

South Australia

Children and Young People (Safety) Regulations 2017

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

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Legislative history

1—Short title

These regulations may be cited as the *Children and Young People (Safety) Regulations 2017*.

2—Commencement

- (1) Subject to this regulation, these regulations will come into operation on 26 February 2018.
- (2) The following regulations will come into operation on a day or time, or days or times, to be fixed by the Minister by notice in the Gazette:
 - (a) regulations 6 to 18 (inclusive);
 - (b) regulation 19(2) and (3);
 - (c) regulations 22 to 35 (inclusive);
 - (d) regulations 38 and 39.

3—Interpretation

In these regulations, unless the contrary intention appears—

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

Contact Arrangements Review Panel or *Panel* means the Contact Arrangements Review Panel established by the Minister under section 94 of the Act;

registered health practitioner has the same meaning as in the *Health Practitioner Regulation National Law (South Australia)*;

unique identifier has the same meaning as in the *Child Safety (Prohibited Persons) Act 2016*.

4—Relevant laws

For the purposes of paragraph (d) of the definition of *relevant law* in section 13(13) of the Act, the *Children and Young People (Oversight and Advocacy Bodies) Act 2016* and the *Children's Protection Act 1993* are declared to be included in the ambit of that definition.

5—State authorities

- (1) For the purposes of paragraph (f) of the definition of *State authority* in section 16(1) of the Act, a person or body who, pursuant to a contract for services or other agreement, provides services to children and young people and their families for, or on behalf of, a State authority is declared to be a State authority.
- (2) For the purposes of the definition of *State authority* in section 16(1) of the Act, the following persons and bodies are declared to be excluded from the ambit of that definition:
 - (a) each court or tribunal of the State;
 - (b) the Ombudsman under the *Ombudsman Act 1972*;
 - (c) the Health and Community Services Complaints Commissioner under the *Health and Community Services Complaints Act 2004*;
 - (d) the Independent Commissioner Against Corruption under the *Independent Commissioner Against Corruption Act 2012*.

6—Who may attend family group conferences

- (1) For the purposes of section 23(1)(k) of the Act, a person invited by the co-ordinator of a family group conference to attend the conference (being a person who, in the opinion of the co-ordinator, has specialist knowledge, experience or other skills or authority that would be of assistance in relation to the conference) is prescribed.
- (2) For the purposes of section 23(4)(b) of the Act, the notice required to be given to a person under that paragraph must be given in a manner that enables the person—
 - (a) to understand the purpose of the family group conference and their proposed role in the conference; and
 - (b) to make appropriate arrangements to attend the family group conference.

7—Procedures at family group conferences

- (1) For the purposes of section 24(4)(c) of the Act, acceptance of a decision must—
 - (a) subject to this regulation, be in writing; and
 - (b) comply with any requirements determined by the Chief Executive for the purposes of this subregulation.
- (2) In the case where a person who accepts a decision in respect of a family group conference is unable to read or write, or is otherwise unable to record their acceptance in writing, the co-ordinator may, if satisfied that the person understands the decision that they are accepting, record the person's acceptance in a manner determined by the co-ordinator.
- (3) For the purposes of section 24(4)(c) of the Act, a decision at a family group conference need not be accepted by a child or young person if the co-ordinator is of the opinion that it is not (having regard to the child or young person's age and development) necessary or appropriate for the child or young person to accept the decision.

- (4) Pursuant to section 24(6), a person who is present at a family group conference and who is not fluent in English is entitled to be assisted by an interpreter in relation to a language in which the person is fluent.

8—Case plans

- (1) For the purposes of section 28(2)(f) of the Act, a case plan in respect of a prescribed child or young person must also contain the following parts:
- (a) a part setting out a plan for the physical health (including the dental health) of the child or young person;
 - (b) a part setting out a plan for the mental health and emotional wellbeing of the child or young person;
 - (c) a part setting out a plan for the education and development of the child or young person.
- (2) Pursuant to section 28(4), the Chief Executive must take reasonable steps to ascertain the views, and encourage the participation, of any person who, in the opinion of the Chief Executive, has information relevant to the preparation of the case plan of a particular child or young person.

Example—

Such people would include the child or young person, their advocate, their teachers or persons providing care to the child or young person such as foster parents or other approved carers.

- (3) Pursuant to section 28(4) of the Act, the Chief Executive must, in preparing the part of a case plan of an Aboriginal or Torres Strait Islander child or young person setting out a cultural maintenance plan, take reasonable steps to consult with—
- (a) an Aboriginal organisation or Torres Strait Islander organisation (as the case requires) of a kind that is, in the opinion of the co-ordinator, appropriate to the child or young person; or
 - (b) a member of the Aboriginal or Torres Strait Islander community (as the case requires) to which the child or young person belongs.

9—Application of Chapter 5 Part 1 of Act

- (1) For the purposes of section 30(3)(i) of the Act, the class of persons consisting of an officer or employee of a prescribed organisation who holds a management position in the organisation, the duties of which include direct responsibility for, or direct supervision of, the provision of services to children and young people (whether or not those duties constitute child-related work under the *Child Safety (Prohibited Persons) Act 2016*) is prescribed.
- (2) In this regulation—

prescribed organisation has the same meaning as in section 114 of the Act.

10—Reporting of suspicion that child or young person may be at risk

For the purposes of section 31(2)(c) of the Act, a person need not report a suspicion under section 31(1) of the Act if the person believes on reasonable grounds that the Department is already aware of all of the information that forms the basis of the person's suspicion.

11—Assessment of reports and notifications

- (1) For the purposes of section 32(1) of the Act, a report or notification is to be assessed in accordance with any requirement or direction of the Chief Executive.
- (2) Pursuant to section 32(5) of the Act, the Chief Executive may not refer a matter under section 32(3)(c) of the Act to the Guardian for Children and Young People.

12—Examination and assessment of child or young person

For the purposes of section 35(1)(d) of the Act, circumstances in which the Chief Executive determines that it is, having regard to the operation of Chapter 2 of the Act, necessary or appropriate for a child or young person to be examined and assessed are prescribed.

