

South Australia

Child Safety (Prohibited Persons) Regulations 2019

under the *Child Safety (Prohibited Persons) Act 2016*

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1—Short title

These regulations may be cited as the *Child Safety (Prohibited Persons) Regulations 2019*.

2—Commencement

These regulations will come into operation on the day that section 15 of the *Child Safety (Prohibited Persons) Act 2016* comes into operation.

3—Interpretation

In these regulations, unless the contrary intention appears—
Act means the *Child Safety (Prohibited Persons) Act 2016*;

prescribed passenger transport service means a service in which—

- (a) passengers are carried for a fare or other consideration (including under a hire or charter arrangement or for consideration provided by a third party) by means of a vehicle; and
- (b) the passengers are, or may include, children (whether or not any passengers so carried are, in fact, children);

protected information means information that may, if disclosed—

- (a) prejudice a criminal investigation; or
- (b) prejudice an investigation or assessment being conducted, or likely to be conducted, under the *Children's Protection Act 1993* or the *Children and Young People (Safety) Act 2017*; or
- (c) identify, or enable the identification of, a child who has been abused or neglected or is at risk of harm; or
- (d) identify, or enable the identification of, a parent, guardian or family member of a child referred to in paragraph (c); or
- (e) identify, or enable the identification of, a person who has made a report or notification that a child may be being abused or neglected, or may be at risk of harm (whether under the *Children's Protection Act 1993*, the *Children and Young People (Safety) Act 2017* or otherwise); or
- (f) endanger a person's life or physical safety or wellbeing;

records management system means the records management system established and maintained by the Registrar under section 34 of the Act;

vehicle—

- (a) includes a motor vehicle and a human powered vehicle or a vehicle drawn by an animal;
- (b) does not include—
 - (i) a vessel, aeroplane, train or tram; or
 - (ii) any other vehicle of a kind declared by the regulations not to be included in the ambit of this definition.

4—Protected information

- (1) The Registrar may, in accordance with any requirements set out in the guidelines, classify specified information as protected information.
- (2) If the central assessment unit makes a decision under the Act to prohibit a person from working with children on the basis of information that is classified by the Registrar as protected information, the central assessment unit is not required to provide any grounds or reasons for the decision other than that it would be contrary to the public interest to allow the person to work with children.

- (3) In any proceedings under this Act, the court determining the proceedings—
- (a) must, on the application of the Registrar, take steps to maintain the confidentiality of information classified by the Registrar as protected information, including steps to receive evidence and hear argument about the information in private in the absence of the parties to the proceedings and their representatives; and
 - (b) may take evidence consisting of, or relating to, information that is so classified by the Registrar by way of affidavit.

5—Prescribed offences

For the purposes of the definition of *prescribed offence* in section 5 of the Act, the following offences are declared to be excluded from the ambit of that definition:

- (a) an offence referred to in that definition in relation to which each of the following provisions apply:
 - (i) the offence is—
 - (A) an offence against section 49, 56, 58, 63 or 63A of the *Criminal Law Consolidation Act 1935*; or
 - (B) an offence against section 74 of the *Criminal Law Consolidation Act 1935* (as in force before the commencement of the *Criminal Law Consolidation (Rape and Sexual Offences) Amendment Act 2008*); or
 - (C) an offence against section 272.8(1), 272.9(1), 471.16(1), 471.17, 471.24(1), 471.25(1), 471.26, 474.19, 474.20, 474.25A(1), 474.26(1), 474.27(1) or 474.27A of the *Criminal Code* of the Commonwealth; or
 - (D) an offence against section 272.14 or 272.15 of the *Criminal Code* of the Commonwealth where the sexual activity occurred, or was intended to occur, between the defendant and the victim and no other person; or
 - (E) an offence referred to in paragraph (g), (h) or (j) of the definition of *prescribed offence*;
 - (ii) the victim in relation to the offence consented to the conduct constituting the offence;
 - (iii) either—
 - (A) at the time the offence was committed, the victim was not less than 15 years of age and the offender was 18 years of age; or
 - (B) at the time the offence was committed, the victim was not less than 16 years of age and the offender was 19 years of age;

- (b) an offence of which a person is convicted where that conviction is spent pursuant to the *Spent Convictions Act 2009* or a corresponding law within the meaning of that Act (however nothing in this subregulation prevents such a conviction or offence from comprising assessable information or otherwise being taken into account for the purposes of a working with children check).

