

South Australia

Prevention and Early Intervention for the Development and Wellbeing of Children and Young People Bill 2017

A BILL FOR

An Act to provide a framework for improving the wellbeing and development of children and young people; to recognise the primacy of prevention and early intervention in improving outcomes for children and young people; to provide for a whole of State strategy for furthering the purposes of this Act; to recognise the importance of strengthening families and communities in improving outcomes for children and young people; to ensure that, where intervention in the lives of children and young people is necessary, that intervention occurs at the earliest opportunity; and for other purposes.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Prevention and Early Intervention for the Development and Wellbeing of Children and Young People Act 2017*.

2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

3—Interpretation

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

10 *Aboriginal or Torres Strait Islander child or young person* means a child or young person who—

- (a) is of Aboriginal or Torres Strait Islander descent; and
- (b) regards themselves as Aboriginal or Torres Strait Islander or, if they are a young child, is regarded as Aboriginal or Torres Strait Islander by at least 1 of their parents; and
- 15 (c) is accepted as such by the community with which the child or young person associates;

Chief Executive means the Chief Executive of the Department;

Child Development Council or *Council* means the Child Development Council under the *Children and Young People (Oversight and Advocacy Bodies) Act 2016*;

20 *child or young person* means a person who is under 18 years of age;

Commissioner for Children and Young People means the Commissioner for Children and Young People under the *Children and Young People (Oversight and Advocacy Bodies) Act 2016*;

25 *Department* means the administrative unit of the Public Service that is responsible for assisting a Minister in the administration of this Act;

early years, in relation to a child, means the first 1 000 days in the life of the child;

peak bodies means the persons or bodies from time to time declared by the regulations to be peak bodies for the purposes of this Act;

prescribed service provider means—

- 30 (a) the Department; or
- (b) the Department for Education and Child Development; or
- (c) the Department for Health and Ageing; or
- (d) the Department for Communities and Social Inclusion; or
- (e) a local council constituted under the *Local Government Act 1999*; or

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- (f) any other person or body, or person or body of a class, prescribed by the regulations,

but does not include a person or body declared by the regulations to be excluded from the ambit of this definition;

5 *purposes of this Act*—see section 7;

statutory instrument means—

- (a) a plan, program or policy prepared under an Act; or
(b) any other instrument, or instrument of a kind, prescribed by the regulations for the purposes of this definition;

10 *Whole of State Strategy for Prevention and Early Intervention for Children and Young People and Families* or *State Strategy* means the *Whole of State Strategy for Prevention and Early Intervention for Children and Young People and Families* prepared under Part 4 Division 1, as in force from time to time.

15 (2) For the purposes of this Act, a reference to the *parents* of children and young people will be taken to include a reference to—

- (a) a step-parent of the child or young person; and
(b) a person who stands *in loco parentis* to the child or young person.

(3) For the purposes of this Act, a reference to the *family* of a child or young person will be taken to be a reference to—

- 20 (a) the biological family of the child or young person; and
(b) the extended family of the child or young person; and
(c) a person who, in accordance with the cultural background of the child or young person, has a relationship of responsibility for the child or young person.

25 **4—Meaning of *rights*, *wellbeing* and *development***

(1) For the purposes of this Act, a reference to the *rights* of children and young people will be taken to include a reference to rights recognised in accordance with statutory and common law, rights set out from time to time in the *United Nations Convention on the Rights of the Child* and rights set out in any other relevant international human rights instruments.

(2) For the purposes of this Act, a reference to the *wellbeing* of children and young people will be taken to include a reference to a state of being—

- (a) characterised by satisfactory conditions of health, safety, happiness and connection; and
35 (b) enhanced by building protective factors and resilience to be better equipped to respond to adversity and enjoy fulfilling life experiences.

(3) For the purposes of this Act, a reference to the *development* of children and young people will be taken to include a reference to the physical, social, emotional, cognitive and health growth of each individual from birth through to adulthood.