13—Assessments under section 36 of Act

- (1) Pursuant to section 36(5) of the Act, the date and time of an assessment, and the place at which an assessment is to be conducted, are to be determined by the person or body who is to conduct the assessment (being the person or body referred to in subregulation (3)(b)).
- (2) Pursuant to section 36(5) of the Act, the Chief Executive may revoke a notice under that section at any time and for any reason the Chief Executive thinks fit (and nothing in this subregulation prevents the Chief Executive from giving another direction under that section to the person to whom the notice relates at any time).
- (3) For the purposes of section 36(4) of the Act, a notice must set out the following information:
 - (a) the nature of the assessment and the provision of the Act under which the relevant direction is given;
 - (b) the name and contact details of the person or body who is to conduct the assessment;
 - (c) a direction that the person to be assessed must—
 - (i) contact the specified person or body referred to in paragraph (b) within the period specified in the notice; and
 - (ii) comply with any lawful directions of the person or body who is to conduct the assessment in relation to the assessment;
 - (d) the contact details of the Legal Services Commission;
 - (e) contact details of a person or body with whom the person can communicate in respect of the assessment;
 - (f) information setting out the consequences for refusing or failing to comply with a direction under section 36 of the Act.
- (4) Pursuant to section 36(5) of the Act, the person or body who conducts an assessment under that section must, in accordance with any requirement of the Chief Executive, provide a written report on the assessment to a person specified by the Chief Executive.

14—Random drug and alcohol testing scheme

- (a1) For the purposes of section 37(1)(c) of the Act, a person who, in the preceding 5 years, is the subject of an order of the Court under Chapter 6 Part 2 of the Act requiring the person to be assessed in relation to the use of drugs or alcohol (however described) is declared to be included in the ambit of that subsection.
- (1) For the purposes of section 37(2) of the Act, the scheme for random drug and alcohol testing is the scheme determined by the Chief Executive for the purposes of that section and published in the Gazette, as in force from time to time.
- (2) Without limiting any other provisions that the Chief Executive may include in the scheme, the following provisions will be taken to be part of the scheme, as in force from time to time:
 - (a) for the purposes of the law of the State, the taking of forensic material consisting of hair, blood, urine and saliva is authorised under the scheme (and the scheme must make provisions setting out how, and by whom, such forensic material may be taken);
 - (b) forensic material taken under the scheme must be tested to identify whether drugs or alcohol are present in the forensic material and the scheme may make provisions—
 - (i) setting out how, and by whom, such testing is to be undertaken; and
 - (ii) specifying particular drugs that the forensic material must be tested for;
 - (c) the results of the testing referred to in paragraph (b) must be provided, in the manner and form determined by the Chief Executive, to a person specified by the Chief Executive.
- (3) The Chief Executive may, by notice in the Gazette, vary or substitute the scheme referred to in subregulation (1).

15—Notice relating to rehabilitation program under section 38 of Act

- (1) For the purposes of section 38(3) of the Act, a notice must set out the following information:
 - (a) the provision of the Act under which the direction is given;
 - (b) the name and nature of the drug and alcohol rehabilitation program that the person is directed to undertake;
 - (c) the place at which the person must attend in relation to the rehabilitation program;
 - (d) the date and time of the rehabilitation program;
 - (e) contact details of a person or body with whom the person can communicate in respect of the rehabilitation program;
 - (f) information setting out the consequences for refusing or failing to comply with a direction under section 38 of the Act,

and may contain any other information or direction the Chief Executive thinks appropriate.

- (2) For the purposes of this regulation, a reference to attending a rehabilitation program will be taken to include a reference to attending on each day on which the program runs, or at any appointment or meeting required by or under the program.

16—Destruction of forensic material

For the purposes of section 40 of the Act, forensic material must be destroyed in accordance with a scheme determined by the Chief Executive.

17—Removal of child or young person

Pursuant to section 41(2) of the Act, the requirements under section 41(1) of the Act will be taken to be satisfied in relation to a particular child or young person in circumstances where—

- (a) either—
- (i) a restraining order under section 99AAC of the *Criminal Procedure Act 1921*; or
 - (ii) an intervention order under the *Intervention Orders (Prevention of Abuse) Act 2009*,
- is in force against a particular person; and
- (b) it is a condition of the restraining order or intervention order (as the case requires) that the person not reside with the child or young person; and
- (c) the person is residing with the child or young person.

17A—Prescribed information

For the purposes of section 48 of the Act, the following information is prescribed:

- (a) the name, address and date of birth of the person found guilty of the qualifying offence;
- (b) details of each qualifying offence of which the person is found guilty;
- (c) such other information as may be specified by the Chief Executive after consultation with the Courts Administration Authority.

17B—Onus on objector

For the purposes of section 59(1a) of the Act, proceedings where the child or young person to whom the proceedings relate—

- (a) is under the guardianship, or in the custody, of the Chief Executive or another person pursuant to an interim order made under section 53(2) of the Act; and
- (b) was not, at the time the application relating to the proceedings was made, under the guardianship, or in the custody, of the Chief Executive or another person pursuant to any other order under section 53 of the Act,

are prescribed.

18—Exclusions from definition of out of home care

For the purposes of the definition of *out of home care* in section 69 of the Act, the following kinds of care are declared to be excluded from the ambit of that definition:

- (a) care provided to children and young people at a licensed children's residential facility;
- (b) care provided to children and young people at a residential facility established under section 36 of the *Family and Community Services Act 1972*.

18A—Temporary placement of child or young person

- (1) Pursuant to section 77(4) of the Act, the Chief Executive may place a child or young person with a person under section 77(1) of the Act despite it being reasonably practicable to place the child or young person in the care of a particular approved carer if the Chief Executive is satisfied that to place the child or young person under that subsection is (having regard to the operation of Chapter 2 of the Act as well as the circumstances relating to the child or young person) preferable to placing the child or young person with the approved carer.
- (2) Pursuant to section 77(4) of the Act, section 77(2)(b) of the Act will be taken not to apply to the placement of a child referred to in subregulation (1).