6—Prescribed positions

For the purposes of paragraph (b) of the definition of *prescribed position* in section 5 of the Act, the following positions and classes of position are prescribed:

- (a) every position in the administrative unit of the Public Service assisting a Minister with the administration of the Act;
- (b) every position in the administrative unit of the Public Service assisting a Minister with the administration of the *Children and Young People (Safety) Act 2017*;
- (c) a position in which a person is employed to provide preschool, primary or secondary education to a child (whether or not the person is a registered teacher);
- (d) Registrar of the Teachers Registration Board;
- (e) a Registrar of the Education and Early Childhood Services Registration and Standards Board of South Australia.

7—Child-related work

- (1) Pursuant to section 6(2) of the Act—

accommodation and residential services for children means—

- (a) services provided at a licensed children's residential facility (within the meaning of the *Children and Young People (Safety) Act 2017*); or
- (b) services provided at a residential facility for children established under section 36 of the *Family and Community Services Act 1972*; or
- (c) services provided by, or on behalf of, a licensed foster care agency (within the meaning of the *Children and Young People (Safety) Act 2017*); or
- (d) services provided by an approved carer (within the meaning of the *Children and Young People (Safety) Act 2017*); or
- (e) services consisting of care provided to a child overnight and involving sleeping arrangements (whether such care is provided on a short term or ongoing basis, and including such services provided in the course of an excursion or camp);

child protection services includes—

- (a) services provided in the course of the exercise of a power or function under the *Children and Young People (Safety) Act 2017*; and
- (b) the care of a child by an approved carer (within the meaning of the *Children and Young People (Safety) Act 2017*) in whose care, guardianship or custody the child is placed under that Act; and

- (c) services provided by a licensed foster care agency (within the meaning of the *Children and Young People (Safety) Act 2017*); and
- (d) any other service declared by the Minister to whom the administration of the *Children and Young People (Safety) Act 2017* is committed by notice in the gazette to be included in the ambit of this definition;

coaching or tuition services means services provided to children consisting of instruction in 1 or more of the following areas:

- (a) education;
- (b) sports;
- (c) recreational activities;
- (d) cultural awareness or cultural activities;
- (e) arts and crafts,

and includes coaching or tuition services provided in the course of any other service or activity referred to in section 6(1) of the Act;

education services includes preschool, primary and secondary education, but does not include tertiary education;

justice or detention services means—

- (a) the exercise of a power or function under the *Correctional Services Act 1982*; or
- (b) the exercise of a power or function under the *Young Offenders Act 1993*; or
- (c) the exercise of a power or function under the *Youth Court Act 1993*; or
- (d) the exercise of a power or function under the *Youth Justice Administration Act 2016*;

services or activities provided by religious organisations means services or activities provided by or on behalf of a religious organisation in the course of which an employee of the religious organisation has, or would reasonably be expected to have, contact with a child;

training centre means a facility for the reception, detention, correction and training of youths who offend against the criminal law established under the *Family and Community Services Act 1972* or the *Youth Justice Administration Act 2016*;

transport services for children means a prescribed passenger transport service.

- (2) Pursuant to section 6(2) of the Act, a reference to a ***religious organisation*** will be taken to include a reference to an organisation of, or providing services of, a spiritual or pastoral nature (however described).
- (3) Pursuant to section 6(2) of the Act, a reference to ***clubs and associations*** will be taken to include a reference to a body (whether or not incorporated and however described) providing services or undertaking activities of a sporting, recreational, cultural or artistic nature.

