

South Australia

Children's Protection Regulations 2010

under the *Children's Protection Act 1993*

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Legislative history

Part 1—Preliminary

1—Short title

These regulations may be cited as the *Children's Protection Regulations 2010*.

2—Commencement

These regulations will come into operation on the day on which section 7 of the *Children's Protection (Implementation of Report Recommendations) Amendment Act 2009* comes into operation.

3—Interpretation

In these regulations—

Act means the *Children's Protection Act 1993*;

authorised screening unit means a person or body established as an authorised screening unit under regulation 7(1);

child-related employment screening means undertaking an assessment of information about a person for the purpose of determining whether the person may, if appointed to, or engaged to act in, a position, pose a risk to the safety of children;

CrimTrac means the CrimTrac Agency established under the *Public Service Act 1999* of the Commonwealth;

interstate authorised screening unit means a person or body declared to be an interstate authorised screening unit under regulation 7(2);

responsible authority has the same meaning as in section 8B of the Act.

Part 2—Preliminary matters from Act

4—Aboriginal and Torres Strait Islander Child Placement Principle

- (1) For the purposes of section 4(5) of the Act, the Aboriginal and Torres Strait Islander Child Placement Principle is as follows:
 - (a) the fundamental principles apply to the placement of an Aboriginal or Torres Strait Islander child with the additional requirement that in determining a child's best interests under subsection (4) of that section consideration must be given to the child's cultural needs and identity;
 - (b) subject to the fundamental principles, when an Aboriginal or Torres Strait Islander child is being placed in alternative care (other than care provided in a detention facility), consideration must be given to placing the child with the first in order of priority of the following persons who is available to provide the care:

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- (i) a member of the child's family, as determined by reference to Aboriginal or Torres Strait Islander culture;
 - (ii) a member of the child's community who has a relationship of responsibility for the child, as determined by reference to Aboriginal or Torres Strait Islander traditional practice or custom;
 - (iii) a member of the child's community, as determined by reference to Aboriginal or Torres Strait Islander traditional practice or custom;
 - (iv) a person—
 - (A) in the case of an Aboriginal child—of Aboriginal cultural background; or
 - (B) in the case of a Torres Strait Islander child—of Torres Strait Islander cultural background;
 - (v) a person who is able to ensure that the child maintains significant contact with the child's family (as determined by reference to Aboriginal or Torres Strait Islander culture), the child's community or communities and the child's culture;
- (c) if the placement of a child in alternative care in accordance with paragraph (b) is objected to by the child on reasonable grounds, consideration must be given to placing the child with the next person (determined in accordance with paragraph (b)) available to provide the care.
- (2) In this regulation—
- fundamental principles* means the fundamental principles set out in section 4 of the Act (other than the principle in section 4(5) of the Act).

5—Definition of Department

For the purposes of the definition of *Department* in section 6(1) of the Act, the Department for Families and Communities is prescribed.

Part 3—Criminal history assessment

Division 1—Undertaking criminal history assessments

6—Manner in which assessment must be undertaken

- (1) For the purposes of section 8B of the Act, the responsible authority for an organisation to which that section applies must undertake an assessment of a person's criminal history by either of the following methods:
- (a) by—
 - (i) obtaining—
 - (A) a criminal history report relating to the person prepared by South Australia Police or CrimTrac; or
 - (B) other prescribed evidence of the person's criminal history; and

- (ii) undertaking an assessment of that report or evidence for the purpose of determining whether the person may pose a risk to the safety of children,

in accordance with standards published, from time to time, by the Chief Executive;

- (b) by obtaining a criminal history assessment relating to the person from an authorised screening unit.

- (2) In this regulation—

prescribed evidence means evidence of a kind specified by the Chief Executive for the purposes of this regulation in standards referred to in subregulation (1)(a).

7—Screening units

- (1) The Chief Executive may establish such authorised screening units for the purposes of this Division as the Chief Executive thinks fit.
- (2) The Chief Executive may, by notice in the Gazette, declare that a person or body is an interstate authorised screening unit for the purposes of these regulations.

