South Australia

Child Safety (Prohibited Persons) Act 2016

An Act to minimise the risk to children posed by persons who work or volunteer with them; to provide for the screening of persons who want to work or volunteer with children; to provide for a system of accountability for persons working or volunteering with children; to prohibit those who pose an unacceptable risk to children from working or volunteering with children; to provide for a central assessment unit to undertake screening of persons who want to work or volunteer with children; and for other purposes.

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Legislative history

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Child Safety (Prohibited Persons) Act 2016*.

2—Commencement

(1) This Act will come into operation on a day to be fixed by proclamation.

(2) Section 7(5) of the *Acts Interpretation Act 1915* does not apply to this Act or to a provision of this Act.

Part 2—Objects, principles and guidelines

3—Object and principles

(1) The primary object of this Act is to minimise the risk to children posed by persons who work with them.

(2) In order to further the primary object, it is a further object of this Act to provide a framework for the prohibition of persons who pose an unacceptable risk to children from working with them.

(3) The paramount consideration in respect of the administration, operation and enforcement of this Act must always be the best interests of children, having regard to their safety and protection.

(4) The following principles must be taken into account in connection with the administration, operation and enforcement of this Act:

(a) a working with children check relating to a person is conducted by the central assessment unit to determine (based on an assessment of information available to the central assessment unit)—

(i) whether the person poses an unacceptable risk to children; and

(ii) whether the person should be prohibited from working with children;

(b) persons who pose an unacceptable risk to children are to be prevented from working with children;

(c) a working with children check is not a determination of a person's suitability to work with children and cannot be relied on as such, and in particular—

(i) a working with children check that does not result in a person being prohibited from working with children is not proof of good character; and

(ii) a working with children check that does not result in a person being prohibited from working with children is not proof that the person does not pose a risk to children;

(d) a working with children check is an assessment of 1 person's prior conduct, and the fact that working with children checks are conducted in relation to employees does not, of itself, satisfy an employer's obligation to ensure that a workplace is safe for children;

(e) organisations and employers must have in place comprehensive strategies to ensure child safe environments.

4—Guidelines

(1) The Minister may, by notice in the Gazette, publish or adopt guidelines for the purposes of this Act.

(2) Without limiting the generality of subsection (1), guidelines must be published or adopted in relation to—

(a) procedures to be followed by the central assessment unit when conducting working with children checks; and

(b) standards to be applied by the central assessment unit when determining the weight to be given to evidence of a specified kind; and

(c) benchmarks for periods within which certain applications for working with children checks are to be processed by the central assessment unit; and

(d) the risk assessment criteria to be used by the central assessment unit in conducting working with children checks.

(3) The Minister may, from time to time, by notice in the Gazette, vary, substitute or revoke guidelines published or adopted under this section.

(4) A copy of any guidelines published or adopted under this section, as varied or substituted from time to time—

(a) must be published on a website determined by the Minister; and

(b) must be made available for inspection without charge at the place or places determined by the Minister.

Part 3—Interpretation and provisions relating to application of Act

5—Interpretation

(1) In this Act, unless the contrary intention appears—

assessable information—see section 8;

central assessment unit means the central assessment unit established under section 20;

child-related work—see section 6;

criminal intelligence means information relating to actual or suspected criminal activity (whether in this State or elsewhere) the disclosure of which could reasonably be expected to prejudice criminal investigations, to enable the discovery of the existence or identity of a confidential source of information relevant to law enforcement or to endanger a person's life or physical safety;

employed, ***employee*** and ***employer***—see section 7;

guidelines means the guidelines published or adopted under section 4, as in force from time to time;

prescribed offence means—

(a) an offence against a following provision of the *Criminal Law Consolidation Act 1935* where the victim is a child:

(i) section 11 (murder);

(ii) section 13 (manslaughter);

(iii) Part 3 Division 9 (kidnapping and unlawful child removal);

(iv) Part 3 Division 11 (rape and other sexual offences);

(v) section 72 (incest); or

(b) an offence against Part 3 Division 11A of the *Criminal Law Consolidation Act 1935* (child exploitation offences); or

(c) an offence against section 270B of the *Criminal Law Consolidation Act 1935* (assault with intent) with intent to commit an offence referred to in any of the preceding paragraphs; or

(d) an offence against a law previously in force in this State that corresponds to an offence referred to in a preceding paragraph where the victim is a child; or

(e) an offence against the law of another State or Territory that corresponds to an offence referred to in any of the preceding paragraphs where the victim is a child; or

(f) an offence against a following provision of the *Criminal Code* of the Commonwealth where the victim is a child:

(i) section 271.4;

(ii) section 271.7;

(iii) section 272.8;

(iv) section 272.9;

(v) section 272.10;

(vi) section 272.11;

(vii) section 272.12;

(viii) section 272.13;

(ix) section 272.14;

(x) section 272.15;

(xi) section 272.18;

(xii) section 272.19;

(xiii) section 272.20;

(xiv) section 471.16;

(xv) section 471.17;

(xvi) section 471.19;

(xvii) section 471.20;

(xviii) section 471.22;

(xix) section 471.24;

(xx) section 471.25;

(xxi) section 471.26;

(xxii) section 474.19;

(xxiii) section 474.20;

(xxiv) section 474.22;

(xxv) section 474.23;

(xxvi) section 474.24A;

(xxvii) section 474.25A;

(xxviii) section 474.25B;

(xxix) section 474.26;

(xxx) section 474.27;

(xxxi) section 474.27A; or

(fa) an offence against a following provision of the *Criminal Code* of the Commonwealth (offences committed overseas involving child pornography material or child abuse material):

(i) section 273.5;

(ii) section 273.6;

(iii) section 273.7; or

(fb) an offence against section 233BAB of the *Customs Act 1901* of the Commonwealth where the tier 2 goods to which the offence relates consist of or include items of child pornography (within the meaning of that section); or

