

South Australia

Children's Protection Law Reform (Transitional Arrangements and Related Amendments) Act 2017

An Act to make transitional arrangements and related amendments to various Acts consequent upon the enactment of the *Child Safety (Prohibited Persons) Act 2016*, the *Children and Young People (Oversight and Advocacy Bodies) Act 2016* and the *Children and Young People (Safety) Act 2017*.

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Act 2017—1.7.2019

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Legislative history

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Children's Protection Law Reform (Transitional Arrangements and Related Amendments) Act 2017*.

2—Commencement

- (1) This Act will come into operation on a day to be fixed by proclamation.
- (2) Section 7(5) of the *Acts Interpretation Act 1915* does not apply to this Act or to a provision of this Act.

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

4—Interpretation

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

assessment of relevant history means an assessment of relevant history conducted under the *Children's Protection Act 1993* (as in force immediately before the commencement of this section) by an authorised screening unit;

authorised screening unit means a person or body who was, at the relevant time, an authorised screening unit within the meaning of the *Children's Protection Regulations 2010*;

criminal history report means a criminal history report prepared by South Australia Police, CrimTrac or the Australian Crime Commission;

transitional period means the period—

- (a) commencing on the day on which this section comes into operation; and
- (b) ending on—
 - (i) if the Minister, by notice in the Gazette, specifies a day on which the transitional period is to end—that day; or

- (ii) if the Minister does not specify a day under subparagraph (i)—3 years after the day on which this section comes into operation.
- (2) For the purposes of this Act, a reference to a person becoming a prohibited person under the *Child Safety (Prohibited Persons) Act 2016* will be taken to include a reference to a person who is a prohibited person by force of section 15 of that Act on the day that section comes into operation.

Part 2—Transitional provisions relating to *Child Safety (Prohibited Persons) Act 2016*

5—Interpretation

Unless the contrary intention appears, a term or phrase used in this Part that is defined in the *Child Safety (Prohibited Persons) Act 2016* has the same meaning as in that Act.

6—Expiry of Part

This Part will expire on the day that the transitional period ends.

7—Certain applications for assessments of relevant history taken to be application for working with children check

- (1) This section applies to an application for an assessment of relevant history made to an authorised screening unit before the commencement of this section but not determined before such commencement.
- (2) An application to which this section applies will, for the purposes of the *Child Safety (Prohibited Persons) Act 2016*, be taken to be an application to the central assessment unit for a working with children check under section 27 of that Act (and the application will, unless the central assessment unit determines otherwise, be taken to have satisfied the requirements set out in section 27(1) of that Act).

8—Recognition of certain assessments of relevant history as working with children checks

- (1) An assessment of relevant history conducted in respect of a person within the 3 years preceding the commencement of this section will, for the purposes of the *Child Safety (Prohibited Persons) Act 2016*, be taken to be a working with children check in respect of the person conducted under that Act.
- (2) However, this section ceases to apply to an assessment of relevant history in respect of a particular person if either of the following occurs:
 - (a) the person becomes a prohibited person;
 - (b) a working with children check is conducted in relation to the person.
- (3) To avoid doubt, an assessment of relevant history referred to in subsection (1) clearing a person for child-related employment (however described) will, for the purposes of the *Child Safety (Prohibited Persons) Act 2016*, be taken to be a determination of the central assessment unit made at the relevant time that the person is not to be prohibited from working with children.

- (4) The central assessment unit may issue a unique identifier under section 29 of the *Child Safety (Prohibited Persons) Act 2016* to each person contemplated by subsection (1) (being a person to whom a unique identifier has not previously been issued under that Act).

8A—Transitional provisions—persons the subject of assessment of relevant history conducted by responsible authority

- (1) This section applies to a person in respect of whom the responsible authority for an organisation had conducted an assessment of relevant history in accordance with regulation 6(1)(a) of the *Children's Protection Regulations 2010* within the 3 years preceding the commencement of this section.
- (2) The following provisions of the *Child Safety (Prohibited Persons) Act 2016* do not apply to, or in relation to, a person to whom this section applies:
- (a) section 16;
 - (b) section 17;
 - (c) section 18.
- (3) However, this section ceases to apply to a person referred to in subsection (1)—
- (a) if either of the following occurs:
 - (i) the person becomes a prohibited person;
 - (ii) a working with children check is conducted in relation to the person;or
 - (b) 12 months after the commencement of this section,
- whichever occurs first.
- (4) The central assessment unit may issue a unique identifier under section 29 of the *Child Safety (Prohibited Persons) Act 2016* to each person to whom this section applies (being a person to whom a unique identifier has not previously been issued under that Act).
- (5) In this section—
- responsible authority** for an organisation has the same meaning as in section 8B of the *Children's Protection Act 1993*, as in force immediately before that section is repealed.

8B—Transitional provisions—certain emergency service workers

- (1) This section applies to a person who, immediately before the commencement of this section, was an emergency service worker.
- (2) However, this section ceases to apply to a person referred to in subsection (1) if any of the following occurs:
- (a) the person becomes a prohibited person;
 - (b) a working with children check is conducted in relation to the person;
 - (c) the person ceases to be an emergency service worker.

- (3) The following provisions of the *Child Safety (Prohibited Persons) Act 2016* do not apply to, or in relation to, a person to whom this section applies:
- (a) section 16;
 - (b) section 17;
 - (c) section 18.
- (4) The central assessment unit may issue a unique identifier under section 29 of the *Child Safety (Prohibited Persons) Act 2016* to each person to whom this section applies (being a person to whom a unique identifier has not previously been issued under that Act).
- (5) In this section—
- emergency service worker*** means—
- (a) a member of—
 - (i) SAMFS; or
 - (ii) SACFS; or
 - (iii) SASES; or
 - (b) a member of the SA Ambulance Service; or
 - (c) a person providing ambulance services pursuant to a restricted ambulance service licence under section 58 of the *Health Care Act 2008*.

9—Transitional provisions—teachers

- (1) This section applies to a person who, immediately before the commencement of this section—
- (a) was a registered teacher (within the meaning of the *Teachers Registration and Standards Act 2004*) whose registration was in force; or
 - (b) was the subject of a special authority to teach granted under section 30 of the *Teachers Registration and Standards Act 2004* that was in force.
- (2) However, this section ceases to apply to a person referred to in subsection (1) if any of the following occurs:
- (a) the person becomes a prohibited person;
 - (b) a working with children check is conducted in relation to the person;
 - (c) the person's current registration as a teacher, or the special authority to teach, (as the case requires) expires;
 - (d) the person's registration as a teacher, or the special authority to teach, (as the case requires) is cancelled or revoked for any reason.
- (3) The following provisions of the *Child Safety (Prohibited Persons) Act 2016* do not apply to, or in relation to, a person to whom this section applies:
- (a) section 16;
 - (b) section 17;
 - (c) section 18.

- (4) The central assessment unit may issue a unique identifier under section 29 of the *Child Safety (Prohibited Persons) Act 2016* to each person to whom this section applies (being a person to whom a unique identifier has not previously been issued under that Act).

10—Transitional provisions—persons employed under *Children's Services Act 1985*

- (1) This section applies to a person who—
- (a) was, immediately before the commencement of this section, employed in a registered children's services centre under section 12 of the *Children's Services Act 1985*; and
 - (b) either—
 - (i) is the subject of an assessment of relevant history undertaken in the 3 years immediately preceding the commencement of this section; or
 - (ii) did both of the following:
 - (A) obtained a criminal history report in the 3 years immediately preceding the commencement of this section;
 - (B) provided a copy of the report to the employing authority under the *Children's Services Act 1985*.
- (2) However, this section ceases to apply to a person referred to in subsection (1) if either of the following occurs:
- (a) the person becomes a prohibited person;
 - (b) a working with children check is conducted in relation to the person.
- (3) The following provisions of the *Child Safety (Prohibited Persons) Act 2016* do not apply to, or in relation to, a person to whom this section applies:
- (a) section 16;
 - (b) section 17;
 - (c) section 18.
- (4) The central assessment unit may issue a unique identifier under section 29 of the *Child Safety (Prohibited Persons) Act 2016* to each person to whom this section applies (being a person to whom a unique identifier has not previously been issued under that Act).

11—Transitional provisions—health practitioners

- (1) This section applies to a person who, immediately before the commencement of this section, was a registered health practitioner.
- (2) However, this section ceases to apply to a person referred to in subsection (1) if any of the following occurs:
- (a) the person becomes a prohibited person;
 - (b) a working with children check is conducted in relation to the person;
 - (c) the person's registration as a registered health practitioner expires or is cancelled or revoked for any reason.

- (3) The following provisions of the *Child Safety (Prohibited Persons) Act 2016* do not apply to, or in relation to, a person to whom this section applies:
- (a) section 16;
 - (b) section 17;
 - (c) section 18.
- (4) The central assessment unit may issue a unique identifier under section 29 of the *Child Safety (Prohibited Persons) Act 2016* to each person to whom this section applies (being a person to whom a unique identifier has not previously been issued under that Act).
- (5) In this section—
- registered health practitioner* has the same meaning as in the *Health Practitioner Regulation National Law (South Australia)*.