8—Information to be included in criminal history in certain circumstances

A reference to a person's *criminal history* in section 8B of the Act or in these regulations will, in relation to an authorised screening unit or an interstate authorised screening unit, be taken to include the following classes of information:

- (a) convictions for offences committed by the person in South Australia or elsewhere (whether those convictions relate to offences committed before or after the commencement of this regulation);
- (b) charges for offences alleged to have been committed by the person in South Australia or elsewhere (whether those charges relate to offences alleged to have been committed before or after the commencement of this regulation and regardless of the outcome of those charges);
- (c) information about convictions referred to in paragraph (a) and charges referred to in paragraph (b).

9—Exchange of information with other jurisdictions

Despite any other Act or law, information forming part of a person's criminal history may be provided by the Crown, or an agency or instrumentality of the Crown, to—

- (a) an authorised screening unit for the purpose of undertaking child-related employment screening in accordance with these regulations; or
- (b) an interstate authorised screening unit for the purpose of undertaking child-related employment screening as authorised or required under a law of another State or Territory, or of the Commonwealth.

10—Prescribed functions

For the purposes of paragraph (c) of the definition of *prescribed functions* in section 8B(8) of the Act, the following kinds of records are prescribed, where such records relate to a child or children:

- (a) records of an educational or child care service;

- (b) records of a health service (within the meaning of the *Health Care Act 2008*);
- (c) records of a disability service (within the meaning of the *Disability Services Act 1993*);
- (d) records made or kept in connection with the administration of the *Children's Protection Act 1993*, the *Family and Community Services Act 1972*, the *Young Offenders Act 1993* or the *Youth Court Act 1993*;
- (e) records relating to legal proceedings.

11—Responsible authority

For the purposes of the definition of *responsible authority* in section 8B(8) of the Act, each of the following bodies is approved:

- (a) the Association of Independent Schools of South Australia Incorporated;
- (b) the Catholic Church Endowment Society Incorporated;
- (c) the Lutheran Schools Association of South Australia, Northern Territory and Western Australia Incorporated.

Division 2—Offences

12—Authorised screening unit to only undertake child-related employment screening

- (1) An authorised screening unit must not undertake an assessment of information of a kind specified in regulation 8(b) or (c) unless satisfied that the assessment is required for child-related employment screening.

Maximum penalty: \$10 000.

- (2) An authorised screening unit must not undertake any kind of assessment other than assessment of a person's criminal history for the purpose of child-related employment screening unless the authorised screening unit has been granted approval, in writing, by the Chief Executive to undertake assessments of that kind.

Maximum penalty: \$10 000.

- (3) The Chief Executive must not grant approval to an authorised screening unit to undertake a particular kind of assessment unless the Chief Executive is satisfied that the authorised screening unit has in place appropriate safeguards to ensure that information of a kind specified in regulation 8(b) or (c) will not be used for the purpose of those assessments.

13—Confidentiality and information management requirements

- (1) A person who, in the course of carrying out functions of—
 - (a) a responsible authority; or
 - (b) an organisation to which a responsible authority communicates information forming part of a person's criminal history; or
 - (c) an organisation that prepares a criminal history report for a responsible authority; or
 - (d) an authorised screening unit,

has, or has had, access to information forming part of a person's criminal history must not disclose such information except—

- (e) to, or with the consent of, the person to whom the information relates; or
- (f) as may be authorised or required by law.

Maximum penalty: \$10 000.

- (2) The responsible authority for an organisation to which section 8B of the Act applies must ensure that information forming part of—

- (a) a person's criminal history; or
- (b) an assessment obtained from an authorised screening unit,

is dealt with in accordance with any standards for dealing with such information published from time to time by the Chief Executive (insofar as such standards are applicable to the organisation).

Maximum penalty: \$5 000.