5—Meaning of *prevention* and *early intervention*

- 5 (1) For the purposes of this Act, a reference to *prevention* in relation to children and young people will be taken to include a reference to measures (including measures directed towards families and communities) aimed at reducing risks and harm to health, wellbeing and development that are implemented before a particular social issue arises, taking into consideration the complex ecology of social and economic factors that contribute to a predicted population level issue.
- 10 (2) For the purposes of this Act, a reference to *early intervention* in relation to children and young people will be taken to include a reference to the provision of services and supports, and taking of preventative measures, soon after a particular problem is identified to address vulnerability and build resilience (including services, supports and preventative measures directed towards families and communities).

6—Interaction with other Acts

- 15 (1) Nothing in this Act limits the operation of the *Children and Young People (Safety) Act 2017*, the *Child Safety (Prohibited Persons) Act 2016* or the *Children and Young People (Oversight and Advocacy Bodies) Act 2016*.
- (2) In the event of an inconsistency with the *Children and Young People (Safety) Act 2017*, that Act will prevail to the extent of the inconsistency.
- (3) This Act is in addition to, and does not derogate from, any other Act or law.

20 Part 2—Purposes of this Act

7—Effect of Part

This Part sets out—

- 25 (a) the Parliament of South Australia's commitment to the *United Nations Convention on the Rights of the Child*; and
- (b) the objects of this Act; and
- (c) principles to be taken into account in the administration and operation of this Act; and
- 30 (d) the Parliament of South Australia's recognition of certain matters relevant to the wellbeing and development of children and young people, and its expectation that those matters be addressed,

collectively to be referred to in this Act as the *purposes of this Act*.

8—Commitment to the *United Nations Convention on the Rights of the Child*

35 The Parliament of South Australia recognises the *United Nations Convention on the Rights of the Child* and prescribed service providers will seek to give effect to the rights set out from time to time in the convention.

9—Objects of Act

The object of this Act is to improve outcomes for all children and young people in this State by—

- (a) establishing a legislative framework to ensure that—

- 5
- (i) reasonable, practicable and evidence based measures are taken to develop and implement policies and services that build capacity and strengthen families and communities, as well as facilitate improvements in the wellbeing and development of children and young people; and
- (ii) targeted assistance is made available to vulnerable children and young people and their families; and
- (b) working with families and communities so that services are timely and referral pathways are needs based, local and integrated; and
- 10 (c) establishing collaborative partnerships between government and non-government organisations and communities in the planning and delivery of services for families; and
- (d) recognising the interests and aspirations of Aboriginal and Torres Strait Islander families and communities, and giving due recognition to the ability of families and communities to make a significant contribution to furthering the purposes of this Act by working in partnership with Aboriginal and Torres Strait Islander children and young people.
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10—Principles

20 The following principles must be taken into account in the administration and operation of this Act:

- (a) parents, guardians and carers have the primary role in the wellbeing and development of children and young people in their care;
- (b) the community is an important factor in supporting children and young people and strengthening families;
- 25 (c) recognising the importance of a child's early years and investing across the life of children and young people is important in supporting families to help children and young people reach their developmental milestones and full potential;
- (d) prevention and early intervention policies and services are of fundamental importance in optimising outcomes for children and young people, their families and communities;
- 30 (e) individuals, families, community groups and government have a shared responsibility to ensure every child and young person is supported to grow up happy and cared for, to be kept safe from harm, and to be supported to participate in society and fulfil their potential;
- 35 (f) children and young people and their families should have access to services that are culturally and developmentally appropriate, relevant to their needs, and delivered in the most culturally appropriate way to maximise their engagement and participation;
- 40 (g) accountability is achieved through measuring and reporting on programs and services and their impact on improving wellbeing for children and young people.