12—Transitional provisions—foster parents

- (1) This section applies to a person who—
- (a) was, immediately before the commencement of this section—
 - (i) an approved foster parent under section 43 of the *Family and Community Services Act 1972*; or
 - (ii) an approved carer under the *Children and Young People (Safety) Act 2017*; and
 - (b) is the subject of an assessment of relevant history undertaken in the 3 years immediately preceding the commencement of this section.
- (2) To avoid doubt, this section does not apply to a person merely because the Chief Executive was satisfied that the person was a fit and proper person under section 42 of the *Family and Community Services Act 1972*, or because a criminal history report was obtained by or in relation to the person.
- (3) However, this section ceases to apply to a person referred to in subsection (1) if any of the following occurs:
- (a) the person becomes a prohibited person;
 - (b) a working with children check is conducted in relation to the person;
 - (c) the current period of the person's approval as an approved carer (as continued under section 27 of this Act) expires;
 - (d) the person's approval as an approved carer (as continued under section 27 of this Act) is cancelled or revoked for any reason.
- (4) The following provisions of the *Child Safety (Prohibited Persons) Act 2016* do not apply to, or in relation to, a person to whom this section applies:
- (a) section 16;
 - (b) section 17;
 - (c) section 18.

- (5) The central assessment unit may issue a unique identifier under section 29 of the *Child Safety (Prohibited Persons) Act 2016* to each person to whom this section applies (being a person to whom a unique identifier has not previously been issued under that Act).

13—Transitional provisions—licensed foster care agencies

- (1) This section applies to a person who—
- (a) was, immediately before the commencement of this section—
 - (i) licensed as a foster care agency under section 48 of the *Family and Community Services Act 1972*; or
 - (ii) licensed as a foster care agency under the *Children and Young People (Safety) Act 2017*; and
 - (b) is the subject of an assessment of relevant history undertaken in the 3 years immediately preceding the commencement of this section.
- (2) To avoid doubt, this section does not apply to a person merely because the Chief Executive was satisfied that the person was a fit and proper person under section 48 of the *Family and Community Services Act 1972*, or because a criminal history report was obtained by or in relation to the person.
- (3) However, this section ceases to apply to a person referred to in subsection (1) if any of the following occurs:
- (a) the person becomes a prohibited person;
 - (b) a working with children check is conducted in relation to the person;
 - (c) the current period of the person's licence as a foster care agency (as continued under section 28 of this Act) expires;
 - (d) the person's licence as a foster care agency (as continued under section 28 of this Act) is cancelled for any reason.
- (4) The following provisions of the *Child Safety (Prohibited Persons) Act 2016* do not apply to, or in relation to, a person to whom this section applies:
- (a) section 16;
 - (b) section 17;
 - (c) section 18.
- (5) The central assessment unit may issue a unique identifier under section 29 of the *Child Safety (Prohibited Persons) Act 2016* to each person to whom this section applies (being a person to whom a unique identifier has not previously been issued under that Act).

14—Transitional provisions—licensed children's residential facilities

- (1) This section applies to a person who—
- (a) was, immediately before the commencement of this section—
 - (i) the holder of a licence to maintain a children's residential facility under section 51 of the *Family and Community Services Act 1972*; or

- (ii) the holder of a licence to maintain a children's residential facility under the *Children and Young People (Safety) Act 2017*; and
 - (b) is the subject of an assessment of relevant history undertaken in the 3 years immediately preceding the commencement of this section.
- (2) To avoid doubt, this section does not apply to a person merely because the Chief Executive was satisfied that the person was suitable to maintain a children's residential facility under section 51 of the *Family and Community Services Act 1972*, or because a criminal history report was obtained by or in relation to the person.
- (3) However, this section ceases to apply to a person referred to in subsection (1) if any of the following occurs:
 - (a) the person becomes a prohibited person;
 - (b) a working with children check is conducted in relation to the person;
 - (c) the current period of the person's licence to maintain a children's residential facility (as continued under section 29 of this Act) expires;
 - (d) the person's licence to maintain a children's residential facility (as continued under section 29 of this Act) is cancelled for any reason.
- (4) The following provisions of the *Child Safety (Prohibited Persons) Act 2016* do not apply to, or in relation to, a person to whom this section applies:
 - (a) section 16;
 - (b) section 17;
 - (c) section 18.
- (5) The central assessment unit may issue a unique identifier under section 29 of the *Child Safety (Prohibited Persons) Act 2016* to each person to whom this section applies (being a person to whom a unique identifier has not previously been issued under that Act).

15—Transitional provisions—employees in training centres etc

- (1) This section applies to a person who—
 - (a) was, immediately before the commencement of this section, employed in—
 - (i) a training centre established under the *Family and Community Services Act 1972* or the *Youth Justice Administration Act 2016*; or
 - (ii) a correctional institution (within the meaning of the *Correctional Services Act 1982*) in which children or young people are detained; and
 - (b) is the subject of an assessment of relevant history undertaken in the 3 years immediately preceding the commencement of this section.
- (2) However, this section ceases to apply to a person referred to in subsection (1) if any of the following occurs:
 - (a) the person becomes a prohibited person;
 - (b) a working with children check is conducted in relation to the person.

- (3) The following provisions of the *Child Safety (Prohibited Persons) Act 2016* do not apply to, or in relation to, a person to whom this section applies:
 - (a) section 16;
 - (b) section 17;
 - (c) section 18.
- (4) The central assessment unit may issue a unique identifier under section 29 of the *Child Safety (Prohibited Persons) Act 2016* to each person to whom this section applies (being a person to whom a unique identifier has not previously been issued under that Act).

16—Transitional provisions—passenger transport services

- (1) This section applies to the following persons:
 - (a) a person who was, immediately before the commencement of this section, the holder of a current accreditation for a passenger transport service operated by the person granted under section 27 of the *Passenger Transport Act 1994*;
 - (b) a person who was, immediately before the commencement of this section, the holder of a current accreditation for a driver of a public passenger vehicle granted under section 28 of the *Passenger Transport Act 1994*;
 - (c) a person who was, immediately before the commencement of this section, the holder of a current accreditation for an operator of a centralised booking service granted under section 29 of the *Passenger Transport Act 1994*.
- (2) However, this section ceases to apply to a person referred to in subsection (1) if any of the following occurs:
 - (a) the person becomes a prohibited person;
 - (b) a working with children check is conducted in relation to the person;
 - (c) the person's accreditation expires or is revoked for any reason.
- (3) The following provisions of the *Child Safety (Prohibited Persons) Act 2016* do not apply to, or in relation to, a person to whom this section applies:
 - (a) section 16;
 - (b) section 17;
 - (c) section 18.
- (4) The central assessment unit may issue a unique identifier under section 29 of the *Child Safety (Prohibited Persons) Act 2016* to each person to whom this section applies (being a person to whom a unique identifier has not previously been issued under that Act).

17—Evidentiary provision

- (1) In any proceedings under the *Child Safety (Prohibited Persons) Act 2016*, a document issued by an authorised screening unit and purporting to be a child-related employment screening letter or a child-related employment screening-cleared letter, or a certificate issued by the authorised screening unit in accordance with regulation 8A of the *Children's Protection Regulations 2010*, and stating that an assessment of relevant history had been conducted in relation to a specified person on a specified date will, in the absence of evidence to the contrary, be taken to be proof of the matters so stated.
- (2) In proceedings for an offence against the *Child Safety (Prohibited Persons) Act 2016*, an allegation in an information that an assessment of relevant history relating to a specified person had, or had not, been conducted on a specified day or within a specified period must be accepted as proved in the absence of evidence to the contrary.

Part 3—Transitional provisions relating to *Children and Young People (Oversight and Advocacy Bodies) Act 2016*

18—Interpretation

Unless the contrary intention appears, a term or phrase used in this Part that is defined in the *Children and Young People (Oversight and Advocacy Bodies) Act 2016* has the same meaning as in that Act.

19—Expiry of Part

This Part will expire on the day that the transitional period ends.

20—Continuation of members of Child Death and Serious Injury Review Committee

- (1) Subject to the *Children and Young People (Oversight and Advocacy Bodies) Act 2016*, the appointment of a member of the Child Death and Serious Injury Review Committee under the *Children's Protection Act 1993* holding office immediately before the commencement of this section will continue for the remainder of their term of office (and the appointment will, for the purposes of the *Children and Young People (Oversight and Advocacy Bodies) Act 2016*, be taken to be an appointment by the Minister under section 30 of that Act).
- (2) An appointment continued under this section will be taken to be subject to any terms, conditions or limitations applicable to the appointment immediately before the commencement of this section.

21—Continuation of chair as presiding member

The member of the Child Death and Serious Injury Review Committee who was, immediately before the commencement of this section, the chair of the Committee will continue as the presiding member of the Committee (and will, for the purposes of the *Children and Young People (Oversight and Advocacy Bodies) Act 2016*, be taken to have been appointed by the Minister under section 32 of that Act).

Part 4—Transitional provisions relating to *Children and Young People (Safety) Act 2017*

22—Interpretation

- (1) Subject to this Part, and unless the contrary intention appears, a term or phrase used in this Part that is defined in the *Children and Young People (Safety) Act 2017* has the same meaning as in that Act.
- (2) In this Part—
repealed Act means the *Children's Protection Act 1993*.