Division 3—Exemptions

14—Exemptions

- (1) Pursuant to section 8D(1) of the Act, but subject to subregulation (2), the following organisations, persons and positions are exempt from the application of section 8B of the Act:

- (a) an organisation that provides equipment, food or venues for children's parties or events and does not provide any other services;
- (b) a person who undertakes work on a voluntary basis to provide a service in his or her capacity as a parent or guardian of a child who is ordinarily provided with the service;
- (c) a person who undertakes work on a voluntary basis to provide a service and who is under 18 years of age;
- (d) a person who undertakes work in the course of, or for the purposes of, an event or activity that takes place over a period of not more than 10 consecutive days or not more than 1 day in any month;
- (e) a person appointed as a police officer;
- (f) a person who is a registered teacher (within the meaning of the *Teachers Registration and Standards Act 2004*);
- (g) a person who undertakes, or a position that only involves, work that is not for the exclusive benefit of children and is not provided to any child on an individual basis;
- (h) a position that only involves prescribed functions because children are employed or engaged to work as volunteers by the person occupying the position or by that person's employer;
- (i) a position in which all work involving children is undertaken in the presence of the children's parents or guardians and in which there is ordinarily no physical contact with the children.

- (2) An organisation, person or position referred to in subregulation (1) (other than subregulation (1)(e) or (f)) is not exempt from the application of section 8B of the Act if the services provided by the organisation or the duties of the person or position—
- (a) involve the provision of—
 - (i) child care or baby sitting services that are licensed or approved under the *Children's Services Act 1985*; or
 - (ii) residential or overnight care for children (other than overnight care by a person who is not ordinarily resident in this State); or
 - (iii) disability services if provided only to children who have a disability; or
 - (b) are related to the administration of the juvenile justice system or child protection services.
- (3) In subregulation (2), *disability* and *disability services* have the same respective meanings as in the *Disability Services Act 1993*.

Part 4—Policies and procedures

15—Obligations of certain organisations

For the purposes of section 8C(2)(b) of the Act, policies and procedures under section 8C must comply with such of the following documents as may be published from time to time by the Chief Executive (insofar as such documents are applicable to the organisation):

- (a) codes of conduct and principles of good practice of a kind referred to in section 8A(a) of the Act;
- (b) standards of a kind referred to in section 8A(j) of the Act.

Schedule 1—Fees

1—Fees payable to authorised screening units

- (1) Subject to subclause (3), the fees set out in the table below are payable to an authorised screening unit for conducting a criminal history assessment under these regulations.
- (2) The fees set out in the table do not include any GST that may be payable in respect of a particular fee.
- (3) An authorised screening unit may determine circumstances in which a fee payable to the unit may be waived or remitted.

	Fee
If the applicant satisfies the authorised screening unit that the relevant position is a voluntary position or is a student placement arranged by or through a tertiary institution	\$34
In any other case	\$52

Schedule 2—Revocation and transitional provisions

Part 1—Revocation

1—Revocation of *Children's Protection Regulations 2006*

The *Children's Protection Regulations 2006* are revoked.

Part 2—Transitional provisions

2—Interpretation

In this Part—

prescribed functions has the same meaning as in section 8B of the Act;

school has the same meaning as in the *Education Act 1972*.

3—Application of section 8B and Schedule 1(1) of the Act deferred in certain cases

- (1) If an organisation was not, immediately before the commencement of section 7 of the *Children's Protection (Implementation of Report Recommendations) Amendment Act 2009*, an organisation to which section 8B of the Act applied but the organisation belongs to a class of organisation specified in the first column of the table below—
- (a) section 8B(1) of the Act will not apply to the organisation until the relevant date specified in the second column of the table below for organisations of that class (or, in the case of an organisation that belongs to more than 1 class specified in the table, until the earliest relevant date specified in the second column of the table below for a class to which the organisation belongs); and
- (b) the prescribed period, for the purposes of Schedule 1(1) of the Act in relation to the organisation is the period specified in the third column of the table below for organisations of that class (or, in the case of an organisation that belongs to more than 1 class specified in the table, is the earliest occurring period specified in the third column of the table below for a class to which the organisation belongs).