(g) an offence against a law of the Commonwealth previously in force that corresponds to an offence referred to in paragraph (f) where the victim is a child; or

(h) a conspiracy to commit, or an attempt to commit, an offence referred to in any of the preceding paragraphs; or

(i) an offence of aiding, abetting, counselling or procuring the commission of an offence referred to in any of the preceding paragraphs; or

(j) an offence against the law of a foreign jurisdiction that corresponds to an offence referred to in any of the preceding paragraphs,

but does not include an offence referred to in a preceding paragraph of a kind declared by the regulations to be excluded from the ambit of this definition;

prescribed position means—

(a) a position in which a person works, or is likely to work, with children; or

(b) any other position, or a position of a class, prescribed by the regulations for the purposes of this definition;

prohibited from working with children means prohibited from working with children under section 15;

prohibited person—see section 15(1);

prohibition notice means a prohibition notice issued to a person under section 32 that is in force;

Registrar of the central assessment unit—see section 22;

unique identifier, in relation to a person, means—

(a) if a unique identifier is issued to the person under section 29—that unique identifier; or

(b) if a unique identifier has not been issued to the person under section 29, but the person is identified in relation to a working with children check referred to in paragraph (b) of the definition of ***working with children check***—that identification;

work with children—see section 6;

working with children check means—

(a) a working with children check conducted by the central assessment unit in accordance with this Act; or

(b) a working with children check (however described) of the Commonwealth, or of another State or Territory, declared by the regulations to be a working with children check for the purposes of this Act.

(2) For the purposes of this Act, a reference to a person being ***found guilty*** of an offence will be taken to include a reference to—

(a) a finding of a court under Part 8A of the *Criminal Law Consolidation Act 1935* that the objective elements of an offence are established (whether or not the person was found not criminally responsible due to mental incompetence, or was found to be mentally unfit to stand trial, pursuant to Division 2 or 3 of that Part); or

(b) any finding of a court of another jurisdiction that corresponds to a finding referred to in paragraph (a).

(3) For the purposes of the definition of ***prescribed position***, a position will be taken to be a position in which a person is likely to work with children if, in the ordinary course of his or her duties, it is reasonably foreseeable that a person in that position will work with children.

6—Meaning of *child-related work* and *work with children*

(1) For the purposes of this Act, the following services or activities are ***child-related work***:

(a) accommodation and residential services for children;

(b) services or activities provided by religious organisations;

(c) childcare or child-minding services;

(d) child protection services;

(e) services or activities provided in the course of the operation of clubs and associations with a significant membership of, or involvement by, children;

(f) coaching or tuition services for children;

(g) commercial services provided directly to children;

(h) disability services for children;

(i) education services for children;

(j) health services for children;

(k) justice and detention services for children;

(l) transport services for children;

(m) any other service or activity declared by the regulations to be child-related work,

however, the following services or activities will be taken not to be child-related work:

(n) a service or activity referred to in subsection (1) that is provided under an arrangement for a personal or domestic purpose;

(o) any other service or activity in the course of which contact with children—

(i) occurs incidentally; or

(ii) would not reasonably be expected to occur;

(p) any other service or activity declared by the regulations not to be child-related work.

(1a) For the purposes of this Act, a service or activity will not be taken to be child-related work merely because—

(a) a person employs a child in the course of the service or activity; or

(b) a person undertakes the service or activity in the same capacity as a child to whom the service or activity relates.

(2) A term or phrase used in subsection (1) and defined in the regulations has the meaning as so defined.

(3) For the purposes of this Act, a person will be taken to ***work with children*** if the person—

(a) provides a service or undertakes an activity that is child-related work in the course of their employment; or

(b) carries on a business in the course of which an employee works with children (whether or not the person themself works with children); or

(c) provides any other service or undertakes any other activity declared by the regulations to be included in the ambit of this subsection.

7—Meaning of *employed*, *employee* and *employer*

For the purposes of this Act, a reference to a person being ***employed*** will be taken to include a reference to a person who—

(a) is a self-employed person; or

(b) carries out work under a contract for services; or

(c) carries out work as a minister of religion or as part of the duties of a religious or spiritual vocation; or

(d) undertakes practical training as part of an educational or vocational course; or

(e) carries out work as a volunteer; or

(f) performs unpaid community work in accordance with an order of a court,

and a reference to an ***employer***, ***employee*** or ***employment*** is to be construed accordingly.

8—Meaning of *assessable information*

(1) For the purposes of this Act, the following information is ***assessable information*** in relation to a person:

(a) information that relates to offences of which the person has been found guilty;

(b) information that relates to offences with which the person has been charged;

(c) information that relates to disciplinary proceedings in which the person was a defendant or respondent;

(d) information that relates to disciplinary action taken against the person;

(e) information that relates to findings of misconduct made against the person;

(f) information that relates to the cancellation of an approval of a foster parent under the *Family and Community Services Act 1972*;

(fa) information that relates to the cancellation of an approval of an approved carer under the *Children and Young People (Safety) Act 2017*;

(g) information that relates to a notification made pursuant to Part 4 Division 1 of the *Children's Protection Act 1993*;

(ga) information that relates to a notification made pursuant to Chapter 5 Part 1 of the *Children and Young People (Safety) Act 2017*;

(h) information (whether or not obtained under the *Children's Protection Act 1993* or the *Children and Young People (Safety) Act 2017*) held by an administrative unit of the Public Service that is responsible for assisting a Minister in the administration of the *Children and Young People (Safety) Act 2017* and that relates to harm caused, or a risk of harm, to a child;

(i) information provided by the person for the purposes of a working with children check;

(j) any other information, or information of a class, declared by the regulations to be assessable information.