23—References to working with children checks and the *Child Safety (Prohibited Persons) Act 2016* etc

- (1) For the purposes of the *Children and Young People (Safety) Act 2017*, a reference in that Act to a **working with children check** will be taken to include a reference to an assessment of relevant history.
- (2) For the purposes of section 72(3)(b)(i) of the *Children and Young People (Safety) Act 2017*, a reference in that subparagraph to having regard to the operation of the *Child Safety (Prohibited Persons) Act 2016* will, to the extent that it includes having regard to the working with children check scheme, will be taken to include a reference to having regard to the operation of sections 8B and 8BA of the *Children's Protection Act 1993* (as in force immediately before the commencement of this section).
- (3) For the purposes of paragraph (b) of the definition of **prescribed organisation** in section 114(7) of the *Children and Young People (Safety) Act 2017*, a reference in that paragraph to persons or bodies who provide a service or undertake an activity that constitutes child-related work under the *Child Safety (Prohibited Persons) Act 2016* will be taken to include a reference to organisations to which section 8C of the *Children's Protection Act 1993* applied immediately before the commencement of this section.

23A—Certain placements to continue as placements under *Children and Young People (Safety) Act 2017*

A placement of a child or young person by the Minister under the repealed Act will be taken to continue in effect as if the child or young person were so placed by the Chief Executive under section 77 or 84 of the *Children and Young People (Safety) Act 2017* (as the case requires) (and the placement will, for the purposes of that Act, be taken to be a placement under the relevant section).

24—Chief Executive to be guardian of certain children and young people

- (1) This section applies to a child or young person who was, immediately before the commencement of this section, under the guardianship of the Minister pursuant to an order of the Court under the repealed Act.
- (2) On the commencement of this section a child or young person to whom this section applies will, by force of this subsection, be taken to be under the guardianship of the Chief Executive.

- (3) A placement of a child or young person to whom this section applies pursuant to the repealed Act will be taken to continue in effect as if the child or young person were so placed by the Chief Executive under section 84 of the *Children and Young People (Safety) Act 2017* (and the placement will, for the purposes of that Act, be taken to be a placement under that section).
- (4) On the commencement of this section, a reference in any order or other document or instrument to the Minister in the Minister's capacity as guardian of a child or young person to whom this section applies will be taken to be a reference to the Chief Executive in that capacity.

25—Chief Executive to have custody of certain children and young people

- (1) This section applies to a child or young person who was, immediately before the commencement of this section, in the custody of the Minister pursuant to an order of the Court under the repealed Act.
- (2) Subject to this section, on the commencement of this section a child or young person to whom this section applies will, by force of this subsection, be taken to be in the custody of the Chief Executive.
- (3) A placement of a child or young person to whom this section applies pursuant to the repealed Act will be taken to continue in effect as if the child or young person were so placed by the Chief Executive under section 84 the *Children and Young People (Safety) Act 2017* (and the placement will, for the purposes of that Act, be taken to be a placement under that section).
- (4) On the commencement of this section, a reference in any order or other document or instrument to the Minister in the Minister's capacity as custodian of a child or young person to whom this section applies will be taken to be a reference to the Chief Executive in that capacity.

26—Continuation of voluntary custody agreements

- (1) Subject to this section and the *Children and Young People (Safety) Act 2017*, a voluntary custody agreement under section 9 of the repealed Act in force immediately before the commencement of this section will continue in accordance with its terms (and the agreement will, for the purposes of the *Children and Young People (Safety) Act 2017*, be taken to be a voluntary custody agreement under section 96 of that Act).
- (2) A reference in a voluntary custody agreement continued under this section to the Minister will be taken to be a reference to the Chief Executive.

26A—Certain proceedings continued as proceedings under *Children and Young People (Safety) Act 2017*

Despite a provision of any other Act or law, proceedings under the repealed Act commenced, but not finally determined, in the Youth Court of South Australia before 22 October 2018 will continue and will, for all purposes, be taken to be proceedings commenced under Chapter 6 of the *Children and Young People (Safety) Act 2017*.

27—Continuation of approved foster parents as approved carers

- (1) Subject to this section, a person who was, immediately before the commencement of this section, an approved foster parent under section 43 of the *Family and Community Services Act 1972* will be taken to be an approved carer under the *Children and Young People (Safety) Act 2017* (and the approval of the person will be taken to have been granted under section 72 of that Act).
- (2) A permission of the Chief Executive Officer under section 43(3) of the *Family and Community Services Act 1972* relating to the number of foster children that a foster parent referred to in subsection (1) is permitted to have in their care will be taken to continue to apply to the approved carer according to its terms.
- (3) The approval of a person as an approved carer under subsection (1) will, subject to the *Children and Young People (Safety) Act 2017*, be taken to be subject to the same conditions applying to the person's approval immediately before the commencement of this section.

28—Continuation of licensed foster care agencies

- (1) A licence of a person as a foster care agency granted under section 48 of the *Family and Community Services Act 1972* and in force immediately before the commencement of this section—
 - (a) will, subject to the *Children and Young People (Safety) Act 2017*, continue in force as a licence to carry on a foster care agency under that Act; and
 - (b) will be taken to have been granted under section 99 of that Act.
- (2) A licence continued under subsection (1) will, subject to the *Children and Young People (Safety) Act 2017*, be taken to be subject to the same conditions applying to the licence immediately before the commencement of this section.
- (3) A record that was, pursuant to section 50 of the *Family and Community Services Act 1972*, required to be kept by the holder of a licence continued under subsection (1) will, for the purposes of section 101(2) of the *Children and Young People (Safety) Act 2017*, be taken to be records required to be kept under that subsection.

29—Continuation of licence to maintain children's residential facilities

- (1) A licence to maintain a children's residential facility granted under section 51 of the *Family and Community Services Act 1972* (being a licence in force immediately before the commencement of this section)—
 - (a) will, subject to the *Children and Young People (Safety) Act 2017*, continue in force as a licence to operate a children's residential facility under that Act; and
 - (b) will be taken to have been granted under section 105 of that Act.
- (2) A licence continued under subsection (1) will, subject to the *Children and Young People (Safety) Act 2017*, be taken to be subject to the same conditions applying to the licence immediately before the commencement of this section.
- (3) A register that was, pursuant to section 53 of the *Family and Community Services Act 1972*, required to be kept by the holder of a licence continued under subsection (1) will, for the purposes of section 108(2) of the *Children and Young People (Safety) Act 2017*, be taken to be a record required to be kept under that subsection.

30—Notifications of abuse or neglect and investigations etc under repealed Act to continue

- (1) A notification made under section 11 of the repealed Act that a person suspects that a child has been or is being abused or neglected will, for the purposes of the *Children and Young People (Safety) Act 2017*, be taken to be a report made by the person under section 31 of that Act.
- (2) An investigation under section 19 of the repealed Act that was commenced but not completed before the commencement of this section will be taken to continue as an investigation of the relevant kind under Chapter 5 Part 2 of the *Children and Young People (Safety) Act 2017* (and, to avoid doubt, the Chief Executive may exercise the powers of investigation or direction under that Part accordingly).

31—Continuation of family care meetings under repealed Act

- (1) Subject to this section, a family care meeting convened under Part 5 of the repealed Act before the commencement of this section will continue as a family group conference convened under Chapter 4 Part 2 of the *Children and Young People (Safety) Act 2017*.
- (2) A family group conference as continued under this section will, subject to the *Children and Young People (Safety) Act 2017*, consist of the same persons as the original family care meeting.
- (3) The procedures applicable to a family care meeting continued under this section will, subject to the *Children and Young People (Safety) Act 2017*, be taken to apply to the family group conference.

31A—Certain orders under section 38 of repealed Act to continue as orders under *Children and Young People (Safety) Act 2017*

An order of the Court under section 38 of the repealed Act in force immediately before the commencement of this section (not being an order referred to in section 32(1) of this Act) will be taken to continue in accordance with its terms and will, for the purposes of the *Children and Young People (Safety) Act 2017*, be taken to be an order under section 53 of that Act.

31B—Certain orders under repealed Act to continue as interim orders under *Children and Young People (Safety) Act 2017*

The following orders of the Court under the repealed Act in force immediately before the commencement of this section will be taken to continue in accordance with their terms and will, for the purposes of the *Children and Young People (Safety) Act 2017*, be taken to be interim orders made by the Court under section 53 of that Act:

- (a) an order referred to in section 39(2)(b) of the repealed Act;
- (b) an order made under section 21(1) of the repealed Act.

32—Orders relating to access to child or young person to continue as determination of Chief Executive

- (1) An order of the Court under section 38 of the repealed Act in force immediately before the commencement of this section (being an order relating to access to a specified child (however described)) is, by force of this section, revoked.

- (2) The Chief Executive will, in respect of each child or young person to whom an order revoked under subsection (1) relates, be taken to have made a determination under section 93 of the *Children and Young People (Safety) Act 2017* in such terms as to give continuing effect to the terms of the revoked order (and the determination will, for the purposes of that Act, be taken to be a determination under section 93 of that Act).

33—Continuation of certain delegations under *Family and Community Services Act 1972*

- (1) A delegation by the Minister or the Chief Executive under section 8 of the *Family and Community Services Act 1972* relating to a matter that is the subject of the *Children and Young People (Safety) Act 2017* and that is in force immediately before the commencement of this section will, subject to the *Children and Young People (Safety) Act 2017*, continue in accordance with its terms (and will, for the purposes of the *Children and Young People (Safety) Act 2017*, be taken to be a delegation by the Minister or Chief Executive (as the case requires) of the relevant powers under section 146 of that Act).
- (2) A delegation by the Minister under section 80 of the *Family and Community Services Act 1972* in force immediately before the commencement of this section will, subject to the *Children and Young People (Safety) Act 2017*, continue in accordance with its terms (and will, for the purposes of the *Children and Young People (Safety) Act 2017*, be taken to be a delegation by the Chief Executive of the relevant powers under section 76 of that Act).