19—Exemption

- (1) Pursuant to section 170(2)(a) of the Act, a placement agency is exempt from the requirements under—
 - (a) section 79(1) of the Act; and
 - (b) section 80 of the Act; and
 - (c) section 81(1)(b) of the Act (to the extent that that paragraph relates to a member of an approved carer's household),in relation to a child or young person placed in—
 - (d) a licensed children's residential facility; or
 - (e) a residential facility established under section 36 of the *Family and Community Services Act 1972*; or
 - (f) the care of an approved carer of a kind determined by the Chief Executive for the purposes of this subregulation.
- (2) Pursuant to section 170(2)(a) of the Act an approved carer is exempt from the requirements under—
 - (a) section 75(1)(b) of the Act; and
 - (b) section 75(1)(c) or (d) of the Act (being a requirement relating to a person residing with the approved carer),if the approved carer does not provide care for children and young people at the approved carer's residence.

- (3) Pursuant to section 170(2)(a) of the Act, the Chief Executive is exempt from the requirement under section 89(3) of the Act in relation to an approved carer providing care for a child or young person in—
- (a) a licensed children's residential facility; or
 - (b) a residential facility established under section 36 of the *Family and Community Services Act 1972*.

20—Information to be provided to children and young people

For the purposes of section 80 of the Act, the following information (being information that is known to the relevant placement agency and that is, in the opinion of the placement agency, relevant to the circumstances of a particular child or young person) is prescribed:

- (a) the name and age of the approved carer;
- (b) the address at which the child or young person will reside if placed with the approved carer;
- (c) the school (if any) in which it is intended that the child or young person be enrolled (including, if relevant, where there is to be no change in the school from the child or young person's current enrolment);
- (d) the nature of the employment (if any) of the approved carer;
- (e) details setting out the name, age and gender of any other persons residing with the approved carer;
- (f) details of any relevant experience the approved carer has had caring for children and young people.

21—Disclosure of information provided to approved carers

For the purposes of section 81(2)(e) of the Act, an approved carer may disclose information provided under that section—

- (a) to a preschool, school or other education service for a purpose related to the educational needs, or the health, safety, welfare or wellbeing, of the child or young person; or
- (b) with the authorisation of the Chief Executive.

22—Information to be included in long-term care plans

For the purposes of section 90(2) of the Act, a long-term care plan in respect of a child or young person must contain the following information:

- (a) a cultural maintenance plan for the child or young person;
- (b) details of any contact arrangements with the family of the child or young person or other significant people in the child or young person's life;
- (c) information setting out how the educational, health and disability needs (if any) of the child or young person will be met;
- (d) details of any financial or other support provided, or to be provided, to any approved carer in whose care the child or young person is placed;

- (e) details of any compensation paid or payable to the child or young person under the *Victims of Crime Act 2001*;
- (f) details of any dispute resolution process (including mediation) to be followed in relation to disputes involving the care of the child or young person;
- (g) information relating to the most recent review of the child or young person's long-term care plan.

23—Applications relating to long-term guardianship

- (1) For the purposes of section 91(3) of the Act, an application to the Court under that section must include information setting out the views relating to the application (if known to the Chief Executive) of such of the following persons and bodies as may be relevant:
 - (a) the child or young person to whom the application relates;
 - (b) the proposed guardian or guardians;
 - (c) the birth family of the child or young person;
 - (d) the Department;
 - (e) a person or body representing the culture or community of the child or young person,

and may contain any other information the Chief Executive considers relevant to the application.

- (2) Pursuant to section 91(3) of the Act, the Chief Executive need not comply with section 91(1) of the Act if, following completion of a care plan—
 - (a) the Chief Executive becomes aware (by any means) of information not considered in the course of an assessment under section 89(3) of the Act, or in the course of preparing a long-term care plan under section 90(1) of the Act; and
 - (b) the Chief Executive, having considered the information, is satisfied that the proposed guardian is not suitable to be the guardian of the relevant child or young person.

24—Contact arrangements

- (1) For the purposes of section 93(5)(c) of the Act, a determination under that section must set out the following:
 - (a) details of the Chief Executive's compliance with section 93(3) of the Act;
 - (b) the methods by which contact visits may be undertaken;
 - (c) any methods that must not be used to undertake a contact visit;
 - (d) any persons who must not be present during contact visits;
 - (e) the Chief Executive's reasons for a provision set out in the determination in accordance with that section and this regulation.

- (2) Pursuant to section 93(8) of the Act, the following provisions apply in respect of contact arrangements under the Act:
- (a) the Chief Executive must take reasonable steps to provide a copy of each determination under that section, and each variation of the determination, to each person to whom the determination relates;
 - (b) the Chief Executive must take reasonable steps to explain to each person to whom a determination under that section relates the right to have the contact arrangements reviewed under section 95 of the Act;
 - (c) contact visits may, at the discretion of the Chief Executive, consist of or include—
 - (i) face to face contact visits; or
 - (ii) telephone calls; or
 - (iii) written communication; or
 - (iv) the use of specified social media; or
 - (v) such other methods as the Chief Executive considers appropriate;
 - (d) the Chief Executive may exclude a specified method or methods from being used in contact visits if the Chief Executive considers it necessary or appropriate to do so in the circumstances of a particular determination;
 - (e) the Chief Executive must cause a record of the reasons for any determination under section 93 of the Act to be made and kept in accordance with any determination of the Chief Executive.