(2) Subsection (1) applies to information—

(a) whether the relevant conviction, offence or conduct occurred before or after the commencement of this section;

(b) whether the relevant offence or conduct was committed or occurred in South Australia or elsewhere;

(c) regardless of the outcome of the charges;

(d) whether the information was obtained before or after the commencement of this section;

(e) whether or not an appeal has been lodged or finally determined in respect of the relevant matter;

(f) regardless of the outcome of any proceedings, action or appeal to which the information relates.

9—Meaning of *excluded person*

(1) For the purposes of this Act, the following persons are ***excluded persons***:

(c) a member of South Australia Police or the Australian Federal Police;

(d) a person to whom subsection (3) applies;

(e) any other person of a class declared by the regulations to be included in the ambit of this subsection.

(2) However, the following persons are not excluded persons (whether or not they are a person referred to in subsection (1)):

(a) a person who is, or has ever been, a prohibited person;

(b) a person providing education or early childhood services or residual early childhood services under the *Education and Early Childhood Services (Registration and Standards) Act 2011* or the *Education and Care Services National Law (South Australia)* or otherwise providing preschool, primary or secondary education to children;

(c) any other class of person prescribed by the regulations for the purposes of this subsection.

(3) This subsection applies to the following persons:

(a) a person who believes on reasonable grounds that they will not work with children on more than 7 days (whether consecutive or not) in a calendar year;

(b) a person who, at the time of engaging in particular child-related work on a particular day in a calendar year, had worked with children on less than 7 days (whether consecutive or not) in that year,

however, this subsection will cease to apply to a person referred to in a preceding subsection if they work with children on more than 7 days (whether consecutive or not) in any calendar year.

(4) Subsection (3) does not apply to a person who at any time during the relevant calendar year engages in child-related work that consists of or includes—

(a) an overnight excursion or stay; or

(b) close personal contact with children with disability.

(5) To avoid doubt, the lawfulness of anything done or not done by a person while subsection (3) did apply to the person is not affected by that subsection ceasing to apply to the person.

(6) In any legal proceedings, the onus is on a person—

(a) claiming to be a person to whom this Division does not apply; or

(b) claiming to be a person to whom subsection (3) applies,

to prove that fact.

10—Criminal intelligence

(1) If the central assessment unit makes a decision under this Act to prohibit a person from working with children on the basis of information that is classified by the Commissioner of Police as criminal intelligence, 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.

(2) In any proceedings under this Act, the court determining the proceedings—

(a) must, on the application of the Commissioner of Police, take steps to maintain the confidentiality of information classified by the Commissioner of Police as criminal intelligence, 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 Commissioner of Police by way of affidavit.

11—Procedural fairness

Except as may be required by the regulations, neither the central assessment unit nor the Registrar are required to provide procedural fairness in exercising powers or performing functions under this Act.

12—Interaction with other Acts and laws

(1) The *State Records Act 1997* does not apply to information obtained or held by the central assessment unit or the Registrar under this Act.

(2) Despite the provisions of the *Spent Convictions Act 2009* or a corresponding law within the meaning of that Act, the fact that an offence in respect of which a person has been found guilty becomes spent does not affect—

(a) the status of the offence as a prescribed offence or presumptive disqualification offence (within the meaning of section 26A) for the purposes of this Act; or

(b) the ability for the offence to be taken into account in a working with children check.

(3) This Act is otherwise in addition to, and does not derogate from, any other Act or law.

13—Act to bind, and impose criminal liability on, the Crown

(1) This Act binds the Crown in right of this jurisdiction and, in so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

(2) The Crown is liable for an offence against this Act.

(3) If the Crown is guilty of an offence against this Act, the penalty that may be imposed on the Crown is the penalty that may be imposed on a body corporate.

14—Exemptions

(1) The Minister may, on application made in a manner and form determined by the Minister, by notice in writing, exempt a specified person, or a specified class of persons, from the operation of a specified provision or provisions of this Act.

(2) However, the Minister must not exempt the following persons from a requirement under this Act that a working with children check be conducted in relation to the person:

(a) a person who is, or has ever been, a prohibited person;

(b) any other class of person prescribed by the regulations for the purposes of this subsection.

(3) An exemption may be conditional or unconditional.

(4) The Minister may, for any reason the Minister thinks fit, vary or revoke an exemption.

(5) An exemption remains in force for the period specified in the notice or until the exemption is revoked (whichever is the sooner).

Part 4—Restrictions on working with children

Division 1—Persons who cannot work with children

15—Prohibited persons not to work with children

(1) The following persons (***prohibited persons***) are prohibited from working with children:

(a) a person to whom a prohibition notice has been issued;

(b) a person who, under a law of the Commonwealth, or of another State or Territory, is prohibited from working with children (however described);

(c) a person who has been found guilty of a prescribed offence committed as an adult.

(2) Subsection (1)(c) applies in relation to a prescribed offence—

(a) whether the offence was committed before or after the commencement of this section; and

(b) whether the finding of guilt was made before or after the commencement of this section.

(3) A person who works with children in contravention of subsection (1) is guilty of an offence.

Maximum penalty: $50 000 or imprisonment for 1 year.

(4) An employer who employs, or continues to employ, a prohibited person in a prescribed position is guilty of an offence.

Maximum penalty:

(a) in the case of a natural person—$50 000 or imprisonment for 1 year; or

(b) in the case of a body corporate—$120 000.

16—Working with children without current working with children check prohibited

(1) A person must not work with children unless a working with children check has been conducted in relation to the person within the preceding 5 years.

Maximum penalty:

(a) for a first or second offence—$20 000;

(b) for a third or subsequent offence—$50 000 or imprisonment for 1 year.

(2) Subsection (1) does not apply to an excluded person.