- (4) Pursuant to section 6(2) of the Act, a reference to **commercial services provided directly to children** will be taken to be a reference to—
- (a) the sale or supply of goods or services in the course of which physical contact with children would reasonably be expected to occur; or
 - (b) recreational services in the course of which contact with children would reasonably be expected to occur; or
- Example—**
- Services such as a play gym.
- (c) entertainment services provided at, or in relation to, children's parties or events (however described); or
- Example—**
- Services such as face painting or the hire of bouncing castles.
- (d) entertainment services consisting of a person appearing or performing as a costumed character intended or likely to appeal to children; or
- Example—**
- Services such as a mascot of a sporting team, or acting as Santa Claus in a shopping centre.
- (e) photography of children; or
 - (f) competitions held primarily for children, or in which there is a category for entrants who are children; or
- Example—**
- Competitions such as beauty pageants and talent shows.
- (g) any other service declared by the Minister by notice in the gazette to be included in the ambit of this subregulation,
- (in each case being a service provided for payment or other consideration).
- (5) Pursuant to section 6(2) of the Act, a reference to **health services for children** will be taken to include a reference to allied health services for children.
- (6) Pursuant to section 6(2) of the Act, a person will be taken to have **contact** with a child if the person—
- (a) has physical contact with the child; or
 - (b) is in close physical proximity to the child; or
 - (c) communicates with the child (whether orally or by written, electronic or other means).
- (7) For the purposes of section 6(1)(m) of the Act, the following services and activities are declared to be child-related work:
- (a) the provision of traffic control at, or other supervision of, school pedestrian crossings;
 - (b) the provision of services by a member of—
 - (i) SAMFS; or
 - (ii) SACFS; or

- (iii) SASES,
(whether or not emergency services within the meaning of the *Fire and Emergency Services Act 2005*) that involve regular contact with children;
 - (c) an emergency ambulance service provided, or purportedly provided, by a member of the SA Ambulance Service in accordance with the *Health Care Act 2008*;
 - (d) an emergency or non-emergency ambulance service provided, or purportedly provided, in accordance with the *Health Care Act 2008*.
- (8) For the purposes of section 6(3)(c) of the Act, the residing of an adult person in—
- (a) a licensed children's residential facility (within the meaning of the *Children and Young People (Safety) Act 2017*); or
 - (b) a residential facility for children established under section 36 of the *Family and Community Services Act 1972*; or
 - (c) residential premises in which an approved carer (within the meaning of the *Children and Young People (Safety) Act 2017*) provides care to a child or young person placed in their care under that Act,
- is declared to be included in the ambit of that subsection.

8—Assessable information

For the purposes of section 8(1)(j) of the Act, the following information in relation to a person is declared to be assessable information:

- (a) information provided to the central assessment unit pursuant to a requirement under section 36 of the Act;
- (b) information provided to the central assessment unit pursuant to a requirement under section 37 of the Act;
- (c) information provided to the central assessment unit by the Commissioner of Police pursuant to section 39 of the Act;
- (d) information that relates to a restraining order under the *Criminal Procedure Act 1921* issued against the person;
- (e) information that relates to an intervention order, associated order or interim intervention order under the *Intervention Orders (Prevention of Abuse) Act 2009* issued against the person;
- (f) any other information determined by the Registrar, in accordance with any requirements set out in the guidelines, to be assessable information.

9—Excluded persons

- (1) For the purposes of section 9(1)(e) of the Act, the following persons are declared to be included in the ambit of subsection 9(1) of the Act:
- (a) a person who is under 14 years of age;
 - (b) a person who—
 - (i) is a resident of another State or Territory; and

- (ii) is not prohibited under the law of the Commonwealth, or another State or Territory, from working with children (however described); and
 - (iii) in the case of a resident of another State or Territory that has a working with children scheme—holds a current accreditation or is otherwise authorised under that working with children scheme to work with children; and
 - (iv) is providing a service or activity (including, to avoid doubt, services or activities consisting of or including overnight excursion or stays, accommodation and residential services, or close personal contact with a child) in this State that is child-related work where—
 - (A) the child-related work occurs, or is to occur, in the course of an organised event; and
 - (B) the child-related work does not exceed 10 consecutive days;
- (c) a person who—
- (i) is a parent or guardian of a child; and
 - (ii) is providing a service or activity that is child-related work on a voluntary basis to children where—
 - (A) the children to whom the service or activity is provided include the person's own child; and
 - (B) the service or activity does not consist of or include—
 - accommodation and residential services for a child other than the person's own child; or
 - close personal contact with a child other than the person's own child.
- (2) For the purposes of subregulation (1)(b), a reference to an *organised event* will be taken to be a reference to an event organised and run by an association, club or other body as part of the official activities of the body.

