities or in any other educational setting in order to promote the best development of the child which is compatible with early childhood development goals, primary health and public **health requirements**;
- (j) to promote **good** parenting education, parental responsibility and practice;
- (k) to provide training for persons engaged in the care and protection of children;

- (l) to **co-ordinate** and monitor the activities of **other persons** engaged in the management of cases of child abuse **and** neglect;
- (m) to promote the rights of the child and the **public** awareness of those rights;
- (n) to license and register private childcare facilities and to ensure their compliance with such standards and other requirements as may be prescribed by the Minister;
- (o) to **liaise** with regional and international organizations in matters relating to the welfare of children;
- (p) to make proposals and recommendations for the enactment or improvement of laws relating to the welfare of children.

**PART III
CHILDCARE AND PROTECTION POLICY
COMMITTEE**

Childcare and
Protection Policy
Committee.

5. (1) There is hereby established a Childcare and Protection Policy Committee for **the** Agency consisting of the following members —

- (a) a Chairperson, appointed by the Minister;
- (b) the Director of the Agency;
- (c) a representative of the Ministry responsible for Social Services appointed by the Minister;
- (d) the Chief Medical Officer;
- (e) a representative of the Ministry of Education appointed by the Minister;
- (f) the Commissioner of Police;
- (g) a representative of the Judiciary appointed by the Minister on the **recommendation of** the Chief Justice;

- (h) a representative from **Barbuda** appointed by the Minister on **the recommendation** of the Barbuda Council;
- (i) a representative of the Antigua and Barbuda **Christian Council** appointed by the Minister on **the recommendation** of the Council;
- (j) a representative of the United Evangelical Association appointed by the Minister on the recommendation of the Association;
- (k) a representative of a religious body other than an organization **referred** to in paragraphs (i) and (j);
- (l) two other persons representing civil society appointed by the Minister on the recommendation of such persons **as** he may consider appropriate..

(2) A member appointed under paragraphs (b) to (g), in this Part referred to **as** "an **ex officio** member", may assign an **officer** from his office to represent **him** at any meeting of **the** Committee.

6. A member of the Committee, other **than** an **ex officio member**, shall hold office for a period not exceeding three years and is qualified for re-appointment. Tenure of office.

7. A **member** of the Committee, other than an **ex officio member**, may resign **from** office in writing addressed to the **Minister**. Resignation.

8. The Minister may, on the written recommendation of the Chairperson and after consultation with the authority that recommended the appointment of a member who is not an **ex officio** member, revoke the appointment of the member for the member's failure to perform his functions. Revocation of appointment.

9. The functions of the Committee are — Functions of Committee.

- (a) to formulate and recommend policies and programmes of the Agency for approval by the Minister;
- (b) to monitor and evaluate the **performance** by the Agency, of its function, and its compliance with the

policies and programmes approved by the Minister and to **report its** findings **and make** recommendations to the Minister.

Procedure of
Committee.

10. The Committee shall make its own rules of **procedure and** the rules shall take effect **after** they have been approved by **the** Minister.

PART IV DIRECTOR AND STAFF OF AGENCY

Director and staff
of the Agency.

11. (1) The Governor-General, acting in accordance with the the advice of the Public Service Commission, shall appoint **a** Director of the Agency.

(2) The Director shall be responsible for the management of the affairs of the Agency and for the performance of its functions under this Act in accordance **with** any directions issued by the Minister under section **28**.

(3) The Public Service Commission shall appoint to the service of the Agency such suitable persons, including **persons** seconded **from** other sectors of the public service, **who** possess the requisite qualifications and skills for the effective performance of the functions of the Agency.

(4) The Ministry responsible for the Agency may, on the recommendation of the Director, engage such other **suitable** persons as **may** be required from time to time for the **perform-**ance of the functions of the Agency.

PART V INVESTIGATING AND REPORTING

Performance of
functions.