25—Contact Arrangements Review Panel

- (1) For the purposes of section 94(1) of the Act, the following provisions apply to the establishment of the Contact Arrangements Review Panel:
- (a) the Panel is to consist of not less than 3 persons appointed by the Minister, of whom—
 - (i) at least 1 must be a person who is not an officer or employee of the Department; and
 - (ii) at least 1 must be a person with qualifications or experience in matters related to the protection of children and young people;
 - (b) members of the Panel will be appointed on terms and conditions determined by the Minister;
 - (c) the Panel must appoint 1 of the members to preside over meetings of the Panel.
- (2) For the purposes of section 94(2) of the Act, the Panel has the following powers and functions:
- (a) the review of contact arrangements under Chapter 7 Part 4 of the Act;
 - (b) to report annually to the Minister on matters relating to contact arrangements under the Act;

- (c) such other functions as may be conferred on the Panel by or under the Act or by the Minister;
 - (d) such powers as may be reasonably necessary to perform the functions of the Panel.
- (3) Pursuant to section 94(3) of the Act, the following provisions apply to the Panel:
- (a) the Panel is subject to the direction and control of the Minister (other than in relation to the determination of the Panel in relation to a particular review of contact arrangements);
 - (b) a member of the Panel may also be a member of a panel under section 85 of the Act.

26—Reviews by Contact Arrangements Review Panel

Pursuant to section 95(9) of the Act, the following provisions apply in relation to a review under that section:

- (a) each member of the Panel must, in relation to a particular review, be independent of the matter under review;
- (b) the Panel must, in the case of a review relating to an Aboriginal or Torres Strait Islander child or young person, unless an appropriate Aboriginal or Torres Strait Islander person is already a member of the Panel, sit with an additional member who is an Aboriginal or Torres Strait Islander person appointed to the Panel in accordance with any determination or requirement of the Chief Executive;
- (c) the Panel may, in the case of a particular review, sit with an additional member or members appointed to the Panel in accordance with any determination or requirement of the Chief Executive;
- (d) the Panel is not bound by the rules of evidence and, subject to the Act, may conduct an inquiry under this section in such manner as the Panel thinks fit;
- (e) a review of contact arrangements must be conducted in a timely fashion and with a minimum of formality.

26A—Exemption from section 98 of Act

Pursuant to section 170(2)(a) of the Act, the person from time to time holding or acting in the position of Director-General under the *Education Act 1972* is exempt from the operation of section 98 of the Act.

27—Renewal of licence to carry on business as foster care agency

For the purposes of section 99(7), the following provisions apply to the renewal of a licence:

- (a) the application for renewal must be made in a manner and form determined by the Chief Executive;
- (b) the application must be made within such period before the expiry of the licence as may be determined by the Chief Executive.

28—Record keeping—licensed foster care agencies

- (1) For the purposes of section 101(1) of the Act, the following records are required:
 - (a) records setting out the name, date of birth, residential address and unique identifier (if any) of each approved carer in whose care the foster care agency places children or young people;
 - (b) records setting out the name, date of birth, residential address and unique identifier (if any) of each person employed in or by the foster care agency;
 - (c) records detailing each assessment conducted under section 102 of the Act;
 - (d) records setting out the following information in respect of each placement of a child or young person pursuant to the licence:
 - (i) the name and date of birth of the child or young person;
 - (ii) the name, date of birth and residential address of the approved carer in whose care the child or young person was placed;
 - (iii) the date of the placement;
 - (iv) the date (if any) on which the placement ended;
 - (e) such other records as may be required by the Chief Executive.
- (2) Despite any provision of the *State Records Act 1997* to the contrary, for the purposes of section 101(2) of the Act, records must be kept in accordance with the guidelines published by the Chief Executive by notice in the Gazette, as in force from time to time.

29—Children's residential facilities

- (1) For the purposes of paragraph (b) of the definition of *children's residential facility* in section 103 of the Act, such places as may be determined by the Chief Executive by notice in the Gazette are declared to be included in the ambit of that definition.
- (1a) The Chief Executive may, by subsequent notice in the Gazette, vary or revoke a notice under subregulation (1).
- (2) For the purposes of paragraph (f) of the definition of *children's residential facility* in section 103 of the Act, the following facilities and places are declared not to be included in the ambit of that definition:
 - (a) the residence of a person in whose care a child or young person is placed under section 77 of the Act;
 - (b) a hospital or other health service;
 - (c) any other facility or place determined by the Chief Executive.

30—Renewal of licence to operate children's residential facility

- (1) For the purposes of section 105(7) of the Act, the following provisions apply to the renewal of a licence:
 - (a) the application for renewal must be made in a manner and form determined by the Chief Executive;
 - (b) the application must be made within such period before the expiry of the licence as may be determined by the Chief Executive.

- (2) For the purposes of paragraph (a) of the definition of prescribed number in section 105(8) of the Act, the prescribed number is 12.

31—Exemption from requirement to be assessed before employment in licensed children's residential facility

- (1) For the purposes of section 107(2) of the Act, the class of person consisting of persons (whether tradespeople or otherwise) from time to time engaged by a licensed children's residential facility to provide maintenance or repair services is prescribed.
- (2) For the purposes of section 107(2) of the Act, the following classes of persons are prescribed:
- (a) persons whose contact with children in the course of employment in a licensed children's residential facility is incidental;
 - (b) students who are, as a part of an organised program, undertaking a placement in a licensed children's residential facility (being students in respect of whom a working with children check has been conducted within the preceding 5 years);
 - (c) registered health practitioners in respect of whom a working with children check has been conducted within the preceding 5 years,

however those classes do not include a person who is a prohibited person under the *Child Safety (Prohibited Persons) Act 2016*.

- (3) *For the purposes of section 107(2) of the Act, the employment of a person in a licensed children's residential facility in circumstances where—*
- (a) the facility is operated by a person other than the Department; and*
 - (b) a working with children check has been conduct in respect of the employed person within the preceding 5 years; and*
 - (c) the employed person is not a prohibited person under the Child Safety (Prohibited Persons) Act 2016; and*
 - (d) the operator of the facility takes reasonable steps to ensure that the employed person undergoes a psychological or psychometric assessment of a kind determined by the Chief Executive for the purposes of section 107 of the Act as soon as is reasonably practical after the person is so employed,*

is prescribed.

Note—

Regulation 31(3) has expired.

- (4) Subregulation (3) will expire 18 months after the day on which it commences.

