



## **FALKLAND ISLANDS**

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### **Assessment and Safeguarding of Adults Ordinance 2020**

#### **(ORDINANCE No. 8 OF 2020)**

#### **ARRANGEMENT OF PROVISIONS**

##### **Section**

##### **PART 1 - INTRODUCTORY**

1. Title
2. Commencement
3. Interpretation
4. People who lack capacity
5. Promoting individual well-being

##### **PART 2 - ASSESSING ADULTS' NEEDS**

6. Assessment of an adult's needs for care and support
7. Assessment of carer's needs for support
8. Refusal of assessment
9. Assessments under sections 6 and 7: further provision

##### **PART 3 - SAFEGUARDING ADULTS**

10. Enquiries in connection with adult
11. Protecting property of adults being cared for away from home
12. Safeguarding Adults Board
13. Review of adult safeguarding cases
14. Supply of information requested by Safeguarding Adults Board

##### **PART 4 - INDEPENDENT ADVOCACY SUPPORT**

15. Involvement in assessments
16. Safeguarding enquiries and reviews

## PART 5 - MISCELLANEOUS

- 17. Prisoners
- 18. Regulations etc
- 19. Amendment of Schedule

Schedule



## FALKLAND ISLANDS

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### Assessment and Safeguarding of Adults Ordinance 2020

(assented to: 7 August 2020)  
(commencement: in accordance with section 2)  
(published: 12 August 2020)

#### AN ORDINANCE

To make provision for; assessments, enquiries and reviews to be carried out in respect of adults;  
and for the establishment of the Safeguarding Adults Board.

ENACTED by the Legislature of the Falkland Islands —

### PART 1 - INTRODUCTORY

#### 1. Title

This Ordinance is the Assessment and Safeguarding of Adults Ordinance 2020.

#### 2. Commencement

This Ordinance comes into force on a day appointed by the Governor by notice in the *Gazette*.

#### 3. Interpretation

(1) In this Ordinance —

“**abuse**” includes financial abuse;

“**financial abuse**” includes —

- (a) having money or other property stolen;
- (b) being defrauded;

- (c) being put under pressure in relation to money or other property; and
- (d) having money or other property misused.

**“information and advice”** means information and advice provided by the Government relating to the care and support provided for adults by the Government, in particular information and advice on —

- (a) the system for care and support of adults provided by the Government;
- (b) the choice and types of care and support provided by the Government;
- (c) how to access the care and support that is available;
- (d) how to raise concerns about the safety or well-being of an adult who has needs for care and support.

**“prevention services”** means services, facilities, or resources provided by, or steps taken by, the Government, which the Government considers —

- (a) contribute towards preventing or delaying the development by adults of needs for care and support;
- (b) reduce the need for care and support of adults.

**“SAB”** means the Safeguarding Adults Board established under section 12.

**“well-being”**, in relation to an individual means an individual’s well-being relating to any of the following —

- (a) personal dignity (including treatment of the individual with respect);
- (b) physical and mental health and emotional well-being;
- (c) protection from abuse and neglect;
- (d) control by the individual over day-to-day life (including over care and support, or support, provided to the individual and the way it is provided);
- (e) participation in work, education, training or recreation;
- (f) social and economic well-being;
- (g) domestic, family and personal relationships;
- (h) suitability of living accommodation;
- (i) the individual’s contribution to society.

(2) Where in this Ordinance reference is made to the Government discharging or performing a function, the function must be performed or discharged by the directorate or department within

the Government which has been allocated responsibility for provision of health and social services.

#### **4. People who lack capacity**

(1) For the purposes of this Ordinance a person lacks capacity in relation to a matter if at the material time the person is unable to make a decision for themselves in relation to the matter because of an impairment of, or disturbance in the function of, the mind or brain.

(2) It does not matter whether the impairment or disturbance is permanent or temporary.

(3) A lack of capacity cannot be established merely by reference to —

- (a) a person's age or appearance;
- (b) a condition of the person, or an aspect of the person's behaviour, which might lead others to make unjustified assumptions about the person's capacity.

(4) Any question whether a person lacks capacity within the meaning of this Ordinance must be determined on the balance of probabilities.

#### **5. Promoting individual well-being**

(1) The general duty of the Government, in exercising a function under this Ordinance in the case of an individual, is to promote that individual's well-being.