Division 2—Steps employers must take in relation to employing person

17—Steps employers must take before employing person in prescribed position

(1) An employer must not employ a person in a prescribed position unless the employer has—

(a) obtained from the person their full name, address, date of birth and unique identifier; and

(b) verified, in accordance with the regulations, that—

(i) a working with children check has been conducted in relation to the person within the preceding 5 years; and

(ii) the person is not prohibited from working with children; and

(c) provided to the central assessment unit—

(i) the name, address, telephone number and email address of the business at which the person is to be employed; and

(ii) the name and contact details of the person who verified the matters referred to in paragraph (b).

Maximum penalty: $50 000.

(2) Subsection (1) does not apply in relation to a prospective employee who is an excluded person.

18—Employer to ensure working with children check conducted at least every 5 years

(1) An employer must not continue to employ a person in a prescribed position unless a working with children check has been conducted in relation to the person within the preceding 5 years.

Maximum penalty: $50 000.

(2) An employer who employs a person in a prescribed position must, at least once in every 5 year period, verify, in accordance with the regulations, that—

(a) a working with children check has been conducted in relation to the person within the preceding 5 years; and

(b) the person is not a prohibited person.

Maximum penalty: $50 000.

(3) Subsections (1) and (2) do not apply in relation to an employee who is an excluded person.

19—Employer to advise central assessment unit of certain information

(1) The employer of a person employed in a prescribed position must notify the central assessment unit if—

(a) the employer becomes aware of any assessable information in relation to the person; or

(b) the employer becomes aware that the person is prohibited from working with children under a law of the Commonwealth, or of another State or Territory; or

(c) the employer becomes aware that the person is, or becomes, a registrable offender under the *Child Sex Offenders Registration Act 2006*; or

(d) the person makes a disclosure to the employer under section 66 of the *Child Sex Offenders Registration Act 2006*.

(2) A notice under subsection (1)—

(a) must be given in a manner and form determined by the central assessment unit; and

(b) must be given as soon as is reasonably practicable after the employer becomes aware of the relevant matter; and

(c) must contain the information required by the regulations for the purposes of this paragraph.

(3) An employer must not refuse or fail to comply with subsection (1).

Maximum penalty: $25 000.

(4) Subsection (1) does not apply in relation to an employee who is an excluded person.

Part 5—Working with children checks

Division 1—Central assessment unit

20—Central assessment unit

(1) There is to be a central assessment unit.

(2) Where this or any other Act confers a power or function on the central assessment unit or requires that the central assessment unit perform any function (including requiring that the central assessment unit make a determination, or form an opinion, as to any matter)—

(a) the power or function may only be exercised or performed by a person who is authorised to do so on behalf of the central assessment unit by the Minister; and

(b) the exercise of the power or the performance of the function by a person so authorised will be taken to be the exercise of the power or the performance of the function by the central assessment unit.

21—Functions

(1) The functions of the central assessment unit are—

(a) to conduct working with children checks; and

(b) to issue and revoke prohibition notices; and

(c) to provide advice to the Minister in relation to the operation of this Act; and

(d) to assist in education programs relating to the operation of this Act; and

(da) to conduct screenings for the purposes of the *Disability Inclusion Act 2018* and to perform such other functions as may assigned to the central assessment unit under that Act; and

(e) such other functions as may be assigned to the central assessment unit by the Minister or under this or any other Act.

(2) In performing functions under this Act, the central assessment unit must have regard to, and seek to give effect to, the objects and principles set out in section 3.

22—Registrar

(1) There will be a Registrar of the central assessment unit.

(2) The Minister will appoint a Public Service employee to be the Registrar.

(3) The Minister may assign a Public Service employee to act as the Registrar—

(a) during a vacancy in the office of Registrar; or

(b) when the Registrar is absent from, or unable to discharge, official duties.

(4) The functions of the Registrar are—

(a) to ensure that records or registers required under this Act are properly kept and maintained; and

(b) to discharge any duties under this or any other Act relating to financial and annual reports; and

(c) such other functions as may be conferred on the Registrar by the central assessment unit, the Minister or under this or any other Act.

23—Powers of delegation

(1) The central assessment unit may delegate a function or power under this Act (other than a prescribed function or power) to the Registrar or a specified body or person (including a person for the time being holding or acting in a specified office or position).

(2) The Registrar may delegate a function or power under this Act (other than a prescribed function or power) to a specified body or person (including a person for the time being holding or acting in a specified office or position).

(3) A delegation under this section—

(a) must be by instrument in writing; and

(b) may be absolute or conditional; and

(c) does not derogate from the ability of the central assessment unit or the Registrar (as the case requires) to act in any matter; and

(d) is revocable at will.

(4) A function or power delegated under this section may, if the instrument of delegation so provides, be further delegated.

24—Evaluation of central assessment unit

(1) The Minister must cause the operations and performance of the central assessment unit to be reviewed in accordance with the scheme set out in the regulations.

(2) Without otherwise limiting the regulations that may be made under subsection (1), the regulations—

(a) must require a review to be conducted at least once in each 5 year period;

(b) must require that reviews be conducted by a person or body who is independent of the Minister and the administrative unit of the Public Service that is responsible for assisting a Minister in the administration of this Act;

(c) must provide for a report to be prepared in relation to the review and for a copy of the report to be laid before both Houses of Parliament;

(d) may require the central assessment unit or the Registrar to prepare and provide reports of a specified kind, or to provide information of a specified kind, to the person or body conducting a review;

(e) may make provision in respect of the confidentiality of any information or document obtained by the reviewer in the course of a review.

Division 2—Working with children checks

25—Working with children checks to be conducted by central assessment unit

(1) A working with children check under this Act must be conducted by the central assessment unit.

(2) To avoid doubt, a criminal history report prepared by South Australia Police, CrimTrac or the Australian Crime Commission does not constitute a working with children check.

(3) Subsection (1) does not apply in relation to an order of the South Australian Civil and Administrative Tribunal.