Example—

An organised event would include, for example, the Australian Scout Jamboree organised by Scouts Australia.

- (3) In this regulation—

close personal contact means—

- (a) an act involving an intimate bodily function such as using a toilet; or
- (b) an activity involving nudity, or exposure or partial exposure of the genitals, buttocks or breasts;

parent, of a child, includes—

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

working with children scheme, of another State or Territory, means a scheme under a law of that State or Territory that requires a person to be accredited or otherwise authorised in order to lawfully work with children.

10—Procedural fairness

- (1) Subject to this regulation, for the purposes of section 11 of the Act, the central assessment unit and the Registrar (as the case requires) are required to provide procedural fairness in exercising powers or performing functions under the Act as follows:
 - (a) in the case of a working with children check conducted on the application of the person to whom the working with children check relates—the central assessment unit must, in accordance with the guidelines—
 - (i) take reasonable steps to notify the person to whom the working with children check relates of any assessable information relating to the person that is known to the central assessment unit; and
 - (ii) specify a period within which the person may make submissions to the central assessment unit in respect of that assessable information; and
 - (iii) have regard to any submissions made by the person within the specified period;
 - (b) in the case of a working with children check where the applicant is not the person to whom the working with children check relates, or an additional working with children check conducted under section 30 of the Act—the central assessment unit must, in accordance with the guidelines—
 - (i) take reasonable steps to notify the person to whom the working with children check relates of the application and of any assessable information relating to the person that is known to the central assessment unit; and
 - (ii) specify a period within which the person may make submissions to the central assessment unit in respect of that assessable information; and
 - (iii) have regard to any such submissions made by the person within the specified period;
 - (c) subject to the Act, the central assessment unit must, if it determines under section 26(5) that a person is to be prohibited from working with children, provide reasons for that determination to the person in accordance with the guidelines.
- (2) Subregulation (1)(a) and (b) do not apply in relation to the following matters:
 - (a) a working with children check where the Registrar, based on the assessable information available to the Registrar, is of the opinion that the person to whom the working with children check relates poses an immediate and serious risk to the safety of a child or children;

- (b) a working with children check where the assessable information consists of or includes information relating to a prescribed offence with which the person to whom the working with children check relates has been charged, but that has not yet been determined;
- (c) a working with children check conducted in relation to a person who is a prohibited person;
- (d) any other matter determined by the Registrar to be included in the ambit of this subregulation,

(and, to avoid doubt, neither the central assessment unit nor the Registrar need provide procedural fairness in relation to such matters).

11—Verification that working with children check etc conducted

- (1) For the purposes of sections 17(1)(b)(i) and 18(2)(a) of the Act, an employer verifies that a working with children check has been conducted in relation to a person within the preceding 5 years by—
 - (a) accessing the records management system in accordance with any instructions of the Registrar; and
 - (b) interrogating the records management system in accordance with any instructions of the Registrar to determine the following information relating to the person:
 - (i) whether there is an entry in the records management system recording that a working with children check has ever been conducted in relation to the person; and
 - (ii) if a working with children check has been conducted in relation to the person—the date on which the most recent working with children check was conducted in relation to the person; and
 - (c) obtaining evidence of the interrogation of the records management system in accordance with regulation 19.
- (2) For the purposes of sections 17(1)(b)(ii) and 18(2)(b) of the Act, an employer verifies that a person is not a prohibited person by—
 - (a) accessing the records management system in accordance with any instructions of the Registrar; and
 - (b) interrogating the records management system in accordance with any instructions of the Registrar to determine whether there is an entry in the records management system recording that the person is prohibited from working with children; and
 - (c) obtaining evidence of the interrogation of the records management system in accordance with regulation 19.
- (3) To avoid doubt, an employer may comply with the requirements under section 17(1)(b) and 18(2) of the Act in the course of a single interrogation of the records management system.

