

Legislative Council—No 32

As introduced and read a first time, 21 July 2010

South Australia

Disability (Mandatory Reporting) Bill 2010

A BILL FOR

An Act to provide for the protection of persons with a disability; and for other purposes.

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The Parliament of South Australia enacts as follows:

1—Short title

This Act may be cited as the *Disability (Mandatory Reporting) Act 2010*.

2—Commencement

This Act will come into operation 6 months after assent.

5 3—Interpretation

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

10 *abuse or neglect*, in relation to a person, means physical or emotional abuse of the person, or neglect of the person, to the extent that the person has suffered, or is likely to suffer, physical or psychological injury detrimental to the person's wellbeing and includes a reasonable likelihood of the person being killed, injured, abused, neglected or sexually abused by another person;

Chief Executive means the person for the time being holding, or acting in, the position of chief executive of the Department;

15 *dentist* means a person who is registered as a dental practitioner under the law of this State;

Department means the administrative unit of the Public Service prescribed by regulation for the purposes of this definition;

20 *developmental educator* means a person who holds the degree of Bachelor of Disability and Community Rehabilitation conferred by the Flinders University of South Australia or who has completed a course of education or training approved by the Minister for the purposes of this definition;

disability means any of the following:

- 25 (a) a disability within the meaning of the *Disability Services Act 1993*;
- (b) a chronic illness, including a mental illness within the meaning of the *Mental Health Act 1993*;
- (c) a condition prescribed by regulation;

government organisation means a government department, agency or instrumentality;

medical practitioner means a person who is registered as a medical practitioner under the law of this State;

non-government organisation means—

- (a) a business; or
- (b) a service provider; or
- (c) a group organised for some purpose, work or undertaking (such as a society, club, institution or body),

whether incorporated or unincorporated, and includes a local government organisation;

notifier means a person who makes a notification under section 5(1);

occupational therapist means a person who is registered as an occupational therapist under the law of this State;

person to whom this Act applies—see section 4;

pharmacist means a person who is registered as a pharmacist under the law of this State;

psychologist means a person who is registered as a psychologist under the law of this State;

physiotherapist means a person who is registered as a physiotherapist under the law of this State.

- (2) For the purposes of this Act, an organisation may consist of a single person.

4—Person to whom this Act applies

This Act applies to a person who has a disability such that he or she—

- (a) is, or is likely to be, unable to communicate to another person a complaint about abuse or neglect; or
- (b) is, or is likely to be, unable to understand the nature of abuse or neglect in order to make a complaint about it.

5—Notification of abuse or neglect

- (1) If—

- (a) a prescribed person suspects on reasonable grounds that a person to whom this Act applies has been, or is being, abused or neglected; and
- (b) the suspicion is formed in the course of the person's work (whether paid or voluntary) or of carrying out official duties,

the person must notify the Department of that suspicion as soon as practicable after he or she forms the suspicion.

Maximum penalty: \$10 000.

- (2) A notification under this section must be accompanied by a statement of the observations, information and opinions on which the suspicion is based.

(3) It is a defence to a charge of an offence against this section relating to the suspected abuse or neglect of a person for the defendant to prove that he or she made a notification under section 11 the *Children's Protection Act 1993* in relation to that suspected abuse or neglect.

5 (4) A person does not necessarily exhaust his or her duty of care to a person by giving a notification under this section.

(5) A person must not threaten or intimidate, or cause damage, loss or disadvantage to, a prescribed person because the person has discharged, or proposes to discharge, his or her duty under subsection (1).

10 Maximum penalty: \$10 000.

(6) In this section—

prescribed person means any of the following persons:

(a) a medical practitioner;

(b) a pharmacist;

15 (c) a registered or enrolled nurse;

(d) a dentist;

(e) a psychologist;

(f) a developmental educator;

(g) a physiotherapist;

20 (h) an occupational therapist;

(i) a police officer;

(j) a social worker;

(k) a minister of religion;

25 (l) a person who is an employee of, or volunteer in, an organisation formed for religious or spiritual purposes;

(m) a person who is an employee of, or volunteer in, a government or non-government organisation that provides a prescribed service (whether or not the organisation also provides any other service), being a person who—

(i) is engaged in the actual delivery of the prescribed service; or

30 (ii) holds a management position in the relevant organisation the duties of which include direct responsibility for, or direct supervision of, the provision of the prescribed service;

(n) a person of a class prescribed by regulation;

35 ***prescribed service*** means a service that is provided wholly or primarily for persons with disabilities or their carers and consists of 1 or more of the following:

(a) residential services;

(b) health services;

(c) sport or recreation services;

(d) home care and family support services;

- (e) information services;
- (f) education or training services;
- (g) advocacy services;
- (h) transport services;
- (i) services prescribed by regulation.

6—Protection from liability for voluntary or mandatory notification

A person who (whether voluntarily or pursuant to a requirement of this Act) notifies the Department of a suspicion that a person has been or is being abused or neglected, or provides any information to the Department in respect of such a notification—

- (a) cannot, by virtue of doing so, be held to have breached any code of professional etiquette or ethics, or to have departed from any accepted form of professional conduct; and
- (b) insofar as he or she has acted in good faith, incurs no civil or criminal liability in respect of the notification or the provision of the information.

7—Confidentiality of notification of abuse or neglect

- (1) Subject to this section, a person who receives a notification under this Act, or who otherwise becomes aware of the identity of a notifier, must not disclose the identity of the notifier to any other person unless the disclosure—

- (a) is made in the course of official duties to another person acting in the course of official duties; or
- (b) is made with the consent of the notifier; or
- (c) is made by way of evidence adduced in accordance with subsections (2) and (3).

Maximum penalty: \$10 000.

- (2) Subject to subsection (3)—

- (a) no evidence as to the identity of a notifier, or from which the identity of the notifier could be deduced, may be adduced in proceedings before a court without the permission of the court; and
- (b) unless such permission is granted, a party or witness in those proceedings must not be asked, and, if asked, cannot be required to answer, any question that cannot be answered without disclosing the identity of, or leading to the identification of, the notifier.

- (3) A court cannot grant permission under subsection (2) unless—

- (a) the court is satisfied that the evidence is of critical importance in the proceedings and that failure to admit it would prejudice the proper administration of justice; or
- (b) the notifier consents to the admission of the evidence in the proceedings.

- (4) An application for permission to adduce evidence under subsection (2)—

- (a) must not, except as authorised by the court, be heard and determined in public; and

- (b) must be conducted in such a manner as to protect, so far as may be practicable, the identity of the notifier pending the determination of the application.

8—Referral to appropriate authority

5 The Chief Executive must ensure that a report of each notification under section 5 is made and referred to an appropriate authority of the State for further investigation and action.

9—Regulations

10 The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.