(2) In exercising a function under this Ordinance in the case of an individual, the Government must have regard to the following matters in particular —

- (a) the importance of beginning with the assumption that the individual is best-placed to judge the individual's well-being;
- (b) the individual's views, wishes, feelings and beliefs;
- (c) the importance of preventing or delaying the development of needs for care and support or needs for support and the importance of reducing needs of either kind that already exist;
- (d) the need to ensure that decisions about the individual are made having regard to all the individual's circumstances (and are not based only on the individual's age or appearance or any condition of the individual's or aspect of the individual's behaviour which might lead others to make unjustified assumptions about the individual's well-being);
- (e) the importance of the individual participating as fully as possible in decisions relating to the exercise of the function concerned and being provided with the information and support necessary to enable the individual to participate;
- (f) the importance of achieving a balance between the individual's wellbeing and that of any friends or relatives who are involved in caring for the individual;
- (g) the need to protect people from abuse and neglect;

- (h) the need to ensure that any restriction on the individual's rights or freedom of action that is involved in the exercise of the function is kept to the minimum necessary for achieving the purpose for which the function is being exercised.

## **PART 2 - Assessing Adults' Needs**

### **6. Assessment of an adult's needs for care and support**

(1) Where it appears to the Government that an adult may have needs for care and support, the Government must assess —

- (a) whether the adult does have needs for care and support;
- (b) if the adult does, what those needs are.

(2) An assessment under subsection (1) is referred to in this Part as a **"needs assessment"**.

(3) The duty to carry out a needs assessment applies regardless of the Government's view of—

- (a) the level of the adult's needs for care and support; or
- (b) the level of the adult's financial resources.

(4) A needs assessment must include an assessment of —

- (a) the impact of the adult's needs for care and support on the promotion of the adult's well-being;
- (b) the outcomes that the adult wishes to achieve in day to day life; and
- (c) whether, and if so, to what extent, the provision of care and support could contribute to the achievement of those outcomes.

(5) The Government, in carrying out a needs assessment must involve —

- (a) the adult;
- (b) any carer that the adult has;
- (c) any person whom the adult asks the Government to involve or, where the adult lacks capacity to ask the Government to do that, any person who appears to the Government to be interested in the adult's welfare.

(6) When carrying out a needs assessment, the Government must also consider —

- (a) whether, and if so to what extent, matters other than the provision of care and support could contribute to the achievement of the outcomes that the adult wishes to achieve in day-to-day life; and
- (b) whether the adult would benefit from the provision of —

- (i) prevention services;
- (ii) information and advice; or
- (iii) anything which might be available in the community.

(7) This section is subject to section 8 (refusal of assessment).

*[Care Act 2014, s. 9]*

## **7. Assessment of carer's needs for support**

(1) Where it appears to the Government that a carer may have needs for support (whether currently or in the future), the Government must assess —

- (a) whether the carer does have needs for support (or is likely to do so in the future); and
- (b) if the carer does, what those needs are (or are likely to be in the future).

(2) An assessment under subsection (1) is referred to in this Part as a “**carer's assessment**”.

(3) “**Carer**” means an adult who provides or intends to provide care for another adult (an “**adult needing care**”); but see subsections (9) and (10).

(4) The duty to carry out a carer's assessment applies regardless of the Government's view of —

- (a) the level of the carer's needs for support; or
- (b) the level of the carer's financial resources or of those of the adult needing care.

(5) A carer's assessment must include an assessment of —

- (a) whether the carer is able, and is likely to continue to be able, to provide care for the adult needing care;
- (b) whether the carer is willing, and is likely to continue to be willing, to do so;
- (c) the outcomes that the carer wishes to achieve in day-to-day life; and
- (d) whether, and if so to what extent, the provision of support could contribute to the achievement of those outcomes.

(6) The Government, in carrying out a carer's assessment, must have regard to —

- (a) whether the carer works or wishes to do so; and
- (b) whether the carer is participating in or wishes to participate in education, training or recreation.

