

South Australia

# Disability Services (Assessment of Relevant History) Regulations 2014

under the *Disability Services Act 1993*

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## Legislative history

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### 1—Short title

These regulations may be cited as the *Disability Services (Assessment of Relevant History) Regulations 2014*.

### 3—Interpretation

- (1) In these regulations, unless the contrary intention appears—

**ACC** means the Australian Crime Commission established under the *Australian Crime Commission Act 2002* of the Commonwealth;

**Act** means the *Disability Services Act 1993*;

**authorised screening unit** means a person or body established as, or declared to be, an authorised screening unit under regulation 5(1);

**Chief Executive** means the Chief Executive of the administrative unit that is, under the Minister, responsible for the administration of the Act;

*disability services 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 or welfare of people with a disability;

*interstate authorised screening unit* means a person or body declared to be an interstate authorised screening unit under regulation 5(2).

- (2) A term or phrase used in these regulations that is used in section 5B or 5C of the Act has the same meaning as in that section unless the contrary intention appears.

#### **4—Manner in which assessment must be undertaken**

- (1) For the purposes of section 5B(1) and (2) of the Act, an assessment of a person's relevant history must be undertaken by an authorised screening unit.
- (2) For the purposes of section 5C(3)(a) of the Act, an assessment of a person's relevant history must be undertaken by—
- (a) having an authorised screening unit assess the relevant history of the person; or
  - (b) obtaining a criminal history report (such as a National Police Certificate) prepared by the ACC or an ACC accredited agency or broker.

#### **5—Screening units**

- (1) The Chief Executive may, as the Chief Executive thinks fit—
- (a) establish authorised screening units; or
  - (b) declare, by notice in the Gazette, that a person or body is an authorised screening unit,
- for the purposes of undertaking relevant history assessments under the Act.
- (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.

#### **6—Provision of information to interstate authorised screening unit**

Despite any other Act or law, information forming part of a person's relevant history may be provided by the Crown, or an agency or instrumentality of the Crown, to an interstate authorised screening unit for the purpose of undertaking disability services employment screening as authorised or required under a law of another State or Territory, or of the Commonwealth.

#### **7—Prescribed functions**

For the purposes of paragraph (c) of the definition of *prescribed functions* in section 5B(6) of the Act, the following kinds of records are prescribed (where such records relate to a person with a disability):

- (a) records of a disability service;
- (b) records of an educational or child care service;
- (c) records of a health service (within the meaning of the *Health Care Act 2008*);
- (d) records made or kept in connection with the administration of the following:

- (i) *Children's Protection Act 1993*;
- (ii) *Disability Services Act 1993*;
- (iii) *Family and Community Services Act 1972*;
- (iv) *Supported Residential Facilities Act 1992*;
- (e) records relating to legal proceedings.

### **8—Prescribed function—overnight care**

- (1) The provision of overnight care is prescribed for the purposes of paragraph (d) of the definition of *prescribed functions* in section 5B(6) of the Act.
- (2) In this regulation—  
*overnight care* means care provided to a person with a disability overnight and involving sleeping arrangements (whether such care is provided on a short term or ongoing basis).

### **9—Relevant history**

- (1) For the purposes of paragraph (a)(v) of the definition of *relevant history* in section 5B(6) of the Act, the following persons and bodies are prescribed:
  - (a) the administrative unit that is, under the Minister, responsible for the administration of the Act;
  - (b) the administrative unit that is, under the Minister, responsible for the administration of the *Children's Protection Act 1993*;
  - (c) the administrative unit that is, under the Minister, responsible for the administration of the *Supported Residential Facilities Act 1992*;
  - (d) a licensing authority within the meaning of the *Supported Residential Facilities Act 1992*;
  - (e) the Courts Administration Authority;
  - (f) a prescribed disability service provider that is not a government department, agency or instrumentality;
  - (g) an authorised screening unit.
- (2) Information is excluded from the ambit of the definition of *relevant history* in section 5B(6) of the Act if—
  - (a) in respect of a relevant history assessment in relation to which the administrative unit referred to in subregulation (1)(b) holds relevant information—the information is excluded under regulation 10B(2) of the *Children's Protection Regulations 2010* for the purposes of those regulations; or
  - (b) in respect of a relevant history assessment of a kind determined by the Chief Executive—the Chief Executive determines, for reasons based on the nature and quality of the information or on other reasonable grounds, that the information should be so excluded.

## 10—Request for prescribed evidence of compliance

For the purposes of section 5C(5)(c) of the Act, a request must—

- (a) in the case of a request made by a person with a disability in respect of whom the prescribed function is being performed—be made orally or in writing; or
- (b) in the case of a request made by a parent, guardian or carer of such a person with a disability—
  - (i) be made in writing; and
  - (ii) include the name of the person making the request; and
  - (iii) specify whether the person making the request is the parent, guardian or carer of the person with a disability.