12. For the purpose of performing the functions of **the** Agency, the Director or an employee of the Agency **authorized** by the Director in writing, either generally or in any **particular** case, may —

- (a) **investigate** the abuse or **neglect** of a child **or** a **child's** need for **protection**, **whether or not an allegation,** complaint **or report has been made in that regard;**

- (b) take, or assist other persons or authorities to take, remedial measures, including court proceedings—
 - (i) against any person involved in the abuse or neglect;
 - (ii) for the purpose of placing a child affected by abuse or neglect in foster care or protective custody;
 - (iii) in any case of imminent harm or injury or risk of abuse or neglect, by the removal of a child to a place of safety as may be ordered by a court or with the consent of the person having lawful custody of the child;
- (c) take such other measures as will ensure the safety and welfare of the child.

13. (1) A person within any of the categories set out in subsection (2) who, in the course of duty in relation to a child, suspects on reasonable grounds, or knows that the child is being or has been subjected to abuse or neglect or is in imminent risk of harm or injury or is in need of protection **from harm** or injury, shall report that **fact to** the Agency.

Obligation to report abuse or neglect.

(2) Subsection (1) applies to the following persons —

- (a) parents or legal guardians;
- (b) persons engaged in the provision of educational, medical or mental health services;
- (c) social service workers;
- (d) Childcare **or** foster care workers;
- (e) members of the clergy;
- (f) police officers;
- (g) guidance counselors.

(3) The Minister may, by Order published in the *Gazette*, vary the categories of **persons** referred to in subsection (2).

(4) Nothing in this section shall be construed as prohibiting any other **person** not within the categories set out in subsection (2) **from** reporting to the Agency or to any other person or authority, **any** incident of child abuse or neglect; but a person who is not under an obligation to report such incident in terms of subsection (1) need not disclose his identity.

**Failure to report
abuse or neglect,
etc.**

14. A person within any of the categories set out in subsection (2) of section 13 who, without reasonable excuse, fails to report to the Agency as required by subsection (1) of that section commits an offence and the Director may —

- (a) for a **first** offence, issue to the person a written reprimand and also order the person to make the report that he should have made under subsection (1) of section 13; or
- (b) irrespective of whether the failure to report is a first offence, notify the failure to the Police or other competent authority, with a request to institute against him appropriate criminal or disciplinary proceedings by the competent authority.

**Making false
allegation report
or complaint.**

15. Any person who, without reasonable excuse, makes an allegation, report or complaint of abuse or neglect to the Agency in relation to a child which he knows to be false in any material particular, commits an offence.

**Agency to
provide certain
information to
person reporting.**

16. The Agency **shall, if so** requested by a person who has reported an incident of child abuse or neglect or who has lodged a complaint, provide that person with information regarding the steps that are contemplated or are being taken by the Agency in connection with the report or complaint and the Agency shall ensure that the information is provided in a manner that does not prejudice the steps contemplated or being taken.

**Prohibition of
disclosure of
identity of
complainant or
person reporting.**

17. The Agency shall not disclose the identity of a person reporting an incident of child abuse or neglect to the person against whom the report is made unless the person reporting consents to the disclosure.

**Immunity from
personal liability.**

18. (1) A member of staff shall not, in the performance of his functions under this Act, be personally liable in civil proceedings for **any** act done in good faith.

(2) A person who reports an incident of child abuse, whether or not the report is made pursuant to an obligation under subsection (1) of section 13, shall have the same immunity as is provided for in subsection (1) of this section.

**PART VI
LICENSING, REGISTRATION AND
SUPERVISION OF CHILDCARE FACILITIES**

19. (1) A person shall not establish, manage or operate a Childcare facility, other than a Childcare facility belonging to the Agency, except under a licence granted under this Act.

**Application for
licence.**

(2) An applicant for a licence to operate a Childcare facility shall submit an application to the Director in the prescribed form and the application shall be accompanied by the prescribed fee, such documents and information as may be prescribed and such additional documents and information as may be required by the Agency.

(3) The Director may approve or refuse to approve the application and shall communicate the approval or refusal to the applicant and, in the case of a refusal to grant a licence, shall communicate the reasons for the refusal.