31A—Exemption from requirement to be assessed before employment in licensed children's residential facility

Pursuant to section 170(2)(a) of the Act, the following persons and classes of persons are exempt from the operation of section 107(1) of the Act:

- (a) a public sector employee within the meaning of the *Public Sector Act 2009* (not being a person who is a prohibited person under the *Child Safety (Prohibited Persons) Act 2016*);

- (b) any other person, or class of persons, determined by the Chief Executive by written instrument to be included in the ambit of this paragraph.

32—Record keeping—licensed children's residential facilities

- (1) For the purposes of section 108(1) of the Act, the following records are required:
 - (a) records setting out the name, date of birth, residential address and unique identifier (if any) of each person employed in or by the licensed children's residential facility;
 - (b) records setting out the following information in respect of each child or young person who is, from time to time, resident in the licensed children's residential facility:
 - (i) the name and date of birth of the child or young person;
 - (ii) the period of each residence;
 - (iii) details of any complaint made by the child or young person in relation to their residence in the licensed children's residential facility (whether made under section 110 of the Act or otherwise);
 - (c) such other records as may be required by the Chief Executive.
- (2) Despite any provision of the *State Records Act 1997* to the contrary, for the purposes of section 108(2) of the Act, records must be kept in accordance with the guidelines published by the Chief Executive by notice in the Gazette, as in force from time to time.

33—Chief Executive to hear complaints

- (1) For the purposes of section 110(2) of the Act, a complaint must be investigated in the manner determined by the Chief Executive.
- (2) For the purposes of paragraph (b) of the definition of *prescribed facility* in section 110(4) of the Act, the following facilities are prescribed:
 - (a) a residential facility for children and young people established by the Minister under the *Family and Community Services Act 1972*;
 - (b) any other facility (however described) established by the Minister or the Chief Executive and which children or young people under the guardianship, or in the custody, of the Chief Executive reside;
 - (c) such other facilities as may be determined by the Chief Executive.

34—Exemption from requirement to be assessed before employment in residential facility

- (1) For the purposes of section 110A(2) of the Act, the following classes of persons are prescribed:
 - (a) a person whose contact with children in the course of the person's employment in a residential facility is incidental;
 - (b) a student who is, as a part of an organised program, undertaking a placement in a residential facility (being a student in respect of whom a working with children check has been conducted within the preceding 5 years);

- (c) a registered health practitioner in respect of whom a working with children check has been conducted within the preceding 5 years;
- (d) a person (whether a tradesperson or otherwise) from time to time engaged by a residential facility to provide maintenance or repair services,

however those classes do not include a person who is a prohibited person under the *Child Safety (Prohibited Persons) Act 2016*.

- (2) *For the purposes of section 110A(2) of the Act, the employment of a person in a residential facility in circumstances where—*
- (a) *the person is not an employee of the Department; and*
 - (b) *a working with children check has been conducted in respect of the person within the preceding 3 years; and*
 - (c) *the person is not a prohibited person under the Child Safety (Prohibited Persons) Act 2016; and*
 - (d) *the person has not previously been refused employment in a residential facility or children's residential facility (within the meaning of Part 7 of the Act), or had such employment terminated or suspended, on the basis of psychological or psychometric testing of any kind,*

is prescribed.

Note—

Regulation 34(2) has expired.

- (2a) *For the purposes of subregulation (2), a person will be taken not to be an employee of the Department if the person—*
- (a) *is, in respect of the services provided by the person at the residential facility—*
 - (i) *employed by a person or body other than the Department; or*
 - (ii) *self-employed; or*
 - (iii) *a volunteer; and*
 - (b) *is only taken to be employed by the Department by virtue of the operation of section 110A(5) of the Act.*

Note—

Regulation 34(2a) has expired.

- (3) Subregulations (2) and (2a) will expire 18 months after the day on which subregulation (2) comes into operation.

34A—Exemption from requirement to be assessed before employment in certain residential facilities

Pursuant to section 170(2)(a) of the Act, the following persons and classes of persons are exempt from the operation of section 110A(1) of the Act:

- (a) a public sector employee within the meaning of the *Public Sector Act 2009* (not being a person who is a prohibited person under the *Child Safety (Prohibited Persons) Act 2016*);

- (b) any other person, or class of persons, determined by the Chief Executive by written instrument to be included in the ambit of this paragraph.

35—Providing safe environments for children and young people

- (1) For the purposes of section 114(1)(c) of the Act, the following policies and procedures are required:
 - (a) policies and procedures that ensure the prescribed organisation complies with any code of conduct or principles of good practice for caring for, or working with, children and young people developed by the Chief Executive under section 145 of the Act;
 - (b) policies and procedures that ensure the prescribed organisation meets standards of care for ensuring the safety of children and young people as defined by the Chief Executive under section 145 of the Act;
 - (c) such other policies and procedures as may be required by the Chief Executive by notice in the Gazette.
- (2) For the purposes of paragraph (c) of the definition of *prescribed organisation* in section 114(7) of the Act, the following persons and bodies are declared to be included in the ambit of that paragraph:
 - (a) each organisation to which section 8C of the *Children's Protection Act 1993* applied immediately before the commencement of this subregulation;
 - (b) an organisation established after the commencement of this subregulation that would, had it been established before that commencement, have been an organisation to which section 8C of the *Children's Protection Act 1993* applied immediately before that commencement;
 - (c) an organisation (whenever established) that, after the commencement of this subregulation, becomes an organisation to which section 8C of the *Children's Protection Act 1993* would have applied immediately before that commencement.

36—Prescribed facilities—Child and Young Person's Visitor scheme

For the purposes of paragraph (b) of the definition of *prescribed facility* in section 116 of the Act, residential facilities established under section 36 of the *Family and Community Services Act 1972* are prescribed.