26—Nature of working with children check

(1) A working with children check in respect of a person consists of the central assessment unit assessing assessable information relating to a person against the prescribed risk assessment criteria to determine whether or not the person poses an unacceptable risk to children.

(2) Nothing in subsection (1) requires the central assessment unit to assess all assessable information relating to a person (and the fact that the central assessment unit did not assess all assessable information relating to a person in the course of a working with children check does not, of itself, invalidate the working with children check, or a decision of the central assessment unit made in relation to the working with children check).

(3) In conducting a working with children check, the central assessment unit—

(a) is not bound by the rules of evidence; and

(b) may adopt, as in its discretion it considers appropriate, any findings, decision or judgment of a court or other tribunal; and

(c) may otherwise inform itself as it thinks fit.

(4) A working with children check must be conducted in accordance with any other requirements set out in the regulations and the guidelines (however, a failure to comply with this subsection does not, of itself, invalidate a working with children check).

(5) On completing a working with children check in respect of a person, the central assessment unit must determine whether the person is, or is not, to be prohibited from working with children.

(6) To avoid doubt, a working with children check may be used in relation to any child-related work despite being conducted in relation to a particular position, service or activity or employer.

(7) In this section—

prescribed risk assessment criteria means the risk assessment criteria set out in the guidelines.

26A—Certain persons presumed to pose unacceptable risk to children

(1) Subject to this section, the following provisions apply in relation to the conduct of a working with children check in respect of a person who has been found guilty of a presumptive disqualification offence (whether the offence was committed, or the finding of guilt made, before or after the commencement of this section):

(a) the person will be presumed to pose an unacceptable risk to children;

(b) the central assessment unit need not consider or assess any further information in relation to an application for a working with children check made by the person;

(c) the central assessment unit must, for the purposes of section 26(5), determine that the person is to be prohibited from working with children unless the person satisfies the central assessment unit that—

(i) the circumstances of the presumptive disqualification offence are such that the offence should be disregarded in determining whether the person poses an unacceptable risk to children; or

(ii) such exceptional circumstances exist in relation to the person that the person does not appear, or no longer appears, to pose an unacceptable risk to children.

(2) Nothing in this section limits section 27(3).

(3) For the purposes of this section, a reference to a ***person who has been found guilty of a presumptive disqualification offence*** will be taken to include a reference to—

(a) a person in relation to whom, on a charge of a presumptive disqualification offence—

(i) there is a finding of a court under Part 8A of the *Criminal Law Consolidation Act 1935* that the objective elements of a presumptive disqualification offence are established (whether or not the person was found not guilty of the offence, or was found to be mentally unfit to stand trial, pursuant to Division 2 or 3 of that Part); or

(ii) there is a finding of a court of another jurisdiction that corresponds to a finding referred to in subparagraph (i); and

(b) a person who has been charged with a prescribed offence or presumptive disqualification offence, but where the charge has not yet been finally determined.

(4) In this section—

presumptive disqualification offence means an offence, or class of offences, declared by the regulations to be a presumptive disqualification offence (but does not include an offence that is a prescribed offence).

27—Application for working with children check

(1) Subject to this Act, an application for a working with children check—

(a) must be made to the central assessment unit by the person to whom the working with children check relates; and

(b) must be made in a manner and form determined by the central assessment unit; and

(c) must be accompanied by such information as may reasonably be required by the central assessment unit; and

(d) must be accompanied by the prescribed fee.

(2) The regulations may make further provision in relation to applications for working with children checks (including by allowing an application to be made for or on behalf of a person by their employer or another person).

(3) The central assessment unit may refuse to consider an application if—

(a) the central assessment unit has conducted a working with children check in relation to the person to whom the application relates within the preceding 5 years; and

(b) on completion of that working with children check, the central assessment unit issued a prohibition notice to the person; and

(c) that prohibition notice has not been revoked.

(4) The central assessment unit must, in accordance with any requirements set out in the regulations—

(a) issue a receipt in the prescribed form to each applicant for a working with children check; and

(b) if the person to whom the working with children check relates does not have a unique identifier—issue a unique identifier to the person in accordance with section 29.

28—Working with children check to be conducted even if application withdrawn

The central assessment unit must conduct a working with children check in relation to a person to whom an application under section 27 relates whether or not the application is subsequently withdrawn (and, to avoid doubt, this Act will continue to apply in respect of the application as if it were not so withdrawn).

29—Unique identifiers

(1) The central assessment must (unless a unique identifier has already been issued to the person) issue a unique identifier to—

(a) each applicant for a working with children check; and

(b) each person to whom a prohibition notice is issued,

and may issue a unique identifier to such other persons as the central assessment unit thinks appropriate.

(2) The central assessment issues a unique identifier to a person by—

(a) assigning a unique number to the person by which the person can be identified and with which the records management system can be interrogated; and

(b) giving the person a notice in a manner and form determined by the central screening unit setting out the person's unique identifier.

(3) A unique identifier may only be varied, substituted or revoked with the consent of the Minister.

(4) The regulations may make further provision in respect of unique identifiers.

30—Central assessment unit may conduct additional working with children checks

(1) Despite section 27(1)(a), but without limiting any other provision of this Act, the central assessment unit may, at any time, conduct a working with children check in relation to a particular person.

(2) An additional working with children check may be conducted—

(a) on the application of an employer of the person; or

(b) on the application of a person prescribed by the regulations for the purposes of this paragraph; or

(c) on the central assessment unit's own motion,

and must be conducted if the Minister so directs.

(3) An application under this section—

(a) must be made in a manner and form determined by the central assessment unit; and

(b) must be accompanied by such information as may reasonably be required by the central assessment unit; and

(c) must be accompanied by the prescribed fee.

31—Central assessment unit may seek external advice

(1) Despite any other Act or law, the central assessment unit may, in relation to any decision or determination under this Act, seek such medical, legal or other professional advice as it thinks necessary or appropriate to make the decision or determination.