## 11—Prescribed evidence of screening

For the purposes of section 5C(5) of the Act, the following kinds of evidence are prescribed:

- (a) a criminal history report (such as a National Police Certificate) prepared by any of the following within the 3 years preceding the request:
  - (i) South Australia Police;
  - (ii) CrimTrac or a CrimTrac accredited agency or broker;
  - (iii) the ACC or an ACC accredited agency or broker; or
- (b) a relevant history assessment report prepared by an authorised screening unit; or
- (c) any other evidence of a kind approved by the Chief Executive for the purposes of this regulation.

## 11A—ASU authorised to undertake relevant history assessments of persons performing prescribed functions

- (1) Pursuant to section 5B(4)(b) of the Act, an authorised screening unit is, by force of this regulation, authorised to undertake an assessment of the relevant history of any person who performs, or is to perform, a prescribed function (whether or not the service is being provided by a prescribed disability services provider).
- (2) To avoid doubt, subregulation (1) is in addition to and does not affect a requirement for an assessment of a person's relevant history under section 5B or 5C of the Act.

## 12—Assessment of prescribed information

- (1) An authorised screening unit must not undertake an assessment of prescribed information if—
  - (a) the assessment is not authorised or required under the Act, or otherwise authorised by law; or
  - (b) the prescribed information was provided to the authorised screening unit for specified purposes that do not include disability services employment screening.

Maximum penalty: \$10 000.

- (4) In this regulation—

**prescribed information** means information of a kind specified in subparagraph (ii), (iii), (iv) or (v) of paragraph (a) of the definition of **relevant history** in section 5B(6) of the Act.

### 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 relevant history; or
- (c) an organisation that prepares a relevant 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 relevant 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 5B of the Act applies must ensure that information forming part of—

- (a) a person's relevant 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.

### 14—Exemption

- (1) A responsible authority for a prescribed disability service provider is exempt from the requirement under section 5B(1) of the Act to ensure that an assessment of a person's relevant history is undertaken before the person is appointed to, or engaged to act in, a prescribed position if—

- (a) a child-related employment screening has been carried out in relation to the person within the preceding 3 years; and
- (b) the child-related employment screening—
  - (i) indicates that the person does not pose a risk to the safety of children if engaged in child-related employment; or
  - (ii) does not indicate that the person is unsuitable to be engaged in child-related employment (however described).

- (2) In this regulation—

***child-related employment***—a person is engaged in child-related employment if the person—

- (a) is appointed to, or is engaged to act in, a prescribed position (within the meaning of section 8B of the *Children's Protection Act 1993*); or
- (b) performs a prescribed function (within the meaning of section 8B of the *Children's Protection Act 1993*);

***child-related employment screening***, in relation to a person, means an assessment of the person's relevant history (within the meaning of section 8B of the *Children's Protection Act 1993*) for the purposes of section 8B of the *Children's Protection Act 1993* carried out in accordance with regulation 6(1)(b) of the *Children's Protection Regulations 2010*.

#### **14A—Fees—waiver and remittance**

An authorised screening unit may determine circumstances in which a fee prescribed for the purposes of the Act and payable to the authorised screening unit for conducting a relevant history assessment may be waived or remitted.

#### **15—Exemption—working with children check conducted**

- (1) A responsible authority for a prescribed disability service provider is exempt from the requirement under section 5B(1) of the Act to ensure that an assessment of a person's relevant history is undertaken before the person is appointed to, or engaged to act in, a prescribed position if—
  - (a) a working with children check (within the meaning of the *Child Safety (Prohibited Persons) Act 2016*) has been carried out in relation to the person within the preceding 5 years; and
  - (b) the person is not a prohibited person within the meaning of the *Child Safety (Prohibited Persons) Act 2016*.
- (2) This regulation expires on 30 September 2020.

#### **16—Exemption—application for assessment of relevant history pending**

- (1) A responsible authority for a prescribed disability service provider is exempt from the requirement under section 5B(1) of the Act to ensure that an assessment of a person's relevant history is undertaken before the person is appointed to, or engaged to act in, a prescribed position if—
  - (a) an application for an assessment of the person's relevant history has been made to an authorised screening unit; and
  - (b) the assessment of the person's relevant history has not yet been undertaken by the authorised screening unit; and
  - (c) the person is supervised while acting in the prescribed position by a prescribed supervisor.
- (2) An exemption conferred under subregulation (1) remains in force—
  - (a) for a period of 6 months from the time the application was made to the authorised screening unit; or

- (b) until an assessment of the person's relevant history is undertaken by the authorised screening unit,

whichever is the earlier.