37—Child and Young Person's Visitor

- (1) Pursuant to section 117(3) of the Act, the Governor may appoint a person (who may be the Guardian for Children and Young People *ex officio*) to be the Child and Young Person's Visitor.
- (2) If the person appointed to be the Child and Young Person's Visitor is not the Guardian for Children and Young People *ex officio*, the person will be appointed on conditions determined by the Governor and for a term, not exceeding 5 years, specified in the instrument of appointment and, at the expiration of a term of appointment, will be eligible for reappointment.
- (3) The Governor may remove a person from office as the Child and Young Person's Visitor on the presentation of an address from both Houses of Parliament seeking the person's removal.

- (4) The Governor may suspend a person from the position of Child and Young Person's Visitor on the ground of incompetence or misbehaviour and, in that event—
- (a) a full statement of the reason for the suspension must be laid before both Houses of Parliament within 3 sitting days of the suspension; and
 - (b) if, at the expiration of 1 month from the date on which the statement was laid before Parliament, an address from both Houses of Parliament seeking the person's removal has not been presented to the Governor, the person must be restored to the position.
- (5) The position of Child and Young Person's Visitor becomes vacant if the person appointed to the position—
- (a) dies; or
 - (b) resigns by written notice given to the Minister; or
 - (c) completes a term of appointment and is not reappointed; or
 - (d) is removed from the position by the Governor under subregulation (3); or
 - (e) becomes bankrupt or applies as a debtor to take the benefit of the laws relating to bankruptcy; or
 - (f) is convicted of an indictable offence or sentenced to imprisonment for an offence; or
 - (g) becomes a member of the Parliament of this State or any other State of the Commonwealth or of the Commonwealth or becomes a member of a Legislative Assembly of a Territory of the Commonwealth; or
 - (h) becomes, in the opinion of the Governor, mentally or physically incapable of exercising satisfactorily the functions of the position.
- (6) The Minister may appoint a person to act in the position of Child and Young Person's Visitor—
- (a) during a vacancy in the position; or
 - (b) when the Child and Young Person's Visitor is absent or unable to exercise the functions of the position; or
 - (c) if the Child and Young Person's Visitor is suspended from the position under subregulation (4).

38—Powers of child protection officers

- (1) For the purposes of section 149(2)(a) of the Act, the period of 3 months is prescribed.
- (2) For the purposes of section 149(2)(b) of the Act, a passport must, at the end of the prescribed period, be dealt with as follows:
- (a) the Chief Executive must return the passport to a parent of the child or young person to whom the passport relates; or

- (b) the Chief Executive may apply to the Court for an order authorising the Chief Executive to retain the passport for the period specified by the Court or until further order of the Court (however, if the Court does not grant the application, the passport must be dealt with in accordance with any order of the Court or, if no such order is made, the passport must be returned to a parent of the child or young person to whom the passport relates).
- (3) For the purposes of section 149(6)(b) of the Act, an application for the issue of a warrant must comply with the following provisions:
 - (a) an application may only be made by telephone if applicant is of the opinion that the warrant is urgently required and there is insufficient time to make the application personally;
 - (b) in the case of an application made by telephone—
 - (i) the applicant must inform the magistrate of the applicant's name and rank or position title (as the case requires) and the magistrate, on receiving that information, is entitled to assume, without further inquiry, that the applicant has the authority to make the application;
 - (ii) the applicant must inform the magistrate of the grounds on which the issue of the warrant is sought;
 - (iii) if it appears to the magistrate from the information furnished by the applicant that there are proper grounds for the issue of the warrant, the magistrate must inform the applicant of the facts that, in the magistrate's opinion, justify the issue of the warrant and must not proceed to issue the warrant unless the applicant undertakes to make an affidavit verifying those facts;
 - (iv) if the applicant gives such an undertaking, the magistrate may then make out and sign a warrant, noting on the warrant the facts that justify, in the magistrate's opinion, the issue of the warrant;
 - (v) the warrant will be taken to have been issued when signed by the magistrate;
 - (vi) the magistrate must inform the applicant of the terms of the warrant;
 - (vii) the applicant must, as soon as practicable after the issue of the warrant forward to the magistrate an affidavit in accordance with the applicant's undertaking.

39—Sharing of information

- (1) For the purposes of section 152(1)(h) of the Act, the following persons and bodies are prescribed:
 - (a) a person or body that provides services to children and young people or their families for or on behalf of the Department;
 - (b) non-government schools;
 - (c) the South Australian Civil and Administrative Tribunal.

- (2) For the purposes of section 152(2) of the Act, a provider must comply with the following requirements:
 - (a) the provider must confirm the identity of the recipient to whom prescribed information is to be provided;
 - (b) the provider must be satisfied that that the recipient is, in fact, a person or body to whom section 152 of the Act applies;
 - (c) the provider must take reasonable steps to ensure that the prescribed information is not provided to any other person or body (being a person or body who is not a person or body to whom section 152 of the Act applies).
- (3) For the purposes of section 152(6)(b) of the Act, a recipient may disclose information or documents received under that section—
 - (a) for the purposes of legal proceedings in which the information or document is relevant; or
 - (b) with the written authority of the Chief Executive.
- (4) For the purposes of section 152(6)(b) of the Act, a recipient who is, or was, an officer or employee of the Department engaged in the administration, operation or enforcement of the Act may disclose information or documents received under section 152 of the Act in the circumstances contemplated by section 164(1) of the Act.

40—Limitation on matters that may be reviewed under section 157 of Act

Pursuant to section 157(4) of the Act, an application for a review under that section may only be made, and a review only conducted under that section, in relation to a decision of the Chief Executive under Chapter 7 of the Act (other than a decision under Part 4 of that Chapter).

40A—Review of decisions by South Australian Civil and Administrative Tribunal

For the purposes of section 158(3)(c) of the Act, the following persons are prescribed:

- (a) the applicant in respect of an internal review of the relevant reviewable decision under section 157 of the Act;
- (b) a child or young person to whom the relevant reviewable decision relates;
- (c) any other person aggrieved by the relevant reviewable decision and who, in the opinion of the South Australian Civil and Administrative Tribunal, has sufficient interest in the matter.