34—References to Families SA

On the commencement of this section, a reference in any Act, or any order or other instrument or document, to Families SA will, for all purposes, be taken to be a reference to the Department.

35—Application of Chapter 7 Part 8 of *Children and Young People (Safety) Act 2017* to certain children and young people

For the purposes of Chapter 7 Part 8 of the *Children and Young People (Safety) Act 2017*, a child or young person whose guardianship or custody arrangements are continued under this Part will be taken to be a child or young person placed in the guardianship or custody of a person under that Act.

36—Certain policies and procedures taken to satisfy Chapter 8 of *Children and Young People (Safety) Act 2017*

- (1) This section applies to in relation to prescribed policies and procedures of an organisation to which section 8C of the repealed Act applied immediately before the commencement of this section.
- (2) The prescribed policies and procedures of an organisation to which section 8C of the repealed Act applied immediately before the commencement of this section will, for the purposes of Chapter 8 of the *Children and Young People (Safety) Act 2017*, be taken to be a policy or policies prepared or adopted by the organisation in accordance with section 114(1) of that Act.

- (3) An organisation to which section 8C of the repealed Act applied immediately before the commencement of this section (being an organisation that has complied with the requirements under section 8C(3) of the repealed Act) will, for the purposes of Chapter 8 of the *Children and Young People (Safety) Act 2017*, be taken to have complied with the requirements of section 114(3) of that Act.
- (4) In this section—
- prescribed policies and procedures* means policies and procedures put in place by an organisation in accordance with section 8C of the repealed Act and in force immediately before the commencement of this section.

37—Certain persons the subject of interim registration taken to be approved carers under *Children and Young People (Safety) Act 2017*

- (1) This section applies to a person who was, immediately before the commencement of this section—
- (a) caring for a child or young person who is under the guardianship or in the custody of the Minister (whether under an order of the Court, a voluntary custody agreement under section 9 of the *Children's Protection Act 1993* or any other provision of that Act or any other Act); and
 - (b) the subject of a provisional or initial registration by the Department, or an approval for temporary placement granted by the Department, in relation to the care of children.
- (2) A person to whom this section applies will, for the purposes of the *Children and Young People (Safety) Act 2017*, be taken to be approved as an approved carer under section 72 of that Act.
- (3) It is a condition of each approval under this section that the person comply with any directions of the Chief Executive relating to the care of a specified child or young person (including, to avoid doubt, a direction requiring the person to submit to a working with children check).
- (4) The Chief Executive may, by notice in writing, impose such conditions on an approval under this section as the Chief Executive thinks fit.
- (5) The Chief Executive may, by notice in writing, vary or revoke a condition of an approval under this section.
- (6) An approval under this section will remain in force until—
- (a) the end of the transitional period; or
 - (b) the approval is cancelled under subsection (7),
- whichever occurs first.
- (7) However, the approval of a person under this section is, by force of this section, cancelled if—
- (a) the person becomes a prohibited person; or
 - (b) the approval of the person as an approved carer is cancelled under section 74 of the *Children and Young People (Safety) Act 2017*; or
 - (c) the person refuses or fails to comply with a direction under subsection (3); or

- (d) the person contravenes a condition under subsection (4).
- (8) For the purposes of this section, a reference to the Department will be taken to include a reference to an administrative unit of the Public Service that was, at the relevant time, assisting a Minister in the administration of the repealed Act.

38—Certain persons taken to be approved carers under *Children and Young People (Safety) Act 2017*

- (1) This section applies to a person or body, or a person or body of a class, prescribed by the Chief Executive by notice in the Gazette.
- (2) A person to whom this section applies will, for the purposes of the *Children and Young People (Safety) Act 2017*, be taken to be approved as an approved carer under section 72 of that Act.
- (3) It is a condition of each approval under this section that the person comply with any directions of the Chief Executive relating to the care of children or young people (including, to avoid doubt, a direction requiring the person to submit to a working with children check).
- (4) The Chief Executive may, by notice in writing, impose such conditions on an approval under this section as the Chief Executive thinks fit.
- (5) The Chief Executive may, by notice in writing, vary or revoke a condition of an approval under this section.
- (6) An approval under this section will remain in force until—
- (a) the end of the transitional period; or
 - (b) the approval is cancelled under subsection (7),
- whichever occurs first.
- (7) However, the approval of a person under this section is, by force of this section, cancelled if—
- (a) the person becomes a prohibited person; or
 - (b) the approval of the person as an approved carer is cancelled under section 74 of the *Children and Young People (Safety) Act 2017*; or
 - (c) the person refuses or fails to comply with a direction under subsection (3); or
 - (d) the person contravenes a condition under subsection (4).

Part 5—Amendment of *Births, Deaths and Marriages Registration Act 1996*

39—Amendment of section 25—Application to register change of child's name

Section 25—after subsection (4) insert:

- (5) This section does not apply in relation to a child during any period that section 25A applies in relation to the child.

40—Insertion of section 25A

After section 25 insert:

25A—Change of name of child under guardianship

- (1) This section applies in relation to the following children during such time as the child is under the guardianship of the Chief Executive or the relevant person or persons (as the case requires):
 - (a) a child who, pursuant to an order of the Court under the *Children and Young People (Safety) Act 2017*, is under the guardianship of the Chief Executive, or a specified person or persons, until the child attains 18 years of age;
 - (b) a child who, pursuant to orders of the Court under the *Children and Young People (Safety) Act 2017* or the repealed Act, is under the guardianship of the Chief Executive, or a specified person or persons, and has been under such guardianship for a period of at least 24 continuous months.
- (2) The Chief Executive may, by notice in writing—
 - (a) in the case of a child who is under the guardianship of the Chief Executive—on the Chief Executive's own motion; or
 - (b) in the case of a child who is under the guardianship of a person or persons pursuant to an order of the Court under the *Children and Young People (Safety) Act 2017*—on the application of the guardian or guardians (as the case requires),direct the Registrar to register a change of the name of a child in relation to whom this section applies.
- (3) Before giving a direction under subsection (2), the Chief Executive must, unless the Chief Executive is of the opinion that it is not appropriate to do so—
 - (a) ascertain, and have regard to, the views of the child (if any) in respect of the proposed change of name; and
 - (b) —
 - (i) take reasonable steps to notify the parents of the child of the proposed change of name; and
 - (ii) have regard to any submission made by a parent of the child in respect of the proposed change of name during the period specified by the Chief Executive.
- (4) The Chief Executive may only give a direction under subsection (2) if the Chief Executive is of the opinion that it is in the best interests of the child to do so.
- (5) Sections 26, 27 and 28(2) and (3) do not apply in relation to a change of name under this section.

- (6) The Registrar must, as soon as is reasonably practicable after receiving a direction under subsection (2), register the change of name under section 28(1).
- (7) Nothing in this section prevents the name of a child being later changed in accordance with the law of the State.
- (8) A person who is aggrieved by a decision of the Chief Executive under this section is entitled to a review of the decision under section 157 of the *Children and Young People (Safety) Act 2017* (and for the purposes of that section the decision will be taken to be a decision under that Act).
- (9) The regulations may make provision conferring on the South Australian Civil and Administrative Tribunal jurisdiction to deal with matters consisting of the review of a decision of the Chief Executive under this section.
- (10) In this section—

Chief Executive means the Chief Executive under the *Children and Young People (Safety) Act 2017*;

repealed Act means the *Children's Protection Act 1993*.

41—Amendment of section 38A—Notification by court appointed guardians

Section 38A(4), definition of *court appointed guardian*—delete "a Minister) to whom guardianship of another person is given by the Youth Court of South Australia under section 38(1)(d) of the *Children's Protection Act 1993*" and substitute:

the Chief Executive) under the *Children and Young People (Safety) Act 2017*

Part 6—Amendment of *Carers Recognition Act 2005*

42—Amendment of section 5—Meaning of carer

Section 5(3)(b)—after "*Children's Protection Act 1993*" insert:

, the *Children and Young People (Safety) Act 2017*

Part 7—Amendment of *Child Safety (Prohibited Persons) Act 2016*

43—Amendment of section 5—Interpretation

(2) Section 5(1), definition of *prescribed offence*—after paragraph (f) insert:

- (fa) an offence against a following provision of the *Criminal Code* of the Commonwealth (offences committed overseas involving child pornography material or child abuse material):
 - (i) section 273.5;
 - (ii) section 273.6;
 - (iii) section 273.7; or

- (fb) an offence against section 233BAB of the *Customs Act 1901* of the Commonwealth where the tier 2 goods to which the offence relates consist of or include items of child pornography (within the meaning of that section); or