(2) Without limiting the generality of subsection (1), the regulations may provide for the establishment of an advisory panel to advise or assist the central assessment unit in the performance of its functions under this Act.

32—Issue of prohibition notice

(1) If the central assessment unit determines under section 26(5) that a person is to be prohibited from engaging in child-related work, the central assessment unit must, in accordance with the regulations, issue a notice to the person prohibiting the person from engaging in child-related work (a ***prohibition notice***).

(2) A prohibition notice—

(a) must be in the form approved by the Minister; and

(b) must contain a statement in a form approved by the Minister stating that the person to whom the notice relates is prohibited from engaging in child-related work; and

(c) must set out the following information:

(i) the full name and date of birth of the person to whom the notice relates;

(ii) the unique identifier of the person to whom the notice relates;

(iii) the date of issue of the notice;

(iv) any other information required by the regulations for the purposes of this subsection.

(3) A prohibition notice remains in force until it is revoked in accordance with this Act.

33—Revocation of prohibition notice

(1) The central assessment unit may, on the application of the prohibited person to whom a prohibition notice relates or on its own motion, revoke a prohibition notice if—

(a) the only grounds on which the person is a prohibited person is the issue of the prohibition notice; and

(b) if the revocation is on the application of the prohibited person—the prohibited person satisfies the central assessment unit that—

(i) the prohibition notice was issued in error; or

(ii) there is fresh and compelling assessable information that, if assessed in the course of the original working with children check, would have materially affected the determination under section 26(5) to prohibit the person from working with children; and

(c) the central assessment unit conducts a further working with children check in relation to the prohibited person, and determines that the person is not to be prohibited from working with children.

(2) An application under this section—

(a) must be made in a manner and form determined by the central assessment unit; and

(b) must be accompanied by such information or documents as the central assessment unit may reasonably require; and

(c) must be accompanied by the prescribed fee.

(3) The central assessment unit may refuse to consider an application under this section if the central assessment unit has previously considered an application for revocation of the prohibition notice within the preceding 5 years.

33A—Fee payable where volunteer undertakes paid employment

(1) If—

(a) a working with children check is conducted under this Act in respect of a person; and

(b) the person satisfies the central assessment unit that the person is a volunteer and so pays no fee in relation to the working with children check; and

(c) the person uses that working with children check to work with children other than as a volunteer,

the person must, unless the fee is waived by the central assessment unit, pay to the central assessment unit the prescribed fee.

(2) However, subsection (1) does not apply in relation to a person who works with children other than as a volunteer on less than 7 days in any 12 month period (whether or not the person also works with children on a volunteer basis during that period).

(3) A payment under subsection (1) must be made as soon as is reasonably practicable (and in any case within 28 days) after the person commences work with children other than as a volunteer.

(4) A person who fails to comply with subsection (1) is guilty of an offence.

Maximum penalty: $5 000.

Expiation fee: $315.

(5) However, a failure to comply with subsection (1) does not affect the validity of a working with children check.

Division 3—Records management system

34—Records management system

(1) The Registrar must establish and maintain a records management system for the purposes of this Act.

(2) The records management system must include—

(a) to the extent that the central assessment unit is in possession of the relevant information, a part recording, by name, date of birth and unique identifier (if any), persons who are prohibited from working with children; and

(b) a part recording, by unique identifier, persons to whom a prohibition notice has ever been issued; and

(c) a part recording, by unique identifier, the date on which each working with children check is conducted in respect of a person; and

(d) a part recording, by unique identifier, persons in relation to whom a prohibition notice has been revoked; and

(e) a part identifying persons to whom a unique identifier has been issued,

and may contain such other parts as the Registrar thinks appropriate.

(3) The records management system must include the information required by the regulations, and may contain such information as the Registrar thinks appropriate.

(4) The Registrar must correct an entry in the records management system that is not, or has ceased to be, correct.

(5) The Registrar must ensure that the records management system is such as to enable a person to inspect the records management system under section 35.

(6) The Registrar must ensure that the records management system is such as to enable a person to obtain, in accordance with any requirements set out in the regulations, evidence of the fact that the person has inspected or interrogated the records management system.

(7) The Registrar must ensure that the records management system is such as to enable a person to whom a unique identifier is issued to obtain without charge that number or to obtain a copy of the written notice referred to in section 29(2)(b).

(8) The regulations may make further provision in relation to the records management system.

35—Inspection of records management system

(1) The Registrar must ensure that the central assessment unit has direct and unrestricted access to the records management system for the purposes of its functions under this Act.

(2) The records management system may be inspected (without charge) by any person.

(3) A person who interrogates the records management system under this Act must be provided with evidence of that fact in accordance with the regulations.

(4) The regulations may make further provision in respect of inspection of the records management system (including provisions limiting access to specified parts of the system, or to information of a specified kind).

Division 4—Information gathering powers etc

36—Registrar may require information from public sector agencies

(1) The Registrar may, by notice in writing, require a public sector agency to provide to the central assessment unit such information relating to a specified person as may be in the public sector agency's possession and that the central assessment unit reasonably requires for the purposes of this Act.

(2) A public sector agency must provide the information to the central assessment unit in the manner, and within the period, specified in the notice.

(3) If a public sector agency refuses or fails to comply with a notice under subsection (1), the Registrar may, after consultation with the public sector agency—

(a) report the refusal or failure to the Minister and to the Minister responsible for the public sector agency; and

(b) include details of the refusal or failure in the annual report of the central assessment unit.

37—Registrar may require information from other persons

(1) The Registrar may, by notice in writing, require a specified person to provide to the central assessment unit such information relating to a specified person as may be in the person's possession and that the central assessment unit reasonably requires for the purposes of this Act.

