

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*.

3—Interpretation

- (1) In these regulations—

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

authorised screening unit means a person or body established as, or declared to be, 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;

disability has the same meaning as in the *Disability Services Act 1993*;

disability services has the same meaning as in the *Disability Services Act 1993*;

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

interstate spent conviction means a conviction that is spent under a corresponding law (within the meaning of the *Spent Convictions Act 2009*).

- (2) A term or phrase used in these regulations that is used in section 8B or 8BA of the Act has the same meaning as in that section.
- (3) In these regulations, a reference to the Chief Executive includes a reference to a delegate of the Chief Executive.

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:

- (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 administrative unit that is, under the Minister, responsible for the administration of the Act is prescribed.

Part 3—Relevant history assessment

Division 1—Undertaking relevant 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 relevant history by either of the following methods:
- (a) by—
 - (i) obtaining—
 - (A) a criminal history report (such as a National Police Certificate) relating to the person provided by South Australia Police or a CrimTrac accredited agency or broker;
or

- (B) other prescribed evidence of the person's relevant history;
and
 - (ii) undertaking an assessment of that report or evidence, taking into account any information provided by the person for the assessment, for the purpose of determining whether the person may pose a risk to the safety of children;
 - (b) by having an authorised screening unit assess the relevant history of the person.
- (1a) For the purposes of section 8BA(3)(a) of the Act, an assessment of the relevant history of a person to whom that section applies is to be undertaken by having an authorised screening unit assess the relevant history of the person.
- (1b) An assessment under this regulation must be conducted in accordance with any relevant standards issued by the Chief Executive under section 8A(j) of the Act.
- (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, 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 assessments of a person's relevant history 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.
- (3) An authorised screening unit may undertake an assessment of a person's relevant history (where the assessment relates to the care and protection of children)—
- (a) for the purpose of assessing the person's suitability for enrolment as an adult in secondary education; or
 - (b) if the assessment is required under a contract entered into with a State Government agency or instrumentality; or
 - (c) where a child is undertaking a workplace learning program in connection with an approved learning program (within the meaning of section 75D of the *Education Act 1972*).

8—Prescribed non-government organisations

For the purposes of section 8B(6)(c) of the Act, a non-government organisation that provides disability services wholly or partly for children is a non-government organisation of a prescribed class.

8A—Issue of certificates

- (1) For the purposes of section 8B(7)(bb) of the Act, an authorised screening unit must, on completion of an assessment of a person's relevant history, issue a certificate to the person in accordance with this regulation.
- (2) A certificate—
 - (a) must be in a form approved by the Minister; and
 - (b) must contain the full name of the person to whom it relates; and
 - (c) must contain the date of issue of the certificate; and
 - (d) must contain a statement that "the relevant history of [*full name of person to whom certificate relates*] has been assessed by [*name of authorised screening unit*] and indicates/does not indicate [*as appropriate*] that [*full name of person to whom certificate relates*] poses a risk to the safety of children".
- (3) A certificate must not indicate that the person to whom the certificate relates is only suitable or authorised to perform specified prescribed functions (however a failure to comply with this subregulation will not invalidate a certificate).
- (4) A certificate may be issued to a person—
 - (a) by giving the certificate to the person personally; or
 - (b) by posting the certificate in an envelope addressed to the person at the person's last known residential or business address; or
 - (c) by leaving the certificate for the person at the person's last known residential or business address with someone apparently over the age of 16 years; or
 - (d) by transmitting a copy of the certificate by fax or email to a fax number or email address.
- (5) To avoid doubt, the issue of a certificate under this regulation does not amount to a representation that the person to whom the certificate relates is suitable or competent (however described) to work with children or perform a prescribed function.
- (6) No civil or criminal liability attaches to the Crown or any other person in relation to the issue of a certificate under this regulation in good faith and without negligence.

9—Exchange of information with other jurisdictions

Despite any other Act or law, information forming part of a person's relevant history (other than information under paragraph (a)(v) of the definition of *relevant history* in section 8B of the Act) may be provided by the Crown, or an agency or instrumentality of the Crown, to—

- (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.

10A—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 8B(8) of the Act.
- (2) In this regulation—
overnight care means care provided to a child overnight and involving sleeping arrangements (whether such care is provided on a short term or ongoing basis).