- (3) In this regulation—

***child-related employment screening*** has the same meaning as in regulation 14;

***prescribed supervisor*** means a person in relation to whom—

- (a) an assessment of relevant history has been undertaken within the preceding 3 years;
- (b) a child-related employment screening has been carried out within the preceding 3 years;
- (c) a working with children check (within the meaning of the *Child Safety (Prohibited Persons) Act 2016*) has been conducted within the preceding 5 years.

- (4) This regulation expires on 30 September 2020.

## 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](http://www.legislation.sa.gov.au).

### Principal regulations and variations

New entries appear in bold.

Year	No	Reference	Commencement
2014	60	<i>Gazette 13.2.2014 p960</i>	16.2.2014: r 2
2014	196	<i>Gazette 26.6.2014 p3074</i>	1.7.2014: r 2
2015	90	<i>Gazette 18.6.2015 p2638</i>	1.7.2015: r 2
2016	53	<i>Gazette 16.6.2016 p2121</i>	16.6.2016: r 2
2016	70	<i>Gazette 23.6.2016 p2181</i>	1.7.2016: r 2
2016	171	<i>Gazette 30.6.2016 p2790</i>	1.7.2016: r 2
2017	76	<i>Gazette 7.6.2017 p2046</i>	7.6.2017: r 2
2017	117	<i>Gazette 22.6.2017 p2309</i>	1.7.2017: r 2
2018	113	<i>Gazette 21.6.2018 p2308</i>	1.7.2018: r 2
2018	233	<i>Gazette 29.11.2018 p4102</i>	29.11.2018: r 2
2019	62	<i>Gazette 13.6.2019 p1839</i>	1.7.2019: r 2
2020	37	<i>Gazette 2.4.2020 p662</i>	2.4.2020: r 2
2020	75	<i>Gazette 21.5.2020 p2476</i>	21.5.2020: r 2
<b>2020</b>	<b>156</b>	<b><i>Gazette 4.6.2020 p3005</i></b>	<b>1.7.2020: r 2</b>

### Provisions varied

New entries appear in bold.

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

Provision	How varied	Commencement
<i>r 2</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	<i>1.7.2014</i>
r 3		
r 3(1)	varied by 53/2016 r 4(1)	16.6.2016
ACC	inserted by 171/2016 r 4	1.7.2016
r 3(2)	varied by 53/2016 r 4(2)	16.6.2016
r 4	substituted by 171/2016 r 5	1.7.2016
r 5		



r 5(1)	varied by 76/2017 r 4	7.6.2017
r 11	varied by 171/2016 r 6	1.7.2016
r 11A	inserted by 76/2017 r 5	7.6.2017
r 12		
r 12(1)	varied by 76/2017 r 6(1)	7.6.2017
<i>r 12(2) and (3)</i>	<i>deleted by 76/2017 r 6(2)</i>	<i>7.6.2017</i>
r 14	substituted by 53/2016 r 5	16.6.2016
<b>r 14A</b>	<b>inserted by 156/2020 r 4</b>	<b>1.7.2020</b>
r 15	inserted by 37/2020 r 4	2.4.2020
	will expire: s 15(2)	(30.9.2020)
r 15(1)	r 15 redesignated as r 15(1) by 75/2020 r 4	21.5.2020
r 15(2)	inserted by 75/2020 r 4	21.5.2020
r 16	inserted by 37/2020 r 4	2.4.2020
	will expire: s 16(4)	(30.9.2020)
r 16(4)	inserted by 75/2020 r 5	21.5.2020
<i>Sch 1 before deletion by 156/2020</i>		
<i>cl 1</i>	<i>varied by 196/2014 r 4(1), (2)</i>	<i>1.7.2014</i>
	<i>varied by 90/2015 r 4(1), (2)</i>	<i>1.7.2015</i>
	<i>varied by 70/2016 r 4(1), (2)</i>	<i>1.7.2016</i>
	<i>varied by 117/2017 r 4(1), (2)</i>	<i>1.7.2017</i>
	<i>varied by 113/2018 r 4(1), (2)</i>	<i>1.7.2018</i>
	<i>varied by 233/2018 r 4</i>	<i>29.11.2018</i>
	<i>varied by 62/2019 r 4(1), (2)</i>	<i>1.7.2019</i>
<b>Sch 1</b>	<b>deleted by 156/2020 r 5</b>	<b>1.7.2020</b>

## Historical versions

1.7.2014  
1.7.2015  
16.6.2016  
1.7.2016  
7.6.2017  
1.7.2017  
1.7.2018  
29.11.2018  
1.7.2019  
2.4.2020  
21.5.2020