44—Amendment of section 8—Meaning of assessable information

- (1) Section 8(1)—after paragraph (f) insert:
 - (fa) information that relates to the cancellation of an approval of an approved carer under the *Children and Young People (Safety) Act 2017*;
- (2) Section 8(1)—after paragraph (g) insert:
 - (ga) information that relates to a notification made pursuant to Chapter 5 Part 1 of the *Children and Young People (Safety) Act 2017*;
- (3) Section 8(1)(h)—delete "the *Children's Protection Act 1993*) held by the administrative unit of the Public Service that is responsible for assisting a Minister in the administration of the *Children's Protection Act 1993* and that relates to the possible abuse or neglect of a child" and substitute:

the *Children's Protection Act 1993* or the *Children and Young People (Safety) Act 2017*) held by an administrative unit of the Public Service that is responsible for assisting a Minister in the administration of the *Children and Young People (Safety) Act 2017* and that relates to harm caused, or a risk of harm, to a child

Part 8—Amendment of *Child Sex Offenders Registration Act 2006*

45—Amendment of Schedule 1—Class 1 and 2 offences

- (1) Schedule 1 clause 3—after paragraph (j) insert:
 - (ja) an offence against section 69 of the *Criminal Law Consolidation Act 1935* (bestiality);
- (2) Schedule 1 clause 3—after paragraph (sb) insert:
 - (sba) an offence against section 273.5 of the *Criminal Code* of the Commonwealth;
 - (sbb) an offence against section 273.6 of the *Criminal Code* of the Commonwealth;
 - (sbc) an offence against section 273.7 of the *Criminal Code* of the Commonwealth;
- (3) Schedule 1 clause 3—after paragraph (z) insert:
 - (zaa) an offence against section 233BAB of the *Customs Act 1901* of the Commonwealth where the tier 2 goods to which the offence relates consist of or include items of child pornography (within the meaning of that section);

Part 9—Amendment of *Children and Young People (Oversight and Advocacy Bodies) Act 2016*

46—Insertion of section 13A

After section 13 insert:

13A—Reporting obligations

- (1) The Commissioner must, on or before 31 October in each year, report to the Minister on the performance of the Commissioner's functions during the preceding financial year.
- (2) The Minister must, within 6 sitting days after receiving a report from the Commissioner, have copies of the report laid before both Houses of Parliament.

47—Amendment of section 26—Functions and powers of Guardian

- (1) Section 26(1)(a)—delete "Minister" and substitute:
Chief Executive
- (2) Section 26(1)(b)—delete "Minister" and substitute:
Chief Executive
- (3) Section 26(1)(c)—delete "Minister" and substitute:
Chief Executive
- (4) Section 26(1)(d)—delete "Minister" second occurring and substitute:
Chief Executive
- (5) Section 26(2)(b)—delete "Minister" and substitute:
Chief Executive
- (6) Section 26(4)—delete "Minister's" and substitute:
Chief Executive's
- (7) Section 26(4)—after the definition of *alternative care* insert:
Chief Executive means the Chief Executive within the meaning of the *Children and Young People (Safety) Act 2017*.

48—Amendment of section 37—Functions of the Committee

Section 37(3)(d)—delete "Minister" and substitute:

Chief Executive (within the meaning of the *Children and Young People (Safety) Act 2017*)

Part 10—Amendment of *Children and Young People (Safety) Act 2017*

49—Amendment of section 28—Chief Executive to prepare case plan in respect of certain children and young people

Section 28(5), definition of *prescribed child or young person*, (b)—after "Act" insert:

(other than a child or young person in relation to whom an order contemplated by section 91 placing the child or young person into the long-term guardianship of a person has been made)

50—Amendment of section 32—Chief Executive must assess and take action on each report indicating child or young person may be at risk

Section 32—after subsection (4) insert:

- (5) The regulations may make further provision in relation to an assessment under this section (including provisions relating to a system referred to in subsection (2) and the disclosure and confidentiality of information gathered, collated or provided under the system).

51—Amendment of section 33—Chief Executive may refer matter

Section 33(5)—delete subsection (5)

52—Amendment of section 53—Orders that can be made by Court

Section 53—after subsection (1) insert:

- (1a) Without limiting the orders that can be made under subsection (1), the Court may make an order placing a child or young person under the guardianship of a specified parent of the child or young person.

Note—

Such an order would confer guardianship on the specified parent to the exclusion of the rights of any other parent of the child or young person—see section 68.

- (1b) Without limiting the orders that can be made under subsection (1), the Court may, if the Court makes an order placing a child or young person under the guardianship of the Chief Executive or a specified person or persons—
- (a) until the child or young person attains 18 years of age; or
- (b) such that the child or young person has been under the guardianship of the Chief Executive, or the person or persons, for a period of at least 24 continuous months,
- make a declaration of the name by which the child or young person is to be known.

- (1c) However, the Court may only make a declaration under subsection (1b) if the Court is satisfied that it is in the best interests of the child or young person to do so.
- (1d) If the Court makes a declaration under subsection (1b)—
 - (a) the Registrar of the Court must give notice of the declaration to the Registrar of Births, Deaths and Marriages in accordance with any requirements in the regulations; and
 - (b) the Registrar of Births, Deaths and Marriages must, as soon as is reasonably practicable after receiving the notice, register the change of name under section 28(1) of the *Births, Deaths and Marriages Registration Act 1996*.
- (1e) Sections 26, 27 and 28(2) and (3) of the *Births, Deaths and Marriages Registration Act 1996* do not apply in relation to a change of name under this section.
- (1f) Nothing in this section prevents the name of a child or young person being later changed in accordance with the law of the State.

53—Amendment of section 90—Long-term care plan to be prepared

Section 90(3)—delete subsection (3) and substitute:

- (3) The Chief Executive must cause a copy of a long-term care plan to be provided to the Court in any application contemplated by section 91.

54—Amendment of section 103—Interpretation

- (1) Section 103, definition of *children's residential facility*, (d)—delete "a training" and substitute:
 - other
- (2) Section 103, definition of *children's residential facility*—after paragraph (d) insert:
 - (da) a training centre established under the *Youth Justice Administration Act 2016*; or

55—Insertion of Chapter 7 Part 7A

After section 110 insert:

Part 7A—Assessment of employees in other residential facilities

110A—Persons not to be employed in certain residential facilities established under *Family and Community Services Act 1972*

- (1) A person must not be employed in a residential facility established by the Minister under section 36 of the *Family and Community Services Act 1972* unless the person has undergone a psychological or psychometric assessment of a kind determined by the Chief Executive for the purposes of this section.

- (2) However, subsection (1) does not apply to the employment of a person or a person of a class, or the employment of a person in circumstances, prescribed by the regulations for the purposes of this subsection.
- (3) A person who is employed in a residential facility in contravention of subsection (1) is guilty of an offence.

Maximum penalty:

- (a) for a first or second offence—\$20 000;
- (b) for a third or subsequent offence—\$50 000 or imprisonment for 1 year.
- (4) A person who employs, or continues to employ, a person in a residential facility in contravention of subsection (1) is guilty of an offence.

Maximum penalty:

- (a) in the case of a natural person—\$50 000 or imprisonment for 1 year; or
- (b) in the case of a body corporate—\$120 000.
- (5) For the purposes of this section, a reference to a person being *employed* will be taken to include a reference to a person who—
- (a) is a self-employed person; or
- (b) carries out work under a contract for services; or
- (c) carries out work as a minister of religion or as part of the duties of a religious or spiritual vocation; or
- (d) undertakes practical training as part of an educational or vocational course; or
- (e) carries out work as a volunteer; or
- (f) performs unpaid community work in accordance with an order of a court,

and a reference to *employ* is to be construed accordingly.

56—Insertion of section 112A

Before section 113 insert:

112A—Chief Executive may provide assistance to persons caring for children and young people

The Chief Executive may grant to an approved carer or other person in whose care a child or young person has been placed under this Act or the *Family Relationships Act 1975* such financial or other assistance in relation to the care and maintenance of the child or young person as may be determined by the Chief Executive.

57—Amendment of section 163—Protection of identity of persons who report to or notify Department

- (1) Section 163(1)—delete ", in the course of the administration, operation or enforcement of this Act,"
- (2) Section 163(1)—after paragraph (a) insert:
 - (ab) is required or authorised by the Chief Executive or under this Act; or

58—Insertion of section 166A

After section 166 insert:

166A—Limitation on tortious liability for acts of certain children and young people

No liability in tort attaches to the Crown, the Minister, the Chief Executive or any employee of the Department in respect of an act or omission of a child or young person under the guardianship of the Chief Executive, or of whom the Chief Executive has custody under any Act, unless the act or omission occurs while the child or young person—

- (a) is acting as the servant or agent of the Chief Executive or employee of the Department; and
- (b) is acting within the scope of such employment or authority.

59—Amendment of section 170—Regulations

Section 170(3)—after paragraph (c) insert:

and

- (ca) make provisions of a saving or transitional nature consequent on the commencement of the *Child Safety (Prohibited Persons) Act 2016*; and

60—Amendment of Schedule 1—Repeal and related amendment

Schedule 1 Part 2—delete Part 2 and substitute:

Part 2—Amendment and repeal of *Children's Protection Act 1993*

2—Amendment of *Children's Protection Act 1993*

The following provisions of the *Children's Protection Act 1993* are repealed:

- (a) sections 3, 5 and 7;
- (b) Part 2 Division 1 and 2;
- (c) Parts 3 to 8 (inclusive);
- (d) sections 56 to 61 (inclusive);
- (e) Schedule 1.

