

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 on 1 July 2014.

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

- (1) Regulation 3, definition of *authorised screening unit*—after "established as" insert:
 , or declared to be,
- (2) Regulation 3—after the definition of *CrimTrac* insert:
 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*;
- (3) Regulation 3, definition of *responsible authority*—delete the definition and substitute:
 interstate spent conviction means a conviction that is spent under a
 corresponding law (within the meaning of the *Spent Convictions Act 2009*).
- (4) Regulation 3—after its present contents as varied by this regulation (now to be designated as subregulation (1)) insert:
 - (2) A term or phrase used in these regulations that is used in section 8B 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.

5—Variation of regulation 5—Definition of Department

Regulation 5—delete "the Department for Families and Communities" and substitute:
 the administrative unit that is, under the Minister, responsible for the
 administration of the Act

6—Variation of heading to Part 3

Heading to Part 3—delete "Criminal" and substitute:
 Relevant

7—Variation of heading to Part 3 Division 1

Heading to Part 3 Division 1—delete "criminal" and substitute:
 relevant

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

- (1) Regulation 6(1)—delete "criminal" first occurring and substitute:
 relevant
- (2) Regulation 6(1)(a)(i)(A)—delete subparagraph (A) and substitute:
 - (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

- (3) Regulation 6(1)(a)(i)(B)—delete 'criminal' and substitute:
relevant
- (4) Regulation 6(1)(a)(ii)—after "evidence" insert:
, taking into account any information provided by the person for the assessment,
- (5) Regulation 6(1)(b)—delete "criminal" and substitute:
relevant

9—Variation of regulation 7—Screening units

- (1) Regulation 7(1)—delete subregulation (1) and substitute:
 - (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 section 8B of the Act.
- (2) Regulation 7—after subregulation (2) insert:
 - (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*).

10—Substitution of regulation 8

Regulation 8—delete the regulation and substitute:

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.

11—Variation of regulation 9—Exchange of information with other jurisdictions

- (1) Regulation 9—delete "criminal history" and substitute:
relevant history (other than information under paragraph (a)(v) of the definition of *relevant history* in section 8B of the Act)
- (2) Regulation 9(a)—delete paragraph (a)

12—Insertion of regulations 10A and 10B

After regulation 10 insert:

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.

13—Variation of regulation 12—Authorised screening unit to only undertake child-related employment screening

- (1) Regulation 12(1)—delete "information of a kind specified in regulation 8(b) or (c)" and substitute:
prescribed information
- (2) Regulation 12(1)—after "employment screening" insert:
or is otherwise authorised or required by law

- (3) Regulation 12(2)—delete subregulation (2) and substitute:
- (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.
- (4) Regulation 12(3)—delete "information of a kind specified in regulation 8(b) or (c)" and substitute:
- prescribed information
- (5) Regulation 12—after subregulation (3) insert:
- (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.

14—Variation of regulation 13—Confidentiality and information management requirements

Regulation 13—delete "criminal" wherever occurring and substitute in each case:

relevant

15—Variation of regulation 14—Exemptions

- (1) Regulation 14—delete "8B" wherever occurring and substitute in each case:
- 8B(1)
- (2) Regulation 14(3)—delete subregulation (3)

Schedule 1—Transitional provision

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.

Made by the Governor

with the advice and consent of the Executive Council
on 13 February 2014

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