40B—Money held on behalf of child or young person

For the purposes of section 161(2)(a) of the Act, the scheme relating to money held by the Public Trustee on behalf of a child or young person is the scheme determined by the Chief Executive, and set out in an agreement between the Chief Executive and the Public Trustee, as in force from time to time.

41—Protection of identity of certain persons

For the purposes of section 163(1)(c) of the Act, a person may, in accordance with any requirements of the Chief Executive, disclose information referred to in that subsection—

- (a) if such disclosure is reasonably necessary for the performance of the person's official functions and duties, or the functions and duties of a State authority relating to the protection of children and young people from harm; or
- (b) if such disclosure is reasonably necessary to prevent harm, or further harm, being caused to a child or young person to whom the information relates.

42—Confidentiality

- (1) Pursuant to section 164(4) of the Act, personal information may be disclosed with the authorisation of the Chief Executive.
- (2) Pursuant to section 164(4) of the Act, personal information will, for the purposes of that section, not be taken to have been disclosed merely because the personal information was disclosed to an interpreter in the course of lawfully disclosing the personal information under that section.
- (3) Pursuant to section 170(3)(c) of the Act, for the purposes of section 164 of the Act, information obtained in the course of the administration, operation or enforcement of the *Children's Protection Act 1993* (including, to avoid doubt, information obtained before the enactment of section 164 of the Act) will be taken to be information obtained in the course of performing functions or exercising powers under the Act (and an authorisation relating to such information under section 58(3)(c) of the *Children's Protection Act 1993* in force immediately before the commencement of this regulation will continue in accordance with its terms and will be taken to be an authorisation to disclose such information under the Act).
- (4) The Chief Executive may, by notice in writing, vary or revoke an authorisation referred to in subregulation (3).

43—Transitional and saving provisions etc

- (1) Pursuant to section 170(3)(c) of the Act, the Court, the Minister, the Chief Executive and any other person engaged in the administration, operation or enforcement of the *Children's Protection Act 1993* must, in the course of exercising functions and powers under that Act, seek to give effect to the guiding principles and aims set out in Parts 1, 2 and 3 of Chapter 2 of the Act.
- (2) The objects set out in section 3 of the *Children's Protection Act 1993* (as in force immediately before the commencement of Schedule 1 Part 2 of the Act) are to be disregarded in the administration, operation or enforcement of the *Children's Protection Act 1993* after the commencement of this regulation (whether or not conduct relating to a particular matter occurred before or after the commencement of this regulation).
- (3) However, if a provision of Part 1, 2 or 3 of Chapter 2 of the Act is inconsistent with a particular provision of the *Children's Protection Act 1993* that is in force, the provision of the *Children's Protection Act 1993* will prevail to the extent of the inconsistency.

- (4) Pursuant to section 170(3)(c) of the Act, a direction of the Chief Executive under Part 7 Division 2 of the *Children's Protection Act 1993* in force immediately before the commencement of section 86 of the Act will continue in accordance with its terms and will, for the purposes of the Act, be taken to be a direction of the Chief Executive under section 86 of the Act.
- (5) Pursuant to section 170(3)(c) of the Act, for the purposes of section 164 of the Act, personal information obtained in the course of performing functions or exercising powers under a previous corresponding law will be taken to be personal information obtained in the course of performing functions or exercising powers under the Act.
- (6) Pursuant to section 170(3)(c) of the Act, a child who, immediately before the commencement of section 41 of the Act—
- (a) has been removed under section 16 of the *Children's Protection Act 1993*; and
 - (b) is, pursuant to section 16(5) of the *Children's Protection Act 1993*, in the custody of the Minister,
- will, on the commencement of section 41 of the Act and for all purposes, be taken to be a child or young person removed under section 41 of the Act (and, to avoid doubt, sections 42 and 43 of the Act will be taken to apply in relation to the removal).
- (7) Pursuant to section 170(3)(c) of the Act, an instrument of guardianship issued by the Chief Executive under section 44B of the *Children's Protection Act 1993* and in force immediately before the commencement of Chapter 5 Part 4 of the Act will continue in accordance with its terms and will, for the purposes of the Act, be taken to be an instrument of guardianship issued by the Chief Executive under section 45 of the Act (and the guardianship of the child or young person to whom the instrument relates is to be determined in accordance with section 45 of the Act).
- (8) Pursuant to section 170(3)(c) of the Act, a restraining notice issued by the Chief Executive under section 44B of the *Children's Protection Act 1993* and in force immediately before the commencement of Chapter 5 Part 4 of the Act will continue in accordance with its terms and will, for the purposes of the Act, be taken to be a restraining notice issued by the Chief Executive under section 46 of the Act.
- (9) Pursuant to section 170(3)(c) of the Act, a decision to place a child made at a family care meeting under Part 5 Division 1 of the *Children's Protection Act 1993* will, for the purposes of the Act, be taken to be a decision made at a family group conference under Chapter 4 Part 2 of the Act (and any reference in the Act to the placement of a child or young person pursuant to such a decision is to be construed accordingly).
- (10) Pursuant to section 170(3)(c) of the Act, a person or body who was, immediately before the commencement of this subregulation, authorised by the Department (within the meaning of the *Family and Community Services Act 1972* and whether authorised by a licence purportedly granted under Part 4 of that Act or otherwise) to operate a children's residential facility will be taken to hold a licence granted by the Chief Executive under section 105 of the Act (and that licence will be taken to be subject to any conditions to which the authorisation was subject immediately before the commencement of this subregulation).

- (11) However, subregulation (10) will be taken not to apply to a person or body—
- (a) who is the holder of a licence continued under section 29 of the *Children's Protection Law Reform (Transitional Arrangements and Related Amendments) Act 2017*; or
 - (b) who is a prohibited person under the *Child Safety (Prohibited Persons) Act 2016*.
- (11a) Pursuant to section 170(3)(c) of the Act, section 59 of the Act will be taken not to apply in relation to proceedings of the following kinds:
- (a) proceedings commenced under *Children's Protection Act 1993* prior to the commencement of section 53 of the Act;
 - (b) proceedings that arise out of, or are related to, the expiry of an order under section 21 of the *Children's Protection Act 1993* that granted custody of a child to the Minister.
- (12) In this regulation—
- previous corresponding law*** means—
- (a) the *Children's Protection Act 1993*; or
 - (b) the *Children's Protection and Young Offenders Act 1973*; or
 - (c) any other law of the State that substantially corresponds to the Act.