(7) The Government, in carrying out a carer's assessment, must involve —

- (a) the carer, and

- (b) any person whom the carer asks the Government to involve.
- (8) When carrying out a carer's assessment, the Government must also consider —
- (a) whether, and if so to what extent, matters other than the provision of support could contribute to the achievement of the outcomes that the carer wishes to achieve in day-to-day life, and
  - (b) whether the carer would benefit from the provision of —
    - (i) prevention services;
    - (ii) information or advice; or
    - (iii) anything which might be available in the community.
- (9) An adult is not to be regarded as a carer if the adult provides or intends to provide care—
- (a) under or by virtue of a contract; or
  - (b) as voluntary work.
- (10) But in a case where the Government considers that the relationship between the adult needing care and the adult providing or intending to provide care is such that it would be appropriate for the latter to be regarded as a carer, that adult is to be regarded as such (and subsection (9) does not apply in that case).
- (11) The references in this section to providing care include a reference to providing practical or emotional support.
- (12) This section is subject to section 8(5) to (7) (refusal by carer of assessment).

*[Care Act s. 10]*

## **8. Refusal of assessment**

- (1) Where an adult refuses a needs assessment, the Government is not required to carry out the assessment (and section 6(1) does not apply to the adult's case).
- (2) But the Government may not rely on subsection (1) (and so must carry out a needs assessment) if —
- (a) the adult lacks capacity to refuse the assessment and the Government is satisfied that carrying out the assessment would be in the adult's best interests; or
  - (b) the adult is experiencing, or is at risk of, abuse or neglect.
- (3) Where having refused a needs assessment, an adult requests the assessment, section 6(1) applies in the adult's case (and subsection (1) above does not).



(4) Where an adult has refused a needs assessment and the Government thinks that the adult's needs or circumstances have changed, section 6(1) applies in the adult's case (but subject to further refusal as mentioned in subsection (1) above).

(5) Where a carer refuses a carer's assessment, the Government is not required to carry out the assessment (and section 7(1) does not apply in the carer's case).

(6) Where, having refused a carer's assessment, a carer requests the assessment, section 7(1) applies in the carer's case (and subsection (5) above does not).

(7) Where a carer has refused a carer's assessment and the Government thinks that the needs or circumstances of the carer or the adult needing care have changed, section 7(1) applies in the carer's case (but subject to further refusal as mentioned in subsection (5) above).

*[Care Act 2014, s. 11]*

*[S.R.&O. 16/2024/w.e.f. 18.10.2024]*

## **9. Assessments under sections 6 and 7: further provision**

(1) Regulations must make further provision about carrying out a needs assessment.

(2) The regulations may, in particular —

- (a) require the Government, in carrying out the assessment, to have regard to the needs of the family of the adult to whom the assessment relates;
- (b) specify other matters to which the Government must have regard in carrying out the assessment (including, in particular, the matters to which the Government must have regard in seeking to ensure that the assessment is carried out in an appropriate and proportionate manner);
- (c) specify the steps that the Government must take for the purpose of ensuring that the assessment is carried out in an appropriate and proportionate manner;
- (d) specify circumstances in which the assessment may or must be carried out by a person (whether or not an officer of the Government) who has expertise in a specified matter or is of such other description as is specified, jointly with or on behalf of the Government;
- (e) specify circumstances to which the adult to whom the assessment relates may carry out the assessment jointly with the Government;
- (f) specify circumstances in which the Government must, before carrying out the assessment or when doing so, consult a person who has expertise in a specified matter or is of such other description as is specified.

(3) The regulations may include provision for facilitating the carrying out of a needs assessment in circumstances specified under subsection (1)(d) or (e); they may, for example, give the Government power to provide the person carrying out the assessment —

- (a) with the information about the adult to whom the assessment relates;

- (b) with whatever resources, or access to whatever facilities the Government thinks will be needed to carry out the assessment.
- (4) The Government must give a written record of a needs assessment to —
  - (a) the adult to whom the assessment relates;
  - (b) any carer that the adult has, if the adult asks the Government to do so; and
  - (c) any other person to whom the adult asks the Government to give a copy.
- (5) The Government may combine a needs assessment with an assessment it is carrying out (whether or not under this Part) in relation to another person only if the adult to whom the needs assessment relates agrees and —
  - (a) where the combination would include an assessment relating to another adult, that other adult agrees;
  - (b) where the combination would include an assessment relating to a child, the consent condition is met in relation to the child.
- (6) The consent condition referred to in subsection (5) is met in relation to a child if —
  - (a) the child has capacity or is competent to agree to the assessments being combined and does so agree; or
  - (b) the child lacks capacity or is not competent so to agree but the Government is satisfied that combining the assessments would be in the child's best interests.
- (7) A reference to an assessment includes a reference to part of an assessment.

