

South Australia

Children and Young People (Safety) (Miscellaneous) Variation Regulations 2018

under the *Children and Young People (Safety) Act 2017*

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Part 1—Preliminary

1—Short title

These regulations may be cited as the *Children and Young People (Safety) (Miscellaneous) Variation Regulations 2018*.

2—Commencement

These regulations will come into operation on 22 October 2018.

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 and Young People (Safety) Regulations 2017*

4—Variation of regulation 5—State authorities

Regulation 5—after its present contents (now to be designated as subregulation (1)) insert:

- (2) For the purposes of the definition of *State authority* in section 16(1) of the Act, the following persons and bodies are declared to be excluded from the ambit of that definition:
 - (a) each court or tribunal of the State;
 - (b) the Ombudsman under the *Ombudsman Act 1972*;
 - (c) the Health and Community Services Complaints Commissioner under the *Health and Community Services Complaints Act 2004*;
 - (d) the Independent Commissioner Against Corruption under the *Independent Commissioner Against Corruption Act 2012*.

5—Variation of regulation 8—Case plans

- (1) Regulation 8(1)(a)—after "health" insert:

(including the dental health)
- (2) Regulation 8—after subregulation (2) insert:
 - (3) Pursuant to section 28(4) of the Act, the Chief Executive must, in preparing the part of a case plan of an Aboriginal or Torres Strait Islander child or young person setting out a cultural maintenance plan, take reasonable steps to consult with—
 - (a) an Aboriginal organisation or Torres Strait Islander organisation (as the case requires) of a kind that is, in the opinion of the co-ordinator, appropriate to the child or young person; or

- (b) a member of the Aboriginal or Torres Strait Islander community (as the case requires) to which the child or young person belongs.

6—Variation of regulation 11—Assessment of reports and notifications

Regulation 11—after its present contents (now to be designated as subregulation (1)) insert:

- (2) Pursuant to section 32(5) of the Act, the Chief Executive may not refer a matter under section 32(3)(c) of the Act to the Guardian for Children and Young People.

7—Variation of regulation 13—Assessments under section 36 of Act

- (1) Regulation 13—before its present contents (now to be designated as subregulation (3)) insert:

- (1) Pursuant to section 36(5) of the Act, the date and time of an assessment, and the place at which an assessment is to be conducted, are to be determined by the person or body who is to conduct the assessment (being the person or body referred to in subregulation (3)(b)).
- (2) Pursuant to section 36(5) of the Act, the Chief Executive may revoke a notice under that section at any time and for any reason the Chief Executive thinks fit (and nothing in this subregulation prevents the Chief Executive from giving another direction under that section to the person to whom the notice relates at any time).

- (2) Regulation 13(3)(b) and (c)—delete paragraphs (b) and (c) and substitute:

- (b) the name and contact details of the person or body who is to conduct the assessment;
- (c) a direction that the person to be assessed must—
 - (i) contact the specified person or body referred to in paragraph (b) within the period specified in the notice; and
 - (ii) comply with any lawful directions of the person or body who is to conduct the assessment in relation to the assessment;

- (3) Regulation 13—after subregulation (3) insert:

- (4) Pursuant to section 36(5) of the Act, the person or body who conducts an assessment under that section must, in accordance with any requirement of the Chief Executive, provide a written report on the assessment to a person specified by the Chief Executive.

8—Variation of regulation 14—Random drug and alcohol testing scheme

- (1) Regulation 14—before subregulation (1) insert:
 - (a1) For the purposes of section 37(1)(c) of the Act, a person who, in the preceding 5 years, is the subject of an order of the Court under Chapter 6 Part 2 of the Act requiring the person to be assessed in relation to the use of drugs or alcohol (however described) is declared to be included in the ambit of that subsection.
- (2) Regulation 14(2)(c)—before "the Chief Executive" second occurring insert:

a person specified by

9—Variation of regulation 17—Removal of child or young person

- (1) Regulation 17(a)—delete paragraph (a) and substitute:
 - (a) either—
 - (i) a restraining order under section 99AAC of the *Criminal Procedure Act 1921*; or
 - (ii) an intervention order under the *Intervention Orders (Prevention of Abuse) Act 2009*,is in force against a particular person; and
- (2) Regulation 17(b)—after "restraining order" insert:

or intervention order (as the case requires)

10—Insertion of regulation 17A

After regulation 17 insert:

17A—Prescribed information

For the purposes of section 48 of the Act, the following information is prescribed:

- (a) the name, address and date of birth of the person found guilty of the qualifying offence;
- (b) details of each qualifying offence of which the person is found guilty;
- (c) such other information as may be specified by the Chief Executive after consultation with the Courts Administration Authority.