10B—Relevant history

- (1) For the purposes of paragraph (a)(v) of the definition of *relevant history* in section 8B(8) of the Act, the following persons and bodies are prescribed:
 - (a) the Department;
 - (b) the administrative unit that is, under a Minister, responsible for the administration of the *Carers Recognition Act 2005*;
 - (c) the administrative unit that is, under a Minister, responsible for the administration of the *Disability Services Act 1993*;
 - (d) the Courts Administration Authority;
 - (e) an authorised screening unit.
- (2) Information under paragraph (a)(v) of the definition of *relevant history* in section 8B(8) of the Act that is lawfully obtained or held by the Department is excluded from the ambit of that definition in respect of a relevant history assessment of a kind determined by the Chief Executive if the Chief Executive is not satisfied that the information relates to a person who has been responsible for harming a child.
- (3) Information is excluded from the ambit of the definition of *relevant history* in section 8B(8) of the Act in respect of a relevant history assessment of a kind determined by the Chief Executive if 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.

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.

11A—Exempt persons

For the purposes of section 8BA(2)(b) of the Act, the following persons, or persons of the following classes, are declared to be persons, or classes of persons, to whom that section does not apply:

- (a) a person who is not a member of an organisation contemplated by section 8B(6) of the Act;
- (b) a person who performs a prescribed function pursuant to a personal arrangement between the person and the parent or guardian of the relevant child or children (whether or not the arrangement involves payment to the person).

11B—Production of prescribed evidence

- (1) For the purposes of section 8BA(5)(c) of the Act, a request under that subsection must—
 - (a) be made in writing; and
 - (b) set out the name of the person making the request and the name of the child to whom the request relates; and
 - (c) specify whether the person making the request is the parent, guardian or carer of the child.
- (2) For the purposes of section 8BA(5) of the Act, the following kinds of evidence are prescribed:
 - (a) in the case where the assessment of the person's relevant history is undertaken by an authorised screening unit—a certificate issued to the person under regulation 8A within the 3 years preceding the request under that subsection; or
 - (b) a criminal history report (such as a National Police Certificate) prepared by South Australia Police, CrimTrac or a CrimTrac accredited agency or broker within the 3 years preceding the request under that subsection; or
 - (c) any other evidence of a kind approved by the Chief Executive for the purposes of this subregulation.

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 prescribed information unless satisfied that the assessment is required for child-related employment screening or is otherwise authorised or required by law.
Maximum penalty: \$10 000.

- (2) An authorised screening unit established by the Chief Executive under regulation 7(1)(a) must not undertake any kind of assessment other than assessment of a person's relevant history for the purpose of child-related employment screening or a purpose authorised under regulation 7(3) 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 prescribed information will not be used for the purpose of those assessments.

- (4) In this regulation—

prescribed information means—

- (a) information of a kind specified in subparagraph (ii), (iii), (iv) or (v) of paragraph (a) of the definition of *relevant history* in section 8B(8) of the Act; and
- (b) information relating to an interstate spent conviction.

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 8B 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.

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(1) 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(1) 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 for which an approval (however described) is required under the *Children's Services Act 1985* or the *Education and Early Childhood Services (Registration and Standards) Act 2011*; 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.

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 relevant 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	\$50.00
In any other case	\$90.50

Schedule 2—Transitional provisions

1—Certain documents taken to be certificates under regulation 8A

- (1) Subject to this clause, a document issued by an authorised screening unit before the commencement of this clause and relating to an assessment of the criminal or relevant history of a specified person for the purposes of child related employment will be taken to be a certificate issued under regulation 8A and—
- (a) will continue in force in accordance with its terms; and
- (b) will be taken to have been issued on the date of its original issue.

Note—

These documents are commonly referred to as clearance letters.

- (2) A document referred to in subclause (1) that indicates that the person specified in the document is only suitable or authorised to perform specified prescribed functions (within the meaning of section 8B of the Act) is, by force of this subclause, void and of no effect.

Note—

These documents are commonly referred to as role specific clearance letters.

Legislative history

Notes

- Variations of this version that are uncommenced are not incorporated into the text.
- 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.