11—Recognition of the importance of involving children and young people and families in decisions and inclusion

- (1) The Parliament of South Australia recognises the importance of involving children and young people and families in decisions that affect their lives.
- 5 (2) The Parliament of South Australia recognises that the participation of Aboriginal and Torres Strait Islander people in nurturing identity, and in the wellbeing and development of their children and young people, is essential to ensuring the best outcomes for Aboriginal and Torres Strait Islander children and young people, as well as the community generally.
- 10 (3) The Parliament of South Australia recognises that the outcomes referred to in subsection (2) are best achieved by Aboriginal and Torres Strait Islander families and communities and prescribed service providers working in partnership when making decisions about Aboriginal and Torres Strait Islander children and young people.
- 15 (4) It is the intention of the Parliament of South Australia that all prescribed service providers will develop culturally appropriate practices and procedures to encourage and facilitate the participation of children and young people and families in the making of decisions relating to the development and review of policies, programs and services that may affect them.
- 20 (5) It is the intention of the Parliament of South Australia that all prescribed service providers will commit to engagement with communities in supporting the needs of all children and young people and families, and, where necessary to achieve that engagement, will give special attention to those children and young people and families for whom it has, by reason of culture, disability, gender, language, religion or any other factor, traditionally been more difficult to access services that may improve their wellbeing and development.
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Part 3—Administration

12—Administration of Act to further purposes of Act

The Minister, the Chief Executive and any other person or body involved in the administration of this Act, and any person or body required to consider the operation or application of this Act (whether acting under this Act or another Act), must act consistently with, and seek to further, the purposes of this Act.

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13—Prescribed service providers to further purposes of Act

- (1) Each prescribed service provider must, insofar as may be relevant to the functions of the prescribed service provider and to the extent that it is reasonably practicable to do so—
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- (a) have regard to; and
 - (b) act consistently with; and
 - (c) seek to further,
- the purposes of this Act.
- 40 (2) Each prescribed service provider must, insofar as may be relevant to the functions of the prescribed service provider and to the extent that it is reasonably practicable to do so, have regard to, and implement, the State Strategy.

(3) However, subsections (1) and (2) do not apply to a prescribed service provider acting in accordance with a requirement of an Act, or in any other circumstances prescribed by the regulations.

(4) A failure by a prescribed service provider to comply with this section does not, of itself, give rise to any civil liability against the Crown, the prescribed service provider or any other person.

14—Functions and powers of Minister

(1) The functions of the Minister under this Act include the following:

(a) to prepare and maintain the State Strategy, with a specific focus on prevention and early intervention;

(b) to monitor compliance with the State Strategy (and, in particular, the provision of preventative and early intervention services as contemplated by the State Strategy);

(c) to work with the Commissioner for Children and Young People, the Child Development Council and other relevant persons and bodies to foster and support the wellbeing and development of children and young people;

(d) to promote a partnership approach between the State, local government and non-government agencies, families and communities to improving wellbeing and development of children and young people;

(e) to ensure that evidence based measures are taken in regard to the design and delivery of services to build capacity and strengthen families and communities;

(f) to ensure collaboration with Aboriginal and Torres Strait Islander communities and service providers in the design of prevention and early intervention activities for children and young people in those communities;

(g) to provide, or assist in the provision of, information and education services for parents, prospective parents and other members of the community relating to the wellbeing and developmental needs of children and young people;

(h) to provide advice with respect to proposed statutory instruments, policies, activities or other matters that may affect children and young people;

(i) to consult with peak bodies, other relevant persons and bodies, and the wider community, about ways in which the purposes of this Act can be furthered;

(j) as far as may be reasonably practicable and appropriate—

(i) to act to integrate the administration of this Act with the administration of other legislation that may affect children and young people; and

(ii) to promote the integration or coordination of policies, programs, plans and projects developed, administered or undertaken by other persons, bodies or authorities insofar as they may affect children and young people; and

(iii) to advocate for the adequate resourcing of programs, plans or projects designed to further the purposes of this Act;