12—Information to be contained in notice provided to central assessment unit by employer

For the purposes of section 19(2)(c) of the Act, a notice under section 19(1) of the Act is required to contain the following information:

- (a) the name and address of the person to whom the notice relates;
- (b) the unique identifier of the person to whom the notice relates (if known by the employer);
- (c) information setting out the circumstances that gave rise to the obligation to give the notice;
- (d) the name and address of the employer;
- (e) the telephone number and email address (if any) of the employer.

13—Prescribed functions and powers

For the purposes of section 23(2) of the Act, the following functions and powers are prescribed:

- (a) the classification of information as protected information under regulation 4;
- (b) the determination of information as assessable information under regulation 8(f);
- (c) the determination of matters to be included in the ambit of regulation 10(2).

14—Evaluation of central assessment unit

- (1) For the purposes of section 24 of the Act, the operations and performance of the central assessment unit must be reviewed in accordance with the following provisions:
 - (a) a review must be conducted by a person or body (the *independent reviewer*) appointed by the Minister to conduct the review, being a person or body who is independent of the Minister and an administrative unit of the Public Service that is responsible for assisting a Minister in the administration of this Act;
 - (b) a review must be conducted at least once in each 5 year period following the day on which section 24 of the Act comes into operation;
 - (c) a review is to relate to—
 - (i) in the case of the first review—the period since section 24 of the Act came into operation; or
 - (ii) in the case of subsequent reviews—the period since the previous review;
 - (d) the independent reviewer must consider such matters as may be specified by the Minister, and may consider any other matter the independent reviewer considers relevant to the operations and performance of the central assessment unit;
 - (e) the independent reviewer must, as soon as is reasonably practicable after completing the review, cause a written report of the findings of the review to be prepared;

- (f) the independent reviewer must, as soon as is reasonably practicable after completing the report, provide the Minister with a copy of the report.
- (2) The Registrar must, at the written request of the independent reviewer, provide to the independent reviewer—
 - (a) a report addressing the matters specified by independent reviewer; and
 - (b) such other information as may reasonably required by the independent reviewer for the purposes of the review.

15—Nature of working with children check

For the purposes of section 26(4) of the Act, a working with children check must be conducted in accordance with the following requirements:

- (a) the central assessment unit should, as far as is reasonably practicable, actively seek to obtain assessable information in relation to the person in respect of whom the working with children check is to be conducted;
- (b) except where the person is a prohibited person, the central assessment unit must, in a case where there is no assessable information relating to a person in respect of whom a working with children check is conducted, determine that the person is not to be prohibited from working with children.

16—Application for working with children check

- (1) Pursuant to section 27(2) of the Act, an application for a working with children check in respect of a particular person may be made for or on behalf of the person by the person's employer.
- (2) Pursuant to section 27(2) of the Act, if an employer makes an application for a working with children check for or on behalf of a person, the employer must notify the person of the making of the application.
- (3) Pursuant to section 27(2) of the Act, if an application for a working with children check in respect of a particular person is made but, before a working with children check is conducted in relation to the application the person to whom the application relates becomes a prohibited person, the central assessment unit need not conduct, or continue to conduct, a working with children check in relation to the application.
- (4) For the purposes of section 27(4)(a) of the Act, a receipt in a form approved by the Minister is prescribed.

17—Advisory panel

- (1) Pursuant to section 31(2) of the Act, the Minister may establish an advisory panel to advise or assist the central assessment unit in the performance of its functions under the Act.
- (2) The advisory panel consists of such members as the Minister thinks fit.
- (3) A member of the advisory panel will hold office on conditions, and for a term, determined by the Minister.
- (4) A member of the advisory panel (not being a member who is a member of the Public Service) is entitled to such allowances and expenses as may be determined by the Minister.

- (5) Subject to any direction of the Minister, the advisory panel may determine its own procedures.