*[Care Act 2014, s. 12]*

### **PART 3 - Safeguarding Adults**

#### **10. Enquiries in connection with adult**

- (1) This section applies where the Government has reasonable cause to suspect that an adult in the Falkland Islands (whether or not ordinarily resident in the Falkland Islands) —
  - (a) has needs for care and support (whether or not the Government is meeting any of those needs);
  - (b) is experiencing, or is at risk of, abuse or neglect; and
  - (c) as a result of those needs is unable to protect themselves against the abuse or neglect or the risk of it.

(2) The Government must make (or cause to be made) whatever enquiries the Government thinks necessary or appropriate to enable the Government to decide whether any action should be taken in the adult's case (whether under this Ordinance or otherwise) and, if so, by whom.

*[Care Act 2014, s. 42]*

## **11. Protecting property of adults being cared for away from home**

(1) This section applies where —

- (a) an adult is having needs for care and support met by the Government in a way that involves the provision of accommodation, or is admitted to hospital (or both); and
- (b) it appears to the Government that there is a danger of loss or damage to movable property of the adult because —
  - (i) the adult is unable (whether permanently or temporarily) to protect or deal with the property; and
  - (ii) no suitable arrangements have been or are being made.

(2) The Government must take reasonable steps to prevent or mitigate the loss or damage.

(3) For the purpose of performing that duty, the Government —

- (a) may at all reasonable times and on reasonable notice enter any premises which the adult was living in immediately before being provided with accommodation or admitted to hospital; and
- (b) may deal with any of the adult's movable property in any way which is reasonably necessary for preventing or mitigating loss or damage.

(4) The Government may not exercise the power under subsection (3)(a) unless —

- (a) the Government has obtained the consent of the adult concerned or, where the adult lacks capacity to give consent, the consent of a person authorised by a court to give it on the adult's behalf; or
- (b) where the adult lacks capacity to give consent and there is no person so authorised, the Government is satisfied that exercising the power would be in the adult's best interests.

(5) Where the Government is proposing to exercise the power under subsection (3)(a), the officer the Government authorises to do so must, if required, produce valid documentation setting out the authorisation to do so.

(6) A person who, without reasonable excuse, obstructs the exercise of the power under subsection (3)(a) —

- (a) commits an offence; and
- (b) is liable on conviction to a fine not exceeding level 4 on the standard scale.

(7) The Government may recover from an adult whatever reasonable expenses the Government incurs under this section in the adult's case.

*[Care Act 2014, s. 47]*

## **12. Safeguarding Adults Board**

(1) There is established a Safeguarding Adults Board.

(2) The objective of the SAB is to prevent abuse and neglect of adults in cases of the kind described in section 10(1).

(3) The way in which the SAB must seek to achieve its objective is to co-ordinate and ensure the effectiveness of what each of its members does.

(4) The SAB may do anything which appears to it to be necessary or desirable for the purpose of achieving its objective.

(5) Further provisions about the SAB are set out in the Schedule.

*[Care Act 2014, s. 43]*

## **13. Review of adult safeguarding cases**

(1) The SAB must arrange for there to be a review of a case involving an adult with needs for care and support (whether or not the Government has been meeting any of those needs), if —

(a) there is reasonable cause for concern about how the SAB, its members or other persons with relevant functions performed their functions or worked together to safeguard the adult; and

(b) condition 1 or 2 is met.

(2) Condition 1 is met if —

(a) the adult has died;

(b) and the SAB suspects that the death resulted from abuse or neglect (whether or not it knew about or suspected the abuse or neglect before the adult died).

(3) Condition 2 is met if —

(a) the adult is still alive; and

(b) the SAB knows or suspects that the adult has experienced serious abuse or neglect.

(4) The SAB may arrange for there to be a review of any other case involving an adult with needs for care and support (whether or not the Government is meeting any of those needs).

(5) Each member of the SAB must co-operate in and contribute to the carrying out of a review under this section with a view to —

- (a) identifying lessons to be learnt from the adult's case; and
  - (b) applying those lessons to future cases.
- (6) When arranging a review under subsection (1), the SAB must appoint a person to lead the review —
- (a) who is not a member of the SAB; and
  - (b) who is independent of the Government.