2A—Repeal of *Children's Protection Act 1993*

The *Children's Protection Act 1993* is repealed—

- (a) on a day to be fixed by proclamation; or
- (b) on the day on which the transitional period (within the meaning of section 4 of the *Children's Protection Law Reform (Transitional Arrangements and Related Amendments) Act 2017*) expires,

whichever is the sooner.

Part 11—Amendment of *Coroners Act 2003*

61—Amendment of section 3—Interpretation

Section 3(1), definition of *reportable death*(f)(ii)—delete "under the *Children's Protection Act 1993*" and substitute:

or Chief Executive under the *Children and Young People (Safety) Act 2017*

Part 12—Amendment of *Criminal Law Consolidation Act 1935*

62—Amendment of section 5—Interpretation

Section 5(1)—after the definition *aggravated offence* insert:

approved carer, of a child, means an approved carer (within the meaning of the *Children and Young People (Safety) Act 2017*) in whose care the child has been placed under that Act;

63—Amendment of section 49—Unlawful sexual intercourse

Section 49(5a)(b)—after "foster parent," insert:

approved carer,

64—Amendment of section 50—Persistent sexual exploitation of a child

Section 50(8)(b)—after "foster parent," insert:

approved carer,

65—Amendment of section 57—Consent no defence in certain cases

Section 57(4)(b)—after "foster parent," insert:

approved carer,

66—Amendment of section 63B—Procuring child to commit indecent act etc

Section 63B(6)(b)—after "foster parent," insert:

approved carer,

Part 13—Amendment of *Education and Early Childhood Services (Registration and Standards) Act 2011*

67—Amendment of section 3—Interpretation

- (1) Section 3(1)—after the definition of *proceedings before the Board* insert:

prohibited person means a prohibited person under the *Child Safety (Prohibited Persons) Act 2016*;

- (2) Section 3(1)—after the definition of *trustee services provider* insert:

working with children check means a working with children check under the *Child Safety (Prohibited Persons) Act 2016*.

68—Amendment of section 13—Meaning of certain terms in *Education and Care Services National Law (South Australia)* for the purposes of this jurisdiction

- (1) Section 13(1)—after paragraph (c) insert:

(ca) the *Children and Young People (Safety) Act 2017*; and

- (2) Section 13(10)—delete "*Children's Protection Act 1993*" and substitute:

Child Safety (Prohibited Persons) Act 2016

69—Insertion of section 13A

After section 13 insert:

13A—Working with children checks

A reference to an *authorised person* in section 170 of the *Education and Care Services National Law (South Australia)* will be taken to include a reference to a person—

- (a) in respect of whom a working with children check has been conducted under the *Child Safety (Prohibited Persons) Act 2016* within the preceding 5 years; and
- (b) who is not a prohibited person (within the meaning of that Act).

70—Amendment of section 22—Composition of Board

Section 22—after subsection (2) insert:

- (2a) A person is not eligible to be appointed to the Board unless a working with children check has been conducted in relation to the member within the preceding 5 years.

71—Amendment section 23—Conditions of membership

- (1) Section 23(3)—after paragraph (a) insert:

- (ab) if a working with children check has not been conducted in relation to the member within the preceding 5 years; or

(2) Section 23(4)—after paragraph (c) insert:

- (ca) becomes a prohibited person (including where the member becomes a prohibited person by force of section 15 of the *Child Safety (Prohibited Persons) Act 2016* on the day that section comes into operation); or

72—Amendment of section 27—Registrars of Board

Section 27—after subsection (2) insert:

- (2a) A person is not eligible to be appointed as a Registrar unless a working with children check has been conducted in relation to the person within the preceding 5 years.

73—Amendment of section 28—Staff of Board

Section 28—after subsection (1) insert:

- (1a) A person is not eligible to be assigned to assist the Board, or employed by the Board, unless a working with children check has been conducted in relation to the person within the preceding 5 years.

Part 14—Amendment of *Family and Community Services Act 1972*

74—Amendment of section 6—Interpretation

- (1) Section 6(1), definition of *authorised officer*—delete the definition
- (2) Section 6(1), definition of *Chief Executive Officer*—delete "Officer" wherever occurring
- (3) Section 6(1), definition of *children's residential facility*—delete the definition
- (4) Section 6(1), definition of *foster care agency*—delete the definition
- (5) Section 6(1), definition of *foster parent*—delete the definition
- (6) Section 6(1), definition of *guardian*—delete "Officer"
- (7) Section 6(1), definition of *Minister*—delete the definition
- (8) Section 6(1), definition of *Youth Court*—delete the definition
- (9) Section 6(5)—delete "Officer"

75—Amendment of section 8—Delegation

Section 8—delete "Officer" wherever occurring

76—Repeal of Part 2 Division 3

Part 2 Division 3—delete Division 3

77—Repeal of Part 2 Division 5

Part 2 Division 5—delete Division 5

78—Amendment of section 23—Special welfare funds

- (1) Section 23(4)(b)—delete "a foster care service for children" and substitute:
an out of home care service for children and young people (within the meaning of the *Children and Young People (Safety) Act 2017*)
- (2) Section 23(4)(c)—delete "residential, foster or similar care apart from their guardians and relatives" and substitute:
out of home care (within the meaning of the *Children and Young People (Safety) Act 2017*)

79—Amendment of section 36—Establishment of facilities and programmes for children

Section 36(2)—delete "Officer"

80—Repeal of Part 4 Division 2 Subdivision 3

Part 4 Division 2 Subdivision 3—delete Subdivision 3

81—Repeal of Part 4 Division 2 Subdivision 4

Part 4 Division 2 Subdivision 4—delete Subdivision 4

82—Repeal of Part 4 Division 2 Subdivision 8

Part 4 Division 2 Subdivision 8—delete Subdivision 8

83—Amendment of section 98—Liability of near relatives for maintenance of child

Section 98(1)—after "Minister" insert:
or the Chief Executive under the *Children and Young People (Safety) Act 2017*

84—Amendment of section 99—Issue of summons for maintenance

Section 99(2)—after "Minister" first occurring insert:
or the Chief Executive under the *Children and Young People (Safety) Act 2017*

85—Amendment of section 104—Order for payment of preliminary expenses

Section 104(1)—delete "Officer"

86—Amendment of section 105—Where order made during pregnancy

Section 105(1)(b)—delete "Officer"

87—Amendment of section 111—Power of Chief Executive to accept settlement in full

Section 111—delete "Officer" wherever occurring

88—Amendment of section 117—Order for payment of medical and like expenses

Section 117(1)—delete "Officer"

89—Amendment of section 142—Evidentiary provision

Section 142—after paragraph (e) insert:

or

- (f) that a child is under the guardianship of the Chief Executive under the *Children and Young People (Safety) Act 2017* pursuant to an order under that or any other Act,

90—Amendment of section 145—Variation of order against near relative of child

Section 145(1)—delete "Officer"

91—Amendment of section 151—Orders may direct mode of payment

Section 151(a)—delete "Officer"

92—Amendment of section 156—Order for delivery of attached property

Section 156(1)—delete "Officer"

93—Amendment of section 158—Liability of persons contravening order

Section 158—delete "Officer"

94—Amendment of section 159—Collection by police of money due to Chief Executive

Section 159—delete "Officer" wherever occurring

95—Amendment of section 160—Caveats

Section 160—delete "Officer" wherever occurring

96—Amendment of section 161—Warrant to enforce payments under orders

Section 161—delete "Officer" wherever occurring

97—Amendment of section 163—Sale under warrant

Section 163—delete "Officer"

98—Amendment of section 164—Assurances to purchaser

Section 164(1)—delete "Officer"

99—Amendment of section 165—Issue of warrant without previous demand

Section 165(3)—delete "Officer"

100—Amendment of section 166—Effect of payment under warrant

Section 166—delete "Officer"

101—Amendment of section 176—Application for attachment of earnings order

Section 176(9)(c)—delete "Officer"

102—Amendment of section 177—Employer to make payments under order

Section 177—delete "Officer" wherever occurring

103—Amendment of section 179—Discharge, suspension or variation of order

Section 179(2)(c)—delete "Officer"

104—Amendment of section 180—Cessation of attachment of earnings order

Section 180(3)—delete "Officer"

105—Amendment of section 183—Notice to defendants of payments made

Section 183(2)—delete "Officer"

106—Amendment of section 189—Payments by Crown etc

Section 189(2)—delete "officer"

107—Amendment of section 195—Proof of payment or non-payment under maintenance order

Section 195—delete "Officer" wherever occurring

108—Amendment of section 197—Collector of Maintenance, Deputy Collector of Maintenance and Assistant Collectors of Maintenance

Section 197(1)(a)—delete "Officer"

109—Repeal of section 236

Section 236—delete the section

110—Amendment of section 236A—Hindering a person in execution of duty

Section 236A—delete "Officer, an authorised officer"

111—Amendment of section 240—Evidentiary provision

Section 240(1)—delete "Officer" wherever occurring

112—Amendment of section 242—Chief Executive may require report

Section 242(1)—delete "Officer" wherever occurring

113—Repeal of section 250

Section 250—delete the section

114—Repeal of section 250A

Section 250A—delete the section

115—Amendment of section 251—Regulations

- (1) Section 251(i)—delete "of the Minister or the Chief Executive Officer or of whom the Minister has custody under any Act" and substitute:

or in the custody of the Minister or the Chief Executive, or the Chief Executive under the *Children and Young People (Safety) Act 2017*, pursuant to an order under that or any other Act;
- (2) Section 251(k)—delete paragraph (k)
- (3) Section 251(k1)—delete paragraph (k1)

Part 15—Amendment of *Intervention Orders (Prevention of Abuse) Act 2009*

116—Amendment of section 3—Interpretation

Section 3(1), definition of *Children's Protection Act order*—delete the definition and substitute:

State child protection order means an order made under the *Children's Protection Act 1993* or the *Children and Young People (Safety) Act 2017*;

117—Amendment of section 10—Principles for intervention against abuse

- (1) Section 10(2)(a)—delete "Children's Protection Act order" and substitute:

State child protection order
- (2) Section 10(2)(b)—delete "Children's Protection Act order" and substitute:

State child protection order

118—Amendment of section 16—Inconsistent Family Law Act or State child protection orders

Section 16(2)—delete subsection (2) and substitute:

- (2) An intervention order prevails over a State child protection order (being an order under section 38 of the *Children's Protection Act 1993* or a corresponding order made under the section 53 of the *Children and Young People (Safety) Act 2017*) to the extent of any inconsistency (but the Youth Court may resolve the inconsistency by varying or revoking the order on application under the *Children and Young People (Safety) Act 2017*).