(2) A person to whom a notice is given under subsection (1) must provide the information to the central assessment unit in the manner, and within the period, specified in the notice.

(3) A person who refuses or fails to comply with a notice under subsection (1) is guilty of an offence.

Maximum penalty: $50 000.

38—Court to provide notice of certain findings of guilt to central assessment unit

A court that finds a person guilty of a prescribed offence or presumptive disqualification offence (within the meaning of section 26A) must ensure that the prescribed information relating to the finding of guilt is provided, in accordance with the regulations, to the central assessment unit.

39—Commissioner of Police to provide information to central assessment unit on charging of certain persons

Without limiting any other Act or law that requires or authorises the Commissioner of Police to disclose information, the Commissioner of Police must ensure that, if a police officer lays a charge of a prescribed offence or a presumptive disqualification offence (within the meaning of section 26A) against a person, the prescribed information relating to the charge is provided to the central assessment unit as soon as is reasonably practicable after the person is charged.

39A—Reporting bodies to notify central assessment unit etc

(1) Without limiting any other Act or law that requires or authorises a reporting body to disclose information, a reporting body—

(a) must, if in the course of performing its functions in relation to a person the reporting body suspects that the person poses, or may pose, an unacceptable risk to children—

(i) notify the central assessment unit of that suspicion; and

(ii) provide to the central assessment unit such information as may be in the possession of the reporting body as may be relevant to the notification; and

(b) may disclose to the central assessment unit any information on any matter relevant to the operation of this Act.

(2) A notification under subsection (1)(a) must be made in a manner and form determined by the central assessment unit.

(3) The regulations may make further provision in relation to a notification under this section.

(4) In this section—

reporting body means a person or body prescribed by the regulations for the purposes of this section.

40—Certain persons to advise central assessment unit of changes in information

(1) A person to whom a unique identifier has been issued must notify the central assessment unit if any of the following occurs:

(a) the person is prohibited from working with children under a law of the Commonwealth, or of another State or Territory;

(b) the person becomes a registrable offender under the *Child Sex Offenders Registration Act 2006*;

(c) the person makes a disclosure to their employer under section 66 of the *Child Sex Offenders Registration Act 2006*;

(d) there is a change in the assessable information relating to the person (being assessable information of a kind contemplated by section 8(1)(a) to (f)) arising out of a matter or proceeding occurring after the person's most recent working with children check was conducted;

(e) the person changes their name, or uses another name.

(2) A notice under subsection (1)—

(a) must be given in a manner and form determined by the central assessment unit; and

(b) must be given as soon as is reasonably practicable after the relevant matter occurs; and

(c) must contain the information required by the regulations for the purposes of this paragraph.

(3) A person must not refuse or fail to comply with subsection (1).

Maximum penalty: $50 000.

41—Central assessment unit to advise employer of certain information

(1) The central assessment unit must take reasonable steps to notify each known employer of a person if—

(a) the person is prohibited from working with children; or

(b) more than 5 years have passed since the person's most recent working with children check was conducted; or

(c) the person's unique identifier is changed.

(2) A notification under subsection (1)—

(a) must be made as soon as is reasonably practicable after the central assessment unit becomes aware of the relevant matter (whether because of a notification under this Act or otherwise); and

(b) must contain the information required by the regulations for the purposes of this paragraph.

(3) Without limiting section 51, a notification under subsection (1) may be made by electronic communication.

42—Central assessment unit to advise prescribed persons and bodies of certain information

(1) The central assessment unit must, in accordance with any requirements set out in the regulations, notify a prescribed person or body if—

(a) a relevant person in respect of the prescribed person or body is prohibited from working with children; or

(b) more than 5 years have passed since a working with children check was conducted in respect of a relevant person in respect of the prescribed person or body; or

(c) the unique identifier of the relevant person in respect of the prescribed person or body is changed.

(2) In this section—

relevant person means a person of a class declared by the regulations to be relevant persons in respect of a particular prescribed person or body.

Division 5—Information sharing

42A—Central assessment unit may disclose etc information to other jurisdictions

(1) Despite a provision of this or any other Act or law, the central assessment unit is authorised to receive and make use of information relevant to the functions of the central assessment unit under this Act from any person or body in this or any other jurisdiction.

(2) Despite a provision of this or any other Act or law, the central assessment unit is authorised to disclose information (not being information classified by the Commissioner of Police as criminal intelligence) in the possession of the central assessment unit to a prescribed person or body in another State or Territory for purposes related to the screening of persons who work with children.

(3) In this section—

prescribed person or body means—

(a) a person or body whose official function consists of or includes the screening of persons who work with children (however described); or

(b) any other person or body prescribed by the regulations for the purposes of this paragraph.

42B—Access to police information

(1) The Commissioner of Police is authorised to disclose the following information for the purpose of the use of the information in assessing and determining whether a person who engages or proposes to engage in child-related work poses an unacceptable risk to children:

(a) information relating to any matter that may cause a person to be prohibited from working with children, or require a risk assessment of a person under this Act or a corresponding law;

(b) information relating to the criminal history of a person;

(c) without limiting a preceding paragraph, information relating to the circumstances of an offence or other matter disclosed under this section.

(2) The disclosure of information under this section is limited to disclosure to any of the following:

(a) the central assessment unit;

(b) an interstate screening agency;

(c) the Australian Criminal Intelligence Commission;

(d) a law enforcement agency of the Commonwealth or another State or Territory.

(3) A person to whom information is disclosed under this section may disclose that information to an interstate screening agency for the purposes of the use of the information in assessing and determining whether a person poses an unacceptable risk to children.

(4) Information relating to a person's criminal history may be disclosed under this section whether or not the information relates to a prescribed offence or presumptive disqualification offence (within the meaning of section 26A).

(5) This section does not limit the persons to whom, or the circumstances in which, information relating to the criminal history, including the criminal record, of persons may be disclosed apart from this Act.