(4) A licence may be issued subject to such conditions as the Director may consider appropriate and the Director may, after giving notice to the holder of a licence and an opportunity for the latter to make representations, vary the conditions of a licence if there are changes relating to the Childcare facility, or if an application has been made by the holder to vary the conditions of the licence.

(5) The proprietor of a Childcare facility in existence on the commencement of this Act shall, if he intends to continue operating the facility after the commencement of this Act, apply for a licence within six months from the commencement of this Act and may continue to operate pending the grant or refusal of a licence.

20. A licence shall remain valid for a period of one year from the date of issue or for such shorter period as may be indicated on the licence and may, on application to the Director, be renewed for further periods.

**Period of validity
of licence.**

Registration of
Childcare
facilities.

21. The Director shall maintain a register containing the following information —

- (a) the name and location of each Childcare facility in respect of which a licence is granted;
- (b) the name and address of the proprietor and the person in charge of each Childcare facility;
- (c) the conditions attached to each licence and any variation of the conditions of the licence or any suspension or revocation of the licence.

Suspension or
revocation of
licence.

22. (1) The Director may suspend or revoke a licence where the holder of the licence —

- (a) obtained the licence through fraud or negligent misrepresentation or any false or misleading statement; or
- (b) is convicted of an offence under this Act, an offence involving moral turpitude or any other offence which, in the opinion of the Director, makes him unfit to hold a licence; or
- (c) fails to comply with any conditions applicable to the licence.

(2) The Director shall, before taking any action in terms of subsection (1), notify the holder of the licence of his intention to suspend or revoke the licence and the reasons therefore and call upon the holder of the licence to show cause, within such reasonable period as may be specified in the notice, why the licence should not be suspended or revoked, as the case may be.

(3) If, at the expiration of the period specified in the notice given under subsection (2) —

- (a) the holder of the licence fails to show cause within that period; or
- (b) the Director is satisfied for **any** reason specified in subsection (1) that the licence should be suspended or revoked,

the Director may, by notice in writing, suspend or revoke the licence or take any such other action as he considers appropriate.

23. (1) An applicant for a licence under section 19 or the holder of a licence who is aggrieved by a decision or determination of the Director in respect of the matters set out in subsection (2), may appeal to the Minister in such manner and within such period as the Minister may, by Regulations, prescribe. **Appeals.**

(2) The Minister may hear and determine appeals in respect of any of the following matters —

- (a) a refusal to grant a licence under section 19;
- (b) the conditions imposed on a licence;
- (c) a refusal to renew a licence;
- (d) a suspension or revocation of a licence; and
- (e) any administrative decision on a matter arising from the application of this Act.

24. (1) The Agency shall —

- (a) supervise and monitor **Childcare** facilities registered under this Act;
- (b) enforce compliance with the prescribed standards and with other requirements under this Act relating to **Childcare** facilities;
- (c) provide guidance and training for persons engaged in the care or custody of children to whom this Act applies.

Supervision and monitoring of childcare facilities.

(2) For the purposes of paragraphs (a) and (b) of subsection (1), a member of staff of the Agency authorized by the Director in writing may, at all reasonable times, enter and inspect the premises of a **Childcare** facility and **carry** out any investigation with regard to compliance with the requirements of this Act.

(3) Where, pursuant to an investigation a member of staff of the Agency is, on reasonable **grounds**, satisfied that the **Childcare**

facility does not, in any particular respect, comply with the requirements of this Act, the employee shall report that fact to ~~the~~ Director and ~~the~~ Director may —

- (a) serve the person in charge of the Childcare facility or the holder of the licence with an order in writing requiring that person to comply with any particular requirement within the period prescribed in the order; or
- (b) suspend or revoke the licence in accordance with this Act and make appropriate arrangements for the continued care of the children in the facility in respect of which the licence is suspended or revoked.

PART VII GUIDING PRINCIPLES AND PROTECTION OF PRIVACY

Welfare of child
paramount.