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- (k) to monitor issues affecting children and young people;
- (l) to conduct or promote research and public education in relation to matters affecting children and young people generally;
- (m) to keep—
- 5 (i) the operation of this Act under review; and
- (ii) the operation of other Acts under review, insofar as they are relevant to the purposes of this Act;
- (n) to assess the extent to which the purposes of this Act are being considered in the administration of other relevant Acts;
- 10 (o) such other functions assigned to the Minister by or under this or any other Act.
- (2) Without limiting any other Act or law, the Minister should adopt a leadership role in relation to matters affecting children and young people.
- (3) The Minister has the power to do anything necessary, expedient or incidental to—
- 15 (a) performing the functions of the Minister under this Act; or
- (b) furthering the purposes of this Act.

15—Delegation

- (1) The Minister may delegate a function or power under this Act (other than a prescribed function or power) to a specified body or person (including a person for the time being holding or acting in a specified office or position).
- 20 (2) A delegation under this section—
- (a) must be by instrument in writing; and
- (b) may be absolute or conditional; and
- (c) does not derogate from the ability of the Minister to act in any matter; and
- 25 (d) is revocable at will.
- (3) A function or power delegated under this section may, if the instrument of delegation so provides, be further delegated.

Part 4—Whole of State Strategy for Prevention and Early Intervention for Children and Young People and their Families

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Division 1—Whole of State Strategy for Prevention and Early Intervention for Children and Young People and their Families

16—Whole of State Strategy for Prevention and Early Intervention for Children and Young People and their Families

- 35 (1) There is to be an instrument (the *Whole of State Strategy for Prevention and Early Intervention for Children and Young People and their Families*) setting out strategies intended to further the purposes of this Act.

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Part 4—Whole of State Strategy for Prevention and Early Intervention for Children and Young People and their Families

Division 1—Whole of State Strategy for Prevention and Early Intervention for Children and Young People and their Families

- (2) The State Strategy must also provide for the implementation of the State Strategy, setting out—
- (a) the priorities that the Minister will pursue in order to further the purposes of this Act; and
 - 5 (b) the strategies that the Minister intends to adopt to meet those priorities; and
 - (c) intended outcomes in relation to the State Strategy (and the measures to be used in relation to those outcomes); and
 - (d) any other matters required by the regulations.
- (3) The State Strategy may incorporate or refer to such codes or standards, documents, policy statements, proposals and other matters as the Minister thinks fit.
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17—Preparation of State Strategy

- (1) The State Strategy is to be prepared by the Minister in accordance with this section.
- (2) The Minister must, in preparing the State Strategy, take into account—
- (a) the State Strategic Plan; and
 - 15 (b) the Charter of Rights for Children and Young People in Care under the *Children and Young People (Safety) Act 2017*; and
 - (c) the Outcomes Framework for Children and Young People under the *Children and Young People (Oversight and Advocacy Bodies) Act 2016*; and
 - (d) any other instrument or matter prescribed by the regulations.
- 20 (3) The State Strategy is to be prepared in accordance with the following provisions:
- (a) the Minister must prepare a draft of the State Strategy; and
 - (b) the Minister must consult with the Commissioner for Children and Young People in respect of the draft strategy; and
 - 25 (c) the Minister must consult with the peak bodies in respect of the draft strategy in accordance with section 20; and
 - (d) the Minister must undertake community consultation in respect of the draft strategy in accordance with section 21; and
 - (e) the Minister may then adopt the draft strategy, as varied during the consultation process, as the State Strategy.
- 30 (4) In preparing the draft State Strategy, the Minister must seek submissions from the Child Development Council in respect of the State Strategy, and must have regard to any submissions or recommendations made by the Child Development Council within the period specified by the Minister.
- (5) The Minister may from time to time vary or substitute the State Strategy.
- 35 (6) A variation or substitution of the State Strategy is to comply with subsections (3) and (4) as if it were a draft State Strategy.