11—Insertion of regulation 18A

After regulation 18 insert:

18A—Temporary placement of child or young person

- (1) Pursuant to section 77(4) of the Act, the Chief Executive may place a child or young person with a person under section 77(1) of the Act despite it being reasonably practicable to place the child or young person in the care of a particular approved carer if the Chief Executive is satisfied that to place the child or young person under that subsection is (having regard to the operation of Chapter 2 of the Act as well as the circumstances relating to the child or young person) preferable to placing the child or young person with the approved carer.
- (2) Pursuant to section 77(4) of the Act, section 77(2)(b) of the Act will be taken not to apply to the placement of a child referred to in subregulation (1).

12—Variation of regulation 21—Disclosure of information provided to approved carers

Regulation 21(a)—after "educational needs" insert:

, or the health, safety, welfare or wellbeing,

13—Variation of regulation 25—Contact Arrangements Review Panel

Regulation 25(1)(c)—delete "Minister" and substitute:

Panel

14—Insertion of regulation 26A

After regulation 26 insert:

26A—Exemption from section 98 of Act

Pursuant to section 170(2)(a) of the Act, the person from time to time holding or acting in the position of Director-General under the *Education Act 1972* is exempt from the operation of section 98 of the Act.

15—Variation of regulation 29—Children's residential facilities

Regulation 29—before its present contents (now to be designated as subregulation (2)) insert:

- (1) For the purposes of paragraph (b) of the definition of *children's residential facility* in section 103 of the Act, such places as may be determined by the Chief Executive by notice in the Gazette are declared to be included in the ambit of that definition.
- (1a) The Chief Executive may, by subsequent notice in the Gazette, vary or revoke a notice under subregulation (1).

16—Variation of regulation 31—Exemption from requirement to be assessed before employment in licensed children's residential facility

Regulation 31(4)—delete subregulation (4) and substitute:

- (4) Subregulation (3) will expire 18 months after the day on which it commences.

17—Variation of regulation 33—Chief Executive to hear complaints

Regulation 33—before its present contents (now to be designated as subregulation (2)) insert:

- (1) For the purposes of section 110(2) of the Act, a complaint must be investigated in the manner determined by the Chief Executive.

18—Variation of regulation 34—Exemption from requirement to be assessed before employment in residential facility

(1) Regulation 34(1)—after paragraph (c) insert:

- (d) a person (whether a tradesperson or otherwise) from time to time engaged by a residential facility to provide maintenance or repair services,

(2) Regulation 34(3)—delete subregulation (3) and substitute:

- (3) Subregulations (2) and (2a) will expire 18 months after the day on which subregulation (2) comes into operation.

19—Variation of regulation 35—Providing safe environments for children and young people

Regulation 35—after its present contents (now to be designated as subregulation (1)) insert:

- (2) For the purposes of paragraph (c) of the definition of *prescribed organisation* in section 114(7) of the Act, the following persons and bodies are declared to be included in the ambit of that paragraph:
 - (a) each organisation to which section 8C of the *Children's Protection Act 1993* applied immediately before the commencement of this subregulation;
 - (b) an organisation established after the commencement of this subregulation that would, had it been established before that commencement, have been an organisation to which section 8C of the *Children's Protection Act 1993* applied immediately before that commencement;
 - (c) an organisation (whenever established) that, after the commencement of this subregulation, becomes an organisation to which section 8C of the *Children's Protection Act 1993* would have applied immediately before that commencement.

20—Variation of regulation 36—Prescribed facilities—Child and Young Person's Visitor scheme

Regulation 36—delete "section 116(1)" and substitute:

section 116

21—Variation of regulation 39—Sharing of information

(1) Regulation 39(1)—delete subregulation (1) and substitute:

(1) For the purposes of section 152(1)(h) of the Act, the following persons and bodies are prescribed:

- (a) a person or body that provides services to children and young people or their families for or on behalf of the Department;
- (b) non-government schools;
- (c) the South Australian Civil and Administrative Tribunal.

(2) Regulation 39—after subregulation (3) insert:

(4) For the purposes of section 152(6)(b) of the Act, a recipient who is, or was, an officer or employee of the Department engaged in the administration, operation or enforcement of the Act may disclose information or documents received under section 152 of the Act in the circumstances contemplated by section 164(1) of the Act.