25. (1) In determining any matter relating to —

- (a) the upbringing of a child; or
- (b) the administration of a child's property or income,

the person who has authority to determine the matter shall ensure that the welfare of the child is paramount.

(2) In all matters relating to a child, whether before a court of law or any other authority regard shall be had to the need to determine the matter without undue delay in order to ensure that the welfare of the child is not prejudiced or adversely affected by the delay.

Criteria for
decisions.

26. In determining any question relating to the circumstances provided for in section 25, the person who has authority to determine the question shall have regard in particular to —

- (a) the ascertainable wishes and feelings of the child concerned, ~~in the light of the child's age and capacity to understand the matter to be~~ **determined**;
- (b) the child's physical, emotional and educational needs;

- (c) the likely effects of any **changes** in the child's circumstances;
- (d) the age, sex and background of the child and any other relevant factors;
- (e) any harm or injury the child has suffered, or is likely to suffer; or
- (f) the capacity of the child's parents, guardians or other persons involved in the care of the child in meeting the needs of the child.

27. (1) In any proceedings involving a child, whether before a court or any other authority established by or under any law, and for the purpose of protecting the welfare of the child, the court or other authority may exclude from the proceedings any person whose presence is not necessary for the conduct or determination of those proceedings.

**Protection of
privacy in
proceedings.**

(2) Subject to the regulations made under subsection (5), no person shall publish any information relating to the proceedings referred to in subsection (1) in a manner that discloses —

- (a) the name of the child or any information from which the identity of the child may be inferred; or
- (b) the name of a person concerned in the matter or any information on that person from which the identity of the person may be inferred.

(3) For the purposes of subsection (2), proceedings involve a child if the child is —

- (a) the subject of the proceedings;
- (b) a witness in the proceedings;
- (c) a person aggrieved by or the victim of the alleged abuse or neglect in the proceedings.

(4) Subsection (2) shall not be construed as prohibiting the disclosure of information —

- (a) in the course of the administration of this Act or the administration of justice;
- (b) to a professional or other person engaged in the care or supervision of a child;
- (c) in order to ensure the safety of the child or other persons if the child poses a risk of serious harm or injury to himself or to other persons; or
- (d) if the disclosure of the information is necessary to assist in apprehending the child in connection with a criminal offence or for the purpose of placing or restoring the child under care or protection.

(5) The Minister may make Regulations providing for additional circumstances, conditions and other matters under which the information referred to in subsection (2) may be published.

PART VIII MISCELLANEOUS

**Power of
Minister to give
directions.**

28. The Minister may give the Agency directions of a general nature relating to the **performance** of its functions and may direct the Agency on any matter which, in the opinion of the Minister, affects Government policy.

**Offences and
penalties.**

29. (1) Any person who —

- (a) establishes, manages or operates, or participates in the management or operation of, a childcare facility without a licence granted under this Act;
- (b) being a person to whom subsections (1) and (2) of section 13 apply, contravenes that section;
- (c) contravenes section 15; or
- (d) fails, without reasonable excuse, to comply with an order served upon him under paragraph (a) of subsection (3) of section 24, commits an offence.

(2) A person convicted of an offence under subsection (1) is liable —

- (a) on **summary** conviction to a fine not exceeding \$1500 or to a term of imprisonment not exceeding six months or both;
- (b) upon conviction on indictment to a **fine** not exceeding \$10,000 or to a term of imprisonment not exceeding two years or both.

30. (1) The Minister may make Regulations for carrying out the purposes of this Act. **Regulations.**

(2) Regulations made under subsection (1) may prescribe, in respect of any contravention of those Regulations in relation to child abuse or neglect, penalties not exceeding the penalties set out in subsection (2) of section 29.

Passed the House of Representatives
this 24th day of October, 2003.

B. Harris,
Speaker.

S. Walker,
Clerk to the House of Representatives.

Passed the Senate this 6th day
of November, 2003.

M. Percival,
President.

S. Walker,
Clerk to the Senate.