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Whole of State Strategy for Prevention and Early Intervention for Children and Young People and their
Families—Part 4

Whole of State Strategy for Prevention and Early Intervention for Children and Young People and their
Families—Division 1

- (7) However, subsection (6) does not apply to a particular variation determined by the Minister to be a minor variation that does not substantially alter the effect of the State Strategy (and, in such a case, the Minister may instead adopt the variation without further action).
- 5 (8) The State Strategy, and any variation or substitution of the State Strategy, comes into operation on being adopted by the Minister.
- (9) The Minister must, within 6 sitting days after adopting the State Strategy, or a variation or substitution of the State Strategy, cause a copy of the State Strategy, or the State Strategy as varied or substituted, (as the case requires) to be laid before both
10 Houses of Parliament.
- (10) A failure of the Minister to comply with a requirement of this section does not affect the validity of the State Strategy.

18—Periodic review of State Strategy

- 15 (1) The Minister must, at least once in each 5 year period, cause the State Strategy to be reviewed in accordance with this section.
- (2) A review under this section—
- (a) must include consultation with the Commissioner for Children and Young People; and
- 20 (b) must include consultation with the peak bodies in accordance with section 20; and
- (c) must include community consultation in accordance with section 21; and
- (d) must comply with any requirements set out in the regulations.
- (3) The Minister must, in relation to each review under this section, seek submissions from the Child Development Council in respect of the State Strategy, and must have regard to any submissions or recommendations made by the Child Development Council within the period for making such submissions and recommendations specified by the Minister.
- 25 (4) On completion of a review, the Minister must cause a report of the review to be prepared and submitted to the Minister.
- 30 (5) The Minister must, within 6 sitting days after receiving a report under subsection (4), cause a copy of the report to be laid before both Houses of Parliament.

19—Publication of State Strategy etc

- (1) The Minister must cause a copy of the State Strategy, as in force from time to time—
- 35 (a) to be published on a website determined by the Minister; and
- (b) to be available for inspection (without charge) at a place or places determined by the Minister.
- (2) The Minister must cause a copy of each report prepared in relation to a review under section 18 to be published on a website determined by the Minister.

Division 2—Consultation and public engagement

20—Consultation and engagement with peak bodies

(1) For the purposes of this Act, the Minister undertakes consultation with the peak bodies by—

5 (a) in the case of consultation required under section 17(3)(c)—

(i) providing a copy of the draft State Strategy to each peak body in a manner and form determined by the Minister; and

10 (ii) specifying a period (being not less than 4 weeks) in which the peak body may make submissions to the Minister in respect of the draft strategy; or

(b) in the case of consultation required under section 18(2)(b)—

(i) providing each peak body with written notice of the review; and

(ii) specifying a period (being not less than 4 weeks) in which the peak body may make submissions to the Minister in respect of the review.

15 (2) To avoid doubt, nothing in this section prevents the Minister from undertaking additional consultation in any other manner, or for any reason, the Minister thinks fit.

(3) The regulations may make further provision in relation to consultation under this section.

21—Community consultation and engagement

20 (1) For the purposes of this Act, the Minister undertakes community consultation by—

(a) in the case of consultation required under section 17(3)(d)—

(i) publishing a copy of the draft State Strategy on a website determined by the Minister; and

25 (ii) specifying a period (being not less than 4 weeks) in which members of the public may make submissions to the Minister in respect of the draft strategy; or

(b) in the case of consultation required under section 18(2)(c)—

(i) publishing notice of the review on a website determined by the Minister; and

30 (ii) specifying a period (being not less than 4 weeks) in which the members of the public may make submissions to the Minister in respect of the review.

35 (2) Without limiting subsection (1), the Minister should, if it is reasonably practicable to do so, utilise community based bodies to encourage engagement of the community in the preparation and review of the State Strategy.

