

South Australia

Children's Protection Variation Regulations 2014

under the *Children's Protection Act 1993*

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Part 1—Preliminary

1—Short title

These regulations may be cited as the *Children's Protection Variation Regulations 2014*.

2—Commencement

These regulations will come into operation 4 months after the day on which they are made (see *Subordinate Legislation Act 1978* section 10AA).

3—Variation provisions

In these regulations, a provision under a heading referring to the variation of specified regulations varies the regulations so specified.

Part 2—Variation of *Children's Protection Regulations 2010*

4—Variation of regulation 3—Interpretation

Regulation 3(2)—after "section 8B" insert:

or 8BA

5—Variation of regulation 6—Manner in which assessment must be undertaken

- (1) Regulation 6(1)(a)—delete "in accordance with standards published, from time to time, by the Chief Executive"
- (2) Regulation 6(1)(b)—delete "obtaining a relevant history assessment relating to the person from an authorised screening unit" and substitute:

having an authorised screening unit assess the relevant history of the person
- (3) Regulation 6—after subregulation (1) insert:
 - (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.

6—Variation of regulation 7—Screening units

Regulation 7(1)—delete "relevant history assessments under section 8B of" and substitute:

assessments of a person's relevant history under

7—Insertion of regulation 8A

After regulation 8 insert:

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.

8—Insertion of regulations 11A and 11B

After regulation 11 insert:

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.

9—Variation of Schedule 1—Fees

Schedule 1 clause 1(1)—delete "criminal" and substitute:
relevant

10—Substitution of Schedule 2

Schedule 2—delete the Schedule and substitute:

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.

Made by the Governor

with the advice and consent of the Executive Council
on 11 December 2014

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