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 these regulations (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 regulations and variations

New entries appear in bold.

| Year | No | Reference | Commencement |
|-------------|-----------|--------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2017 | 353 | <i>Gazette 19.12.2017 p5246</i> | 26.2.2018 except r 34—6.3.2018 (<i>Gazette 6.3.2018 p1090</i>) and except rr 6 to 18, 19(2), (3), 22 to 33, 35, 38 & 39—22.10.2018 (<i>Gazette 11.10.2018 p3774</i>): r 2 |
| 2018 | 45 | <i>Gazette 13.2.2018 p787</i> | 26.2.2018: r 2 |
| 2018 | 218 | <i>Gazette 11.10.2018 p3789</i> | 22.10.2018: r 2 |
| 2018 | 222 | <i>Gazette 18.10.2018 p3825</i> | 22.10.2018: r 2 |
| 2020 | 27 | <i>Gazette 26.3.2020 p598</i> | 26.3.2020: r 2 |

Provisions varied

New entries appear in bold.

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

| Provision | How varied | Commencement |
|-----------------|-------------------------------------------------|--------------|
| r 4 | varied by 45/2018 r 4 | 26.2.2018 |
| r 5 | | |
| r 5(1) | r 5 redesignated as r 5(1) by 218/2018 r 4 | 22.10.2018 |
| r 5(2) | inserted by 218/2018 r 4 | 22.10.2018 |
| r 8 | | |
| r 8(1) | varied by 218/2018 r 5(1) | 22.10.2018 |
| r 8(3) | inserted by 218/2018 r 5(2) | 22.10.2018 |
| r 11 | | |
| r 11(1) | r 11 redesignated as r 11(1) by 218/2018 r 6 | 22.10.2018 |
| r 11(2) | inserted by 218/2018 r 6 | 22.10.2018 |
| r 13 | | |
| r 13(1) and (2) | inserted by 218/2018 r 7(1) | 22.10.2018 |
| r 13(3) | r 13 redesignated as r 13(3) by 218/2018 r 7(1) | 22.10.2018 |
| | varied by 218/2018 r 7(2) | 22.10.2018 |

| | | |
|------------------|-----------------------------------------------|------------------|
| r 13(4) | inserted by 218/2018 r 7(3) | 22.10.2018 |
| r 14 | | |
| r 14(a1) | inserted by 218/2018 r 8(1) | 22.10.2018 |
| r 14(2) | varied by 218/2018 r 8(2) | 22.10.2018 |
| r 17 | varied by 218/2018 r 9(1), (2) | 22.10.2018 |
| r 17A | inserted by 218/2018 r 10 | 22.10.2018 |
| r 17B | inserted by 222/2018 r 4 | 22.10.2018 |
| r 18A | inserted by 218/2018 r 11 | 22.10.2018 |
| r 21 | varied by 218/2018 r 12 | 22.10.2018 |
| r 25 | | |
| r 25(1) | varied by 218/2018 r 13 | 22.10.2018 |
| r 26A | inserted by 218/2018 r 14 | 22.10.2018 |
| r 29 | | |
| r 29(1) and (1a) | inserted by 218/2018 r 15 | 22.10.2018 |
| r 29(2) | r 29 redesignated as r 29(2) by 218/2018 r 15 | 22.10.2018 |
| r 31 | | |
| r 31(3) | expired: r 31(4) | (22.4.2020) |
| r 31(4) | substituted by 218/2018 r 16 | 22.10.2018 |
| r 31A | inserted by 27/2020 r 4 | 26.3.2020 |
| r 33 | | |
| r 33(1) | inserted by 218/2018 r 17 | 22.10.2018 |
| r 33(2) | r 33 redesignated as r 33(2) by 218/2018 r 17 | 22.10.2018 |
| r 34 | | |
| r 34(1) | varied by 45/2018 r 5(1) | 26.2.2018 |
| | varied by 218/2018 r 18(1) | 22.10.2018 |
| r 34(2) | substituted by 45/2018 r 5(2) | 26.2.2018 |
| | expired: r 34(3) | (6.9.2019) |
| r 34(2a) | inserted by 45/2018 r 5(2) | 26.2.2018 |
| | expired: r 34(3) | (6.9.2019) |
| r 34(3) | varied by 45/2018 r 5(3) | 26.2.2018 |
| | substituted by 218/2018 r 18(2) | 22.10.2018 |
| r 34A | inserted by 27/2020 r 5 | 26.3.2020 |
| r 35 | | |
| r 35(1) | r 35 redesignated as r 35(1) by 218/2018 r 19 | 22.10.2018 |
| r 35(2) | inserted by 218/2018 r 19 | 22.10.2018 |
| r 36 | varied by 218/2018 r 20 | 22.10.2018 |
| r 39 | | |
| r 39(1) | substituted by 218/2018 r 21(1) | 22.10.2018 |
| r 39(4) | inserted by 218/2018 r 21(2) | 22.10.2018 |
| r 40A | inserted by 218/2018 r 22 | 22.10.2018 |
| r 40B | inserted by 222/2018 r 5 | 22.10.2018 |
| r 42 | | |
| r 42(3) and (4) | inserted by 45/2018 r 6 | 26.2.2018 |

| | | |
|--------------|---------------------------|------------|
| r 43 | inserted by 45/2018 r 7 | 26.2.2018 |
| r 43(4)—(11) | inserted by 218/2018 r 23 | 22.10.2018 |
| r 43(11a) | inserted by 222/2018 r 6 | 22.10.2018 |
| r 43(12) | inserted by 218/2018 r 23 | 22.10.2018 |

Historical versions

26.2.2018

6.3.2018

22.10.2018