(3) To avoid doubt, nothing in this section prevents the Minister from undertaking additional consultation in any other manner, or for any reason, the Minister thinks fit.

- (4) The regulations may make further provision in relation to consultation under this section.

Part 5—Accountability

22—Minister to report annually to Parliament on operation of Act

- 5 (1) The Minister must, on or before 30 September in each year, cause a report to be prepared on the operation of this Act during the previous financial year.
- (2) A report under subsection (1) must include—
- 10 (a) information relating to submissions received by the Minister in relation to the preparation or variation, or any review, of the State Strategy during the relevant financial year; and
- (b) information relating to the operation of the State Strategy during the relevant financial year (and, in particular, information setting out the extent to which the intended outcomes referred to in section 16(2)(c) were achieved during that year,
- 15 and may include any other information the Minister thinks appropriate.
- (3) The Minister must cause a copy of the report prepared under subsection (1) to be laid before both Houses of Parliament within 12 sitting days after receiving the report.

23—Review of Act

- 20 (1) The Minister must cause a review of the operation of this Act to be conducted, and a report on the results of the review submitted to the Minister, before the fifth anniversary of the commencement of this Act.
- (2) The Minister must cause a copy of the report submitted under subsection (1) to be laid before both Houses of Parliament within 12 sitting days after receiving the report.

Part 6—Miscellaneous

24—Limitation of liability

- 25 (1) No liability attaches to a member of the Child Development Council or any other person for any act or omission in good faith in the exercise or purported exercise of powers or functions under this or any other Act.
- 30 (2) A person who does anything in accordance with this Act, or as required or authorised by or under this Act, cannot by so doing be held to have breached any code of professional etiquette or ethics, or to have departed from any acceptable form of professional conduct.
- 35 (3) Except where the contrary intention is expressly indicated, this Act (including the State Strategy) is an expression of policy and does not affect rights or liabilities (whether of a substantive, procedural or other nature).

25—Confidentiality

- (1) A person engaged or formerly engaged in the administration of this Act must not divulge or communicate personal information obtained (whether by that person or otherwise) in the course of official duties except—

- 5 (a) as required or authorised by or under this Act or any other Act or law; or
 (b) with the consent of the person to whom the information relates; or
 (c) in connection with the administration or enforcement of this or any other Act;
 or
10 (d) to an agency or instrumentality of this State, the Commonwealth or another
 State or a Territory of the Commonwealth for the purposes of the proper
 performance of its functions.

Maximum penalty: \$10 000.

- (2) Subsection (1) does not prevent disclosure of statistical or other data that could not reasonably be expected to lead to the identification of any person to whom it relates.

- 15 (3) Information that has been disclosed under subsection (1) for a particular purpose must not be used for any other purpose by—

- (a) the person to whom the information was disclosed; or
 (b) any other person who gains access to the information (whether properly or improperly and whether directly or indirectly) as a result of that disclosure.

20 Maximum penalty: \$10 000.

- (4) The regulations may make further provision in respect of the disclosure of information obtained in the course of the administration of this Act.

26—Regulations

- 25 (1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.

- (2) The regulations may—

- (a) be of general application or vary in their application according to prescribed factors;
 (b) provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Minister or other specified person or body;
30 (c) exempt a specified person or body, or persons or bodies of a specified class, from the operation of a provision of this Act;
 (d) make provisions of a saving or transitional nature.

- 35 (3) The regulations may refer to or incorporate, wholly or partially and with or without modification, a code, standard or other document prepared or published by a specified person or body, either as in force at the time the regulations are made or as in force from time to time.

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- (4) If a code, standard or other document is referred to or incorporated in the regulations—
- (a) a copy of the code, standard or other document must be kept available for public inspection, without charge and during ordinary office hours, at an office or offices specified in the regulations; and
 - (b) evidence of the contents of the code, standard or other document may be given in any legal proceedings by production of a document apparently certified by the Minister to be a true copy of the code, standard or other document.

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