*[Care Act 2014, s. 44]*

#### **14. Supply of information requested by Safeguarding Adults Board**

- (1) If the SAB requests a person to supply information to it, or to some other person specified in the request, the person to whom the request is made must comply with the request if —
- (a) conditions 1 and 2 are met; and
  - (b) condition 3 or 4 is met.
- (2) Condition 1 is that the request is made for the purpose of enabling or assisting the SAB to exercise any of its functions.
- (3) Condition 2 is that the request is made to a person who the SAB considers to be likely to have information relevant to the exercise of a function by the SAB.
- (4) Condition 3 is that the information relates to —
- (a) the person to whom the request is made,
  - (b) a function or activity of that person, or
  - (c) a person in respect of whom that person exercises a function or engages in an activity.
- (5) Condition 4 is that the information —
- (a) requested by the SAB is from a person to whom information was supplied in compliance with another request under this section, and
  - (b) is the same as, or is derived from, information so supplied.
- (6) Any information received under this section may only be used by the SAB for the purpose of enabling or assisting the SAB to exercise its functions.

*[Care Act 2014, s. 45]*

## PART 4 - Independent Advocacy Support

### 15. Involvement in assessments

(1) This section applies where the Government is required under section 6 or 7 to involve an individual in an assessment carried out under the relevant section.

(2) The Government must, if the condition in subsection (4) is met, arrange for a person who is independent of the Government (an “**independent advocate**”) to be available to represent and support the individual for the purpose of facilitating the individual’s involvement.

(3) Subsection (2) is subject to subsection (5).

(4) The condition is that the Government considers that, were an independent advocate not to be available, the individual would experience substantial difficulty in doing one or more of the following —

- (a) understanding relevant information;
- (b) retaining that information;
- (c) using or weighing that information as part of the process of being involved;
- (d) communicating the individual’s views, wishes or feelings (whether by talking, or using any other means reasonably available).

(5) The duty under subsection (2) does not apply if the Government is satisfied that there is a person —

- (a) who would be an appropriate person to represent and support the individual for the purpose of facilitating the individual’s involvement; and
- (b) who is not engaged in providing care or treatment for the individual in a professional capacity or for remuneration.

*[Care Act 2014, s.67]*

### 16. Safeguarding enquiries and reviews

(1) This section applies where there is to be —

- (a) an enquiry under section 10;
- (b) a review under section 13(1) of a case in which condition 2 in section 13(3) is met or a review under section 13(4).

(2) The Government must, if the condition in subsection (4) is met, arrange for a person who is independent of the Government (an “**independent advocate**”) to be available to represent and support the adult to whose case the enquiry or review relates for the purposes of facilitating the adult’s involvement.

(3) Subsection (2) is subject to subsection (5).

(4) The condition is that the Government considers that, were an independent advocate not to be available, the adult would experience substantial difficulty in doing one or more of the following—

- (a) understanding relevant information;
- (b) retaining that information;
- (c) using or weighing that information as part of the process of being involved;
- (d) communicating the individual's views, wishes or feelings (whether by talking or using any other means reasonably available).

(5) For the purposes of subsection (4), a person is not to be regarded as an appropriate person unless —

- (a) where the adult has capacity to consent to being represented and supported by that person, the adult does so consent; or
- (b) where the adult lacks capacity so to consent, the Government is satisfied that being represented and supported by that person would be in the adult's best interests.

(6) If the enquiry or review needs to begin as a matter of urgency, it may do so even if the Government has not yet been able to comply with the duty under subsection (2) (and the Government continues to be subject to the duty).

*[Care Act 2014, s. 68]*

## **PART 5 - Miscellaneous**

### **17. Prisoners**

(1) Sections 10 and 11 (protection of adults: enquiry by Government, and protection of property) do not apply in the case of an adult who is detained in prison.

(2) The SAB's objective under section 12(2) does not include helping and protecting adults who are detained in prison; but the SAB may nonetheless provide advice or assistance to any person for the purpose of helping and protecting such adults in cases of the kind described in section 10 (adults with needs for care and support who are at risk of abuse or neglect).

(3) Section 13 (review of adult safeguarding cases) does not apply to any case involving an adult in so far as the case relates to any period during which the adult was detained in prison.

(4) “**Prison**” has the same meaning as given in the Prisons Ordinance 2017.

(5) For the purposes of this section a person who is temporarily absent from prison is to be treated as detained in prison for the period of absence.