119—Amendment of section 20—Application to Court for intervention order

- (1) Section 20(1)(d)—delete "Children's Protection Act order under section 38 of the *Children's Protection Act 1993* in force in respect of the child—the Minister responsible for the administration of that Act" and substitute:

State child protection order in force in respect of the child—the Minister responsible for the administration of the *Children and Young People (Safety) Act 2017*

- (2) Section 20(3)—delete "Children's Protection Act order" and substitute:

State child protection order

120—Amendment of section 23—Determination of application for intervention order

Section 23(1a)—delete "Children's Protection Act order" wherever occurring and substitute in each case:

State child protection order

121—Amendment of section 26—Intervention orders

Section 26(1)(c)—delete "Children's Protection Act order under section 38 of the *Children's Protection Act 1993*" and substitute:

State child protection order (being an order under section 38 of the *Children's Protection Act 1993* or a corresponding order made under the section 53 of the *Children and Young People (Safety) Act 2017*)

Part 16—Amendment of *Mental Health Act 2009*

122—Amendment of section 86—Minister's functions

Section 86(c)—after "1993" insert:

, or of the Chief Executive under the *Children and Young People (Safety) Act 2017*

Part 17—Amendment of *Residential Tenancies Act 1995*

123—Amendment of section 89A—Termination based on domestic abuse

Section 89A(9)(b)—after "1993" insert:

or the *Children and Young People (Safety) Act 2017*

124—Amendment of section 105UA—Termination based on abuse of rooming house resident

Section 105UA(7)(b)—after "1993" insert:

or the *Children and Young People (Safety) Act 2017*

125—Amendment of section 112—Restraining orders

Section 112(1b)(b)—after "1993" insert:

or the *Children and Young People (Safety) Act 2017*

Part 18—Amendment of *Spent Convictions Act 2009*

126—Amendment of section 13—Exclusions

Section 13(4)—delete "6,"

127—Amendment of section 13A—Exclusions may not apply

- (1) Section 13A(1)—delete "6,"
- (2) Section 13A(6)(b)—delete paragraph (b)

128—Amendment of Schedule 2—Provisions relating to proceedings before a qualified magistrate

- (1) Schedule 2 clause 3(2)—delete "6 or"
- (2) Schedule 2 clause 3(3), definition of *designated Minister*, (a)—delete paragraph (a)
- (3) Schedule 2 clause 3(3), definition of *Minister for Children's Protection*—delete "the provision of criminal history assessments for the purposes of Part 2 Division 3 of the *Children's Protection Act 1993*" and substitute:

undertaking working with children checks under the *Child Safety (Prohibited Persons) Act 2016*

Part 19—Amendment of *Summary Offences Act 1953*

129—Substitution of section 66V

Section 66V—delete section 66V and substitute:

66V—Power to remove children from dangerous situations

For the purposes of section 41 of the *Children and Young People (Safety) Act 2017*, the requirements of subsection (1) of that section will be taken to be satisfied if—

- (a) a minor is in a declared public precinct; and
- (b) a police officer is of the opinion that the minor—
 - (i) is in danger of being physically harmed or injured; or
 - (ii) is in danger of abuse (including assault and sexual assault, ill treatment and exposure to behaviour that may cause psychological harm to the minor); or
 - (iii) is behaving in an offensive or disorderly manner or is otherwise committing or about to commit an offence.

Part 20—Amendment of *Summary Procedure Act 1921*

130—Amendment of section 99AAC—Child protection restraining orders

- (1) Section 99AAC(8), definition of *Chief Executive*—delete the definition and substitute:

Chief Executive has the same meaning as in the *Children and Young People (Safety) Act 2017*;

- (2) Section 99AAC(8), definition of *Minister*—delete "*Children's Protection Act 1993*" and substitute:

Children and Young People (Safety) Act 2017

131—Amendment of section 99KA—Special restrictions relating to child protection restraining order proceedings

Section 99KA(4)(b)—delete "the administrative unit of the Public Service charged with the administration of the *Children's Protection Act 1993*" and substitute:

an administrative unit of the Public Service assisting a Minister with the administration of the *Children and Young People (Safety) Act 2017*

Part 21—Amendment of *Teachers Registration and Standards Act 2004*

132—Amendment of section 3—Interpretation

- (1) Section 3—after the definition of *professional standards for teachers* insert:

prohibited person means a prohibited person under the *Child Safety (Prohibited Persons) Act 2016*;

- (2) Section 3—after the definition of *teacher regulatory authority* insert:

unique identifier, of a person, means a unique identifier issued to the person under the *Child Safety (Prohibited Persons) Act 2016*;

- (3) Section 3—after the definition of *unprofessional conduct* insert:

working with children check means a working with children check under the *Child Safety (Prohibited Persons) Act 2016*.

133—Amendment of section 9—Membership of Teachers Registration Board

Section 9—after subsection (1) insert:

- (1a) A person is not eligible to be appointed to the Teachers Registration Board unless a working with children check has been conducted in relation to the member within the preceding 5 years.

134—Amendment of section 10—Terms and conditions of membership

- (1) Section 10(5)—after paragraph (a) insert:

- (ab) if a working with children check has not been conducted in relation to the member within the preceding 5 years; or

- (2) Section 10(6)—after paragraph (c) insert:

- (ca) becomes a prohibited person (including where the member becomes a prohibited person by force of section 15 of the *Child Safety (Prohibited Persons) Act 2016* on the day that section comes into operation); or

135—Amendment of section 21—Eligibility for registration

- (1) Section 21(1)—delete "the person"

- (2) Section 21(1)(a)—before "has" insert:
the person
- (3) Section 21(1)(b)—before "has" insert:
the person
- (4) Section 21(1)(c)—delete paragraph (c) and substitute:
- (c) a working with children check has been conducted in relation to the person within the preceding 5 years; and
 - (d) the person is not a prohibited person; and
 - (e) the person is otherwise a fit and proper person to be a registered teacher.

136—Amendment of section 22—Application for registration

Section 22(2)—after paragraph (a) insert:

- (ab) provide evidence of a kind determined by the Board that a working with children check has been conducted in relation to the applicant within the preceding 5 years; and

137—Amendment of section 24—Conditions of registration

- (1) Section 24—before subsection (1) insert:
- (a1) It is a condition of every registration that a working with children check be conducted in relation to the person at least once in each 5 year period.
- (2) Section 24(2)—after paragraph (b) insert:
- and
- (c) make it a condition of every registration that if—
 - (a) the person becomes a prohibited person; or
 - (b) more than 5 years have elapsed since a working with children check has been conducted in relation to the person,the person must give written notice of that fact to the Board containing the details specified in the condition.
- (3) Section 24(3)—after "condition" first occurring insert:
(other than the condition imposed by subsection (a1))

138—Insertion of section 24A

After section 24 insert:

24A—Automatic cancellation of registration of prohibited persons

- (1) Subject to this section, the registration of a teacher is, by force of this section, cancelled if the teacher becomes a prohibited person.

- (2) The cancellation of a teacher's registration under this section has effect from the time a prohibition notice is issued to the teacher under section 32 of the *Child Safety (Prohibited Persons) Act 2016*
- (3) If the issue of the prohibition notice to the teacher is set aside by the South Australian Civil and Administrative Tribunal or any other court, the cancellation of the teacher's registration under this section will be taken to be void and of no effect (and the Teachers Registration Board must take steps as may be necessary to give effect to this subsection).

139—Amendment of section 28—Register

- (1) Section 28(2)—after paragraph (b) insert:
 - (ba) the person's unique identifier; and
 - (bb) details of the most recent working with children check conducted in relation to the person (if known); and
- (2) Section 28—after subsection (4) insert:
 - (4a) A registered person must, as soon as is reasonably practicable after a working with children check is conducted in relation to the person (but in any event within 7 days), inform the Registrar in writing of that fact, and provide such details relating to the working with children check as the Registrar may require.