18—Prohibition notices

- (1) For the purposes of section 32(1) of the Act, the issuing of a prohibition notice by the central assessment unit must comply with the following provisions:
- (a) a prohibition notice must be issued as soon as is reasonably practicable after the determination under section 26(5) of the Act to which the notice relates;
 - (b) the central assessment unit issues a prohibition notice to a person by serving the notice personally on the person;
 - (c) the central assessment unit must, in issuing a prohibition notice, comply with the guidelines.
- (2) For the purposes of section 32(2)(c)(iv) of the Act, a prohibition notice must, subject to section 10 of the Act and regulation 4, set out the following information:
- (a) the reasons why the central assessment unit determined that the person to whom the prohibition notice relates is to be prohibited from engaging in child-related work;
 - (b) information setting out how the person to whom the prohibition notice relates can seek a review of the decision to issue the notice by the South Australian Civil and Administrative Tribunal.
- (3) To avoid doubt, a prohibition notice may contain such other information as the central assessment unit thinks fit.

19—Inspection of records management system

- (1) For the purposes of section 35(3) of the Act, a person who has interrogated the records management system must be issued with a certificate of interrogation setting out—
- (a) the name of the person who interrogated the records management system; and
 - (b) the full name and unique identifier of the person to whom the interrogation relates; and
 - (c) the time and date of the interrogation.
- (2) A certificate of interrogation may contain such other information as the Registrar thinks fit (including, to avoid doubt, information as to whether the person to whom the interrogation relates is a prohibited person).
- (3) A certificate of interrogation—
- (a) must be in a form approved by the Minister; and
 - (b) may be issued in a manner determined by the Registrar (including, to avoid doubt, by electronic means).

20—Limitations on inspection of records management system

For the purposes of section 35(4) of the Act, the Registrar may limit access by a person, or class of persons, to a specified part or parts of the records management system, or to specified information recorded on the records management system, if the Registrar determines that such access—

- (a) would disclose information classified as criminal intelligence; or
- (b) would disclose information classified as protected information; or
- (c) would otherwise not be appropriate.

21—Keeping of records by central assessment unit

- (1) The central assessment unit may keep information, documents or other records received by the central assessment unit in the course of performing its functions and powers under the Act indefinitely (however, nothing in this regulation requires the central assessment unit to do so).
- (2) The central assessment unit may, in accordance with any requirements set out in the guidelines, dispose of information, documents or other records received by the central assessment unit in the course of performing its functions and powers under the Act.

22—Court to notify central assessment unit

- (1) For the purposes of section 38 of the Act, the following information relating to a finding of guilt is prescribed:
 - (a) the full name, address and date of birth of the person found guilty of the prescribed offence;
 - (b) information setting out particulars of each prescribed offence of which the person was found guilty;
 - (c) the date on which the person was found guilty of the prescribed offence;
 - (d) the court that made the finding of guilt.
- (2) For the purposes of section 38 of the Act, a court that finds a person guilty of a prescribed offence must provide the information prescribed by subregulation (1) to the central assessment unit in a manner and form determined by the Registrar.

23—Commissioner of Police to notify central assessment unit

- (1) For the purposes of section 39(1)(a) of the Act, the following information is prescribed:
 - (a) the full name, address and date of birth (if known) of the person charged;
 - (b) details of the charge and a description of any alleged conduct to which the charge relates.
- (2) For the purposes of section 39(1) of the Act, the Commissioner of Police must provide the information prescribed by subregulation (1) to the central assessment unit in a manner and form determined by the Registrar.

24—Certain persons to notify central assessment unit

For the purposes of section 40(2)(c) of the Act, the following information is prescribed:

- (a) the full name, address, date of birth and unique identifier of the person to whom the notice relates;
- (b) the name and address of each current employer of the person to whom the notice relates;
- (c) information setting out details of the occurrence to which the notice relates.

25—Central assessment unit to notify employer

For the purposes of section 41(2)(b) of the Act, the following information is prescribed:

- (a) the full name and unique identifier of the person to whom the notification relates;
- (b) information explaining the operation of Part 4 of the Act.

26—Exemptions

Pursuant to section 53(2)(a) of the Act, the following persons are exempt from the operation of Part 4 of the Act:

- (a) a person in whose care a child or young person removed under the *Children and Young People (Safety) Act 2017* is placed under section 77 of that Act;
- (b) the employer of a person referred to in paragraph (a) in relation to such a placement;
- (c) a person residing in premises in which a child or young person referred to in paragraph (a) is placed.

Made by the Governor

with the advice and consent of the Executive Council
on 17 January 2019

No 5 of 2019

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