*[Care Act 2014, s. 76]*

## **18. Regulations etc**

(1) The Governor may make regulations generally for giving effect to this Ordinance or for purposes of prescribing anything reasonably necessary for the better carrying out of the provisions of this Ordinance.

(2) The Governor may in particular make regulations concerning procedures for carrying out—

(a) assessments under sections 6 and 7;

(b) reviews under section 13.

(3) The Governor may issue guidance relating to —

(a) the exercise of functions by the SAB under this Ordinance;

(b) the exercise by any person of any other functions under this Ordinance.

## **19. Amendment of Schedule**

The Governor may amend the Schedule by Order.



**SCHEDULE**  
**Safeguarding Adults Board**

*(section 12(5))*

**PART 1 - Membership etc**

**1. Membership**

(1) The members of the SAB are —

- (a) the elected member or members of the Legislative Assembly with portfolio responsibility for health and social services, education and community (or equivalent), or their deputy or deputies;
- (b) the Director of Health and Social Services;
- (c) the Director of Education;
- (d) the Chief Medical Officer;
- (e) the Chief Police Officer;
- (f) the Attorney General;
- (g) the Team Leader in the Social Services Department;
- (h) the Chief Nursing Officer;
- (i) the Probation Officer (or the senior representative of the Probation Service);
- (j) a representative of the United Kingdom Ministry of Defence appointed by the Chief of Staff of the Ministry of Defence in the Falkland Islands;
- (k) such other persons, or persons of such description, as may be specified in regulations.

(2) The membership of SAB may also include such other persons as the Governor, having consulted the members listed in sub-paragraph (1), considers appropriate, including a representative of at least one organisation with a role relating to the welfare of families of those serving in the Falkland Islands in the United Kingdom armed forces.

(3) The members listed under sub-paragraph (1)(b) to (i) may appoint a person to represent them at meetings of the SAB; but the representative must be a person whom the member considers to have the appropriate skill and experience to do so effectively.

**2. Chairperson and vice-chairperson**

(1) The Director of Health and Social Services is the chairperson of the SAB.

(2) The chairperson is responsible for the leadership and management of the SAB and must aim to ensure that the SAB is effective in achieving its objectives.

(3) The Team Leader in the Social Services department is the vice-chairperson and will act as chairperson in the absence of the Director of Health and Social Services.

### **3. Meetings**

(1) The SAB must meet at least four times in a year.

(2) The SAB may invite other persons to attend any of its meetings to assist the SAB in carrying out its objective.

### **4. Entitlement to vote**

(1) All members are entitled to vote in any matter to be decided by the SAB.

(2) Any person invited by the SAB under paragraph 3(2) to attend a meeting is not entitled to vote.

### **5. Procedures**

Subject to this Ordinance and any regulations made under it, the SAB may adopt its own procedures.

### **6. Guidance**

Members of the SAB must, in acting as such, have regard to such guidance as the Governor may issue.

## **PART 2 - Strategic Plan**

### **1. Strategic plan**

The SAB must publish for each year a plan (its “**strategic plan**”) which sets out —

- (a) its strategy for achieving its objective (under section 12) during the year; and
- (b) what each member is to do to implement that strategy.

### **2. Involvement in strategic plan**

In preparing its strategic plan, the SAB must involve the community.

### **3. SAB year**

In this paragraph and in Part 3, “**year**” in relation to the SAB means 1 July to 30 June or such other period as may be approved by the Governor.

## **PART 3 - Annual Report**

### **1. Publication of annual report**

As soon as reasonably possible after the end of each year, the SAB must publish a report on—

- (a) what it has done during that year to achieve its objective;
- (b) what it has done during that year to implement its strategy;
- (c) what each member has done during that year to implement the strategy;
- (d) the findings of the reviews arranged by it under section 13 (safeguarding adults reviews) which have concluded in that year (whether or not they began in that year);
- (e) the reviews arranged by it under that section which are ongoing at the end of that year (whether or not they began in that year);
- (f) what it has done during that year to implement the findings of reviews arranged by it under that section; and
- (g) where it decides during that year not to implement a finding of a review arranged by it under that section, the reasons for its decision.

### **2. Dissemination of annual report**

The SAB must send a copy of the report to —

- (a) the Chief Executive;
- (b) the Governor; and
- (c) the Legislative Assembly.