140—Amendment of section 30—Special authority for unregistered person to teach

- (1) Section 30—after subsection (1) insert:
 - (1a) It is a condition of every special authority that a working with children check be conducted in relation to the person at least once in each 5 year period.
- (2) Section 30(2)—delete subsection (2) and substitute:
 - (2) Without otherwise limiting the discretion of the Board under subsection (1), the Teachers Registration Board may only grant a person a special authority if—
 - (a) the person is not a prohibited person under the *Child Safety (Prohibited Persons) Act 2016*; and
 - (b) a working with children check has been conducted in relation to the person within the preceding 5 years; and
 - (c) the person consents to the conduct by the Board of a criminal record check relating to the person; and
 - (d) the person has met any other requirements prescribed by regulation for the purposes of this subsection.

- (3) Section 30(3)—after paragraph (a) insert:
- (ab) be accompanied by evidence of a kind determined by the Board that a working with children check has been conducted in relation to the person within the preceding 5 years; and
- (4) Section 30(3)(b)—delete "fee fixed by regulation" and substitute:
prescribed fee
- (5) Section 30—after subsection (3) insert:
- (4) An applicant for a special authority must pay, in addition to the prescribed fee, an amount specified by the Teachers Registration Board, being an amount payable by the Board for the conduct by the Board of a criminal record check relating to the applicant.

141—Amendment of section 31—Register

- (1) Section 31(2)—after paragraph (b) insert:
- (ba) the person's unique identifier; and
 - (bb) details of the most recent working with children check conducted in relation to the person (if known); and
- (2) Section 31—after subsection (4) insert:
- (4a) The holder of a special authority must, within 7 days after a working with children check is conducted in relation to the person, inform the Registrar in writing of that fact, and provide such details relating to the working with children check as the Registrar may require.

142—Amendment of section 33—Cause for disciplinary action

Section 33(1)—after paragraph (b) insert:

- (ba) a working with children check has not been conducted in relation to the teacher within the preceding 5 years; or

143—Insertion of section 33A

After section 33 insert:

33A—Suspension of teacher's registration if working with children check not current etc

- (1) The Teachers Registration Board may, if satisfied that a working with children check has not been conducted in relation to a registered teacher within the preceding 5 years suspend (without any requirement for a hearing or other process) the registration of the teacher.
- (2) A suspension under this section has effect—
- (a) until the fulfilment of specified conditions or until further order of the Teachers Registration Board; or
 - (b) if the teacher's registration is cancelled under section 35(2)—until that cancellation has effect,

whichever occurs first.

- (3) To avoid doubt, a suspension of a teacher's registration under this section has effect whether or not an appeal has, or is to be, instituted against the decision to suspend the registration of the teacher.

144—Amendment of section 37—Employer to report dismissal

Section 37—after subsection (1) insert:

- (1a) If the employer of a practising teacher—
- (a) dismisses the teacher on the grounds that—
 - (i) the teacher is a prohibited person; or
 - (ii) a working with children check has not been conducted in relation to the teacher within the preceding 5 years; or
 - (b) accepts the resignation of the teacher for a reason referred to in paragraph (a),
- the employer must, within 7 days, submit a written report to the Teachers Registration Board—
- (c) describing the circumstances of the dismissal or resignation; and
 - (d) containing all other prescribed information.
- Maximum penalty: \$10 000.

145—Insertion of section 52A

After section 52 insert:

52A—Notification to employer that teacher is a prohibited person etc

If the Registrar becomes aware that a person who is or has been registered as a teacher is a prohibited person under *Child Safety (Prohibited Persons) Act 2016* the Registrar must, as soon as practicable, give details of that fact to—

- (a) the person's employer if the person is a practising teacher; and
- (b) the chief executives of the Department, the Catholic Education Office and the Association of Independent Schools of South Australia Incorporated.

146—Amendment of section 61—Regulations

Section 61—after subsection (2) insert:

- (2a) The regulations may make provisions of a saving or transitional nature consequent upon the enactment of the *Child Safety (Prohibited Persons) Act 2016* or the *Children's Protection Law Reform (Transitional Arrangements and Related Amendments) Act 2017*.

Part 22—Amendment of *Youth Court Act 1993*

147—Amendment of section 7—Jurisdiction

Section 7(a)—after "*Children's Protection Act 1993*" insert:
and the *Children and Young People (Safety) Act 2017*

Part 23—Amendment of *Youth Justice Administration Act 2016*

148—Amendment of section 3—Objects and guiding principles

Section 3(1)(g)—delete "Minister, or of whom the Minister has custody, under the *Children's Protection Act 1993*" and substitute:

Chief Executive, or of whom the Chief Executive has custody, under the *Children and Young People (Safety) Act 2017*

149—Amendment of section 4—Interpretation

- (1) Section 4(1)—after the definition of *Chief Executive* insert:

Child and Young Person's Visitor means the Child and Young Person's Visitor under the *Children and Young People (Safety) Act 2017*;

- (2) Section 4(1), definition of *guardian*—delete "Minister under the *Children's Protection Act 1993*" and substitute:

Chief Executive under the *Children and Young People (Safety) Act 2017*

- (3) Section 4(1), definition of *Guardian for Children and Young Persons*—delete the definition and substitute:

Guardian for Children and Young People means the Guardian for Children and Young People appointed under the *Children and Young People (Oversight and Advocacy Bodies) Act 2017*;

150—Amendment of section 10—Official visitors

Section 10—after "Visitor" insert:

, the Child and Young Person's Visitor

151—Amendment of section 14—Training Centre Visitor's functions

Section 14(2)(b)(i)—delete "Minister under the *Children's Protection Act 1993*" and substitute:

Chief Executive under the *Children and Young People (Safety) Act 2017*

152—Amendment of section 43—Community programs

Section 43(3)(b)—delete "Minister, or of whom the Minister has custody, under the *Children's Protection Act 1993*" and substitute:

Chief Executive, or of whom the Chief Executive has custody, under the *Children and Young People (Safety) Act 2017*

153—Insertion of section 21A

After section 21 insert:

21A—Persons not to be employed in training centres etc unless assessed

- (1) A person must not be employed in a training centre or other facility established by the Minister under section 21 unless the person has undergone a psychological or psychometric assessment of a kind determined by the Chief Executive for the purposes of this section.
- (2) However, subsection (1) does not apply to the employment of a person or a person of a class, or the employment of a person in circumstances, prescribed by the regulations for the purposes of this subsection.
- (3) A person who is employed in a training centre or other facility in contravention of subsection (1) is guilty of an offence.

Maximum penalty:

- (a) for a first or second offence—\$20 000;
 - (b) for a third or subsequent offence—\$50 000 or imprisonment for 1 year.
- (4) A person who employs, or continues to employ, a person in a training centre or other facility in contravention of subsection (1) is guilty of an offence.

Maximum penalty:

- (a) in the case of a natural person—\$50 000 or imprisonment for 1 year; or
 - (b) in the case of a body corporate—\$120 000.
- (5) For the purposes of this section, a reference to a person being ***employed*** will be taken to include a reference to a person who—
 - (a) is a self-employed person; or
 - (b) carries out work under a contract for services; or
 - (c) carries out work as a minister of religion or as part of the duties of a religious or spiritual vocation; or
 - (d) undertakes practical training as part of an educational or vocational course; or
 - (e) carries out work as a volunteer; or
 - (f) performs unpaid community work in accordance with an order of a court,

and a reference to ***employ*** is to be construed accordingly.

Legislative history

Notes

- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
2017	64	<i>Children's Protection Law Reform (Transitional Arrangements and Related Amendments) Act 2017</i>	12.12.2017	19.12.2017 except ss 22, 23, 26, 60, 147, 149(1), 150—26.2.2018 and except ss 24, 25, 27 to 33, 35 to 42, 47, 48, 58, 61 to 66, 74 to 125, 129 to 131, 148, 149(2), 151 to 153—22.10.2018 (Gazette 19.12.2017 p5119) and except ss 5 to 17, 43(2), 44, 67 to 73, 126 to 128, 132 to 146—1.7.2019 (Gazette 17.1.2019 p93) (s 43(1) deleted by 9/2019 without coming into operation)
2018	17	<i>Children and Young People (Safety) (Miscellaneous) Amendment Act 2018</i>	18.10.2018	Sch 1 (cll 1 to 6)—22.10.2018 (Gazette 18.10.2018 p3821)
2019	9	<i>Statutes Amendment (Screening) Act 2019</i>	16.5.2019	Pt 3 (ss 16 & 17)—1.7.2019 (Gazette 27.6.2019 p2322)

Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Pt 2	will expire: s 6	
ss 8A and 8B	inserted by 9/2019 s 16	1.7.2019
s 12		
s 12(1)	amended by 17/2018 Sch 1 cl 1	22.10.2018
s 13		
s 13(1)	amended by 17/2018 Sch 1 cl 2	22.10.2018
s 14		
s 14(1)	amended by 17/2018 Sch 1 cl 3	22.10.2018
Pt 3	will expire: s 19	
Pt 4		

Children's Protection Law Reform (Transitional Arrangements and Related Amendments)

Act 2017—1.7.2019

Legislative history

s 23A	inserted by 17/2018 Sch 1 cl 4	22.10.2018
s 26A	inserted by 17/2018 Sch 1 cl 5	22.10.2018
ss 31A and 31B	inserted by 17/2018 Sch 1 cl 6	22.10.2018

Pt 7

s 43

<i>s 43(1)</i>	<i>deleted by 9/2019 s 17</i>	<i>1.7.2019</i>
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Historical versions

22.10.2018