Class of organisation	Relevant date	Prescribed period
Organisations that provide child care or residential care	1 January 2011	1 January 2011 to 30 June 2011
Private hospitals (within the meaning of the <i>Health Care Act 2008</i>) and day procedure centres attached to private hospitals	1 January 2011	1 January 2011 to 30 June 2011
Non-government organisations that provide health services and that usually have a number of employees that would be equivalent to more than 25 full time positions (not counting any volunteers)	1 July 2011	1 July 2011 to 31 December 2011
Ambulance services	1 July 2011	1 July 2011 to 31 December 2011
Day procedure centres not attached to private hospitals	1 July 2011	1 July 2011 to 31 December 2011

Class of organisation	Relevant date	Prescribed period
Organisations that provide general practitioner health services	1 July 2011	1 July 2011 to 31 December 2011
Organisations that provide dental services	1 July 2011	1 July 2011 to 31 December 2011
Non-government organisations that provide health services and that usually have a number of employees that would be equivalent to 25 or less full time positions (not counting any volunteers)	1 January 2012	1 January 2012 to 30 June 2012
Organisations that provide welfare services	1 July 2011	1 July 2011 to 31 December 2011
Organisations that provide sporting or recreational services	1 January 2012	1 January 2012 to 30 June 2012
Organisations that provide religious or spiritual services	1 January 2012	1 January 2012 to 30 June 2012
Organisations that provide education services (other than schools)	1 January 2012	1 January 2012 to 30 June 2012

- (2) If a position in an organisation of a kind referred to in subclause (1) is a position belonging to a class specified in the first column of the table below, then despite subclause (1)—
- (a) section 8B(1) of the Act will apply to the position from the relevant date specified in the second column of the table below for positions belonging to that class (or, in the case of a position that belongs to more than 1 class specified in the table, until the earliest relevant date specified in the second column of the table below for a class to which the position belongs); and
 - (b) the prescribed period, for the purposes of Schedule 1(1) of the Act in relation to the position is the period specified in the third column of the table below for positions of that class (or, in the case of a position that belongs to more than 1 class specified in the table, is the earliest occurring period specified in the third column of the table below for a class to which the position belongs).

Class of position	Relevant date	Prescribed period
A person appointed to, or engaged to act in, a position in—	1 January 2012	1 January 2012 to 30 June 2012
(a) an organisation that provides general practitioner health services; or		
(b) a non-government organisation that provides health services and that usually has a number of employees that would be equivalent to more than 25 full time positions (not counting any volunteers); or		
(c) a day procedure centre that is not attached to a private hospital,		

where the prescribed functions do not include the direct provision of health care services to a child

Class of position	Relevant date	Prescribed period
A person appointed to, or engaged to act in, an organisation that provides dental services where the prescribed functions do not include the direct provision of dental services to children	1 January 2012	1 January 2012 to 30 June 2012
A person appointed to, or engaged to act in, a position in an organisation that provides sporting or recreational services, religious or spiritual services or education services (other than a school) where— (a) the person is a volunteer; and (b) the prescribed functions involve children aged 7 years or under.	1 July 2012	1 July 2012 to 31 December 2012
A person appointed to, or engaged to act in, a position in an organisation that provides sporting or recreational services, religious or spiritual services or education services (other than a school) where— (a) the person is a volunteer; and (b) the prescribed functions involve children aged 12 years or under.	1 January 2013	1 January 2013 to 30 June 2013
A person appointed to, or engaged to act in, a position in an organisation that provides sporting or recreational services, religious or spiritual services or education services (other than a school) where— (a) the person is a volunteer; and (b) the prescribed functions involve children aged 17 years or under.	1 July 2013	1 July 2013 to 31 December 2013

4—Transitional modification of section 8C(3)(a) of Act

- (1) The application of section 8C(3)(a) of the Act (as inserted by the *Children's Protection (Implementation of Report Recommendations) Amendment Act 2009*) is modified in relation to an organisation formed before the commencement of this clause so that such an organisation is not required to lodge the statement referred to in that paragraph within the 10 day period specified in that paragraph, but is instead required to lodge the statement within the period of 2 months after the commencement of that paragraph.
- (2) The modification prescribed by this clause applies until the expiration of the period of 2 months after the commencement of section 8C(3)(a) of the Act (as inserted by the *Children's Protection (Implementation of Report Recommendations) Amendment Act 2009*).

Legislative history

Notes

- Variations of this version that are uncommenced are not incorporated into the text.
- 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
2010	176	<i>Gazette 29.7.2010 p3924</i>	1.1.2011: r 2
2011	280	<i>Gazette 15.12.2011 p5075</i>	Pt 2 (r 4)—1.1.2012: r 2