22—Insertion of regulation 40A

After regulation 40 insert:

40A—Review of decisions by South Australian Civil and Administrative Tribunal

For the purposes of section 158(3)(c) of the Act, the following persons are prescribed:

- (a) the applicant in respect of an internal review of the relevant reviewable decision under section 157 of the Act;
- (b) a child or young person to whom the relevant reviewable decision relates;
- (c) any other person aggrieved by the relevant reviewable decision and who, in the opinion of the South Australian Civil and Administrative Tribunal, has sufficient interest in the matter.

23—Variation of regulation 43—Transitional and saving provisions etc

Regulation 43—after subregulation (3) insert:

- (4) Pursuant to section 170(3)(c) of the Act, a direction of the Chief Executive under Part 7 Division 2 of the *Children's Protection Act 1993* in force immediately before the commencement of section 86 of the Act will continue in accordance with its terms and will, for the purposes of the Act, be taken to be a direction of the Chief Executive under section 86 of the Act.
- (5) Pursuant to section 170(3)(c) of the Act, for the purposes of section 164 of the Act, personal information obtained in the course of performing functions or exercising powers under a previous corresponding law will be taken to be personal information obtained in the course of performing functions or exercising powers under the Act.
- (6) Pursuant to section 170(3)(c) of the Act, a child who, immediately before the commencement of section 41 of the Act—
 - (a) has been removed under section 16 of the *Children's Protection Act 1993*; and
 - (b) is, pursuant to section 16(5) of the *Children's Protection Act 1993*, in the custody of the Minister,

will, on the commencement of section 41 of the Act and for all purposes, be taken to be a child or young person removed under section 41 of the Act (and, to avoid doubt, sections 42 and 43 of the Act will be taken to apply in relation to the removal).

- (7) Pursuant to section 170(3)(c) of the Act, an instrument of guardianship issued by the Chief Executive under section 44B of the *Children's Protection Act 1993* and in force immediately before the commencement of Chapter 5 Part 4 of the Act will continue in accordance with its terms and will, for the purposes of the Act, be taken to be an instrument of guardianship issued by the Chief Executive under section 45 of the Act (and the guardianship of the child or young person to whom the instrument relates is to be determined in accordance with section 45 of the Act).
- (8) Pursuant to section 170(3)(c) of the Act, a restraining notice issued by the Chief Executive under section 44B of the *Children's Protection Act 1993* and in force immediately before the commencement of Chapter 5 Part 4 of the Act will continue in accordance with its terms and will, for the purposes of the Act, be taken to be a restraining notice issued by the Chief Executive under section 46 of the Act.

- (9) Pursuant to section 170(3)(c) of the Act, a decision to place a child made at a family care meeting under Part 5 Division 1 of the *Children's Protection Act 1993* will, for the purposes of the Act, be taken to be a decision made at a family group conference under Chapter 4 Part 2 of the Act (and any reference in the Act to the placement of a child or young person pursuant to such a decision is to be construed accordingly).
- (10) Pursuant to section 170(3)(c) of the Act, a person or body who was, immediately before the commencement of this subregulation, authorised by the Department (within the meaning of the *Family and Community Services Act 1972* and whether authorised by a licence purportedly granted under Part 4 of that Act or otherwise) to operate a children's residential facility will be taken to hold a licence granted by the Chief Executive under section 105 of the Act (and that licence will be taken to be subject to any conditions to which the authorisation was subject immediately before the commencement of this subregulation).
- (11) However, subregulation (10) will be taken not to apply to a person or body—
- (a) who is the holder of a licence continued under section 29 of the *Children's Protection Law Reform (Transitional Arrangements and Related Amendments) Act 2017*; or
 - (b) who is a prohibited person under the *Child Safety (Prohibited Persons) Act 2016*.
- (12) In this regulation—
- previous corresponding law*** means—
- (a) the *Children's Protection Act 1993*; or
 - (b) the *Children's Protection and Young Offenders Act 1973*; or
 - (c) any other law of the State that substantially corresponds to the Act.

Note—

As required by section 10AA(2) of the *Subordinate Legislation Act 1978*, the Minister has certified that, in the Minister's opinion, it is necessary or appropriate that these regulations come into operation as set out in these regulations.

Made by the Governor

with the advice and consent of the Executive Council
on 11 October 2018

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