Legislation revoked by principal regulations

The *Children's Protection Regulations 2010* revoked the following:

Children's Protection Regulations 2006

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
2012	85	<i>Gazette 31.5.2012 p2367</i>	1.7.2012: r 2
2013	131	<i>Gazette 6.6.2013 p2340</i>	1.7.2013: r 2
2014	61	<i>Gazette 13.2.2014 p965</i>	1.7.2014: r 2
2014	195	<i>Gazette 26.6.2014 p3072</i>	1.7.2014: r 2
2014	283	<i>Gazette 11.12.2014 p6764</i>	11.4.2015: r 2
2015	63	<i>Gazette 18.6.2015 p2559</i>	1.7.2015: 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
Pt 1		
<i>r 2</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	<i>1.1.2012</i>
r 3		
r 3(1)	r 3 redesignated as r 3(1) by 61/2014 r 4(4)	1.7.2014
authorised screening unit	varied by 61/2014 r 4(1)	1.7.2014
disability	inserted by 61/2014 r 4(2)	1.7.2014

disability services	inserted by 61/2014 r 4(2)	1.7.2014
interstate spent conviction	inserted by 61/2014 r 4(3)	1.7.2014
<i>responsible authority</i>	<i>deleted by 61/2014 r 4(3)</i>	<i>1.7.2014</i>
r 3(2)	inserted by 61/2014 r 4(4) varied by 283/2014 r 4	1.7.2014 11.4.2015
r 3(3)	inserted by 61/2014 r 4(4)	1.7.2014
Pt 2		
r 5	varied by 61/2014 r 5	1.7.2014
Pt 3		
heading	varied by 61/2014 r 6	1.7.2014
Pt 3 Div 1		
heading	varied by 61/2014 r 7	1.7.2014
r 6		
r 6(1)	varied by 61/2014 r 8(1)—(5) varied by 283/2014 r 5(1), (2)	1.7.2014 11.4.2015
r 6(1a) and (1b)	inserted by 283/2014 r 5(3)	11.4.2015
r 7		
r 7(1)	substituted by 61/2014 r 9(1) varied by 283/2014 r 6	1.7.2014 11.4.2015
r 7(3)	inserted by 61/2014 r 9(2)	1.7.2014
r 8	substituted by 61/2014 r 10	1.7.2014
r 8A	inserted by 283/2014 r 7	11.4.2015
r 9	varied by 61/2014 r 11(1) (a) deleted by 61/2014 r 11(2)	1.7.2014 1.7.2014
rr 10A and 10B	inserted by 61/2014 r 12	1.7.2014
rr 11A and 11B	inserted by 283/2014 r 8	11.4.2015
Pt 3 Div 2		
r 12		
r 12(1)	varied by 61/2014 r 13(1), (2)	1.7.2014
r 12(2)	substituted by 61/2014 r 13(3)	1.7.2014
r 12(3)	varied by 61/2014 r 13(4)	1.7.2014
r 12(4)	inserted by 61/2014 r 13(5)	1.7.2014
r 13		
r 13(1) and (2)	varied by 61/2014 r 14	1.7.2014
Pt 3 Div 3		
r 14		
r 14(1)	varied by 61/2014 r 15(1)	1.7.2014
r 14(2)	varied by 280/2011 r 4 varied by 61/2014 r 15(1)	1.1.2012 1.7.2014
<i>r 14(3)</i>	<i>deleted by 61/2014 r 15(2)</i>	<i>1.7.2014</i>
Sch 1	substituted by 85/2012 r 4	1.7.2012

	substituted by 131/2013 r 4	1.7.2013
cl 1	varied by 195/2014 r 4(1), (2)	1.7.2014
cl 1(1)	varied by 283/2014 r 9	11.4.2015
<i>Sch 2 before substitution by 283/2014</i>		
<i>Pt 1</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	<i>1.1.2012</i>
Sch 2	substituted by 283/2014 r 10	11.4.2015

Transitional etc provisions associated with regulations or variations

Children's Protection Variation Regulations 2014 (No 61 of 2014), Sch 1

1—Transitional provision

An authorised screening unit operating immediately before the commencement of regulation 9(1) will, on that commencement, be taken to have been established under regulation 7(1)(a) of the *Children's Protection Regulations 2010* as inserted by these regulations.

Historical versions

1.1.2012

1.7.2012

1.7.2013

1.7.2014