(6) This section does not limit the powers of the Commissioner of Police to disclose relevant information as an authorised person under this Act.

(7) In this section—

interstate screening agency means a person or body exercising functions in the execution or administration of a corresponding law.

42C—Disclosure of information about offences

(1) The central assessment unit may disclose to a law enforcement agency of the State or any other jurisdiction (including a jurisdiction outside Australia) any information obtained as a result of the exercise of a function under this Act that indicates that a relevant offence may have been committed or that constitutes evidence of a relevant offence.

(2) In this section—

relevant offence means a prescribed offence, or any other offence declared by the regulations to be included in the ambit of this definition.

42D—Disclosure of information to prevent harm

Despite a provision of this or any other Act or law, the central assessment unit may disclose information obtained in the course of the administration or operation of this Act to an appropriate person or body if the central assessment unit is of the opinion that to do so is reasonably necessary to prevent harm being caused to a child.

42E—Disclosure of information for research etc purposes

Despite a provision of this or any other Act or law, the central assessment unit may disclose information obtained in the course of the administration or operation of this Act to an appropriate person or body for the purposes of research into the operation of this Act or a law of another State or Territory related to the screening of persons who work with children, or auditing of compliance with such laws.

42F—Provision of other information to central assessment unit

(1) Despite a provision of this or any other Act or law, a person or body (including, to avoid doubt, an administrative unit or public sector employee within the meaning of the *Public Sector Act 2009*) may provide to the central assessment unit any information that the person or body reasonably believes is relevant to the functions of the central assessment unit under this Act.

(2) A person or body incurs no civil or criminal liability in respect of the provision of information to the central assessment unit in good faith and without negligence under this section.

42G—Information sharing for national register or database

Despite a provision of this or any other Act or law, the central assessment unit may disclose information obtained in the operation or administration of this Act for the purpose of providing relevant information for entry in a national register or database relating to the screening of persons who work with children.

Part 6—Review of decisions by South Australian Civil and Administrative Tribunal

43—Review of decisions by South Australian Civil and Administrative Tribunal

(1) The South Australian Civil and Administrative Tribunal is, by force of this section, conferred with jurisdiction to deal with matters consisting of the review of a reviewable decision.

(2) An application for review of a reviewable decision may be made to the South Australian Civil and Administrative Tribunal within 14 days after the applicant receives notice of the relevant decision (or such longer period as the Tribunal may allow).

(3) However, the South Australian Civil and Administrative Tribunal may only allow an extension of time under subsection (2) if satisfied that—

(a) special circumstances exist; and

(b) another party will not be unreasonably disadvantaged because of the delay in commencing the proceedings.

(4) In this section—

reviewable decision—the following are reviewable decisions:

(a) a decision of the central assessment unit to issue or revoke a prohibition notice;

(b) any other decision under this Act of a kind declared by the regulations to be included in the ambit of this definition.

Part 7—Miscellaneous

44—Parents etc may require person to provide unique identifier

(1) A person who is responsible for a child in respect of whom child-related work is, or is to be, performed by a person may require the person to provide their full name and unique identifier (if any).

(2) A person must not refuse or fail to comply with a request under subsection (1).

Maximum penalty: $10 000.

(3) A person will be taken to have complied with a requirement under subsection (1) if the person verifies that they are not a prohibited person by electronic communication in accordance with the scheme set out in the regulations.

(4) This section does not apply in relation to an excluded person.

45—Misrepresentations relating to working with children check

(1) A person must not falsely represent that—

(a) a working with children check has been conducted in relation to the person within the preceding 5 years; or

(b) the person is not prohibited from working with children.

Maximum penalty: $50 000 or imprisonment for 1 year.

(2) A person must not falsely represent that—

(a) a working with children check has, or has not, been conducted in relation to a specified person within the preceding 5 years; or

(b) a specified person is, or is not, prohibited from working with children.

Maximum penalty: $50 000 or imprisonment for 1 year.

46—False or misleading statements

A person must not make a statement knowing that it is false or misleading in a material particular (whether by reason of the inclusion or omission of a particular) in information provided under this Act.

Maximum penalty: $20 000.

47—No obligation to maintain secrecy

No obligation to maintain secrecy or other restriction on the disclosure of information applies in relation to the disclosure of information to the central assessment unit under this Act, except an obligation or restriction designed to keep the identity of an informant secret.

48—Limitation of liability

Except as specifically provided in this Act, no civil or criminal liability attaches to—

(a) the central assessment unit, the Registrar or any other person exercising powers and functions under this Act; or

(b) the Crown,

in respect of an act or omission in good faith in the exercise or discharge, or purported exercise or discharge, of a power, function or duty conferred or imposed by or under this Act.

49—Confidentiality

A person must not, directly or indirectly, disclose information obtained in the course of the administration or operation of this Act except—

(a) for the purposes of the administration or enforcement of this Act; or

(b) for the purposes of referring the matter to a law enforcement agency, or a person or agency exercising official duties under an Act relating to the care or protection of children; or

(c) for the purposes of a criminal proceeding or a proceeding for the imposition of a penalty; or

(d) if the disclosure is reasonably necessary for the protection of the lawful interests of that person; or

(e) as is otherwise required or authorised by or under this or any other Act.

Maximum penalty: $20 000.

50—Victimisation

(1) A person who causes detriment to another on the ground, or substantially on the ground, that the other person or a third person has provided, or intends to provide, information under this Act commits an act of victimisation.

(2) Causing detriment on the ground that a person—

(a) has made a false allegation; or

(b) has not acted in good faith,

does not constitute an act of victimisation.

(3) An act of victimisation under this Act may be dealt with—

(a) as a tort; or

(b) as if it were an act of victimisation under the *Equal Opportunity Act 1984*,

but, if the victim commences proceedings in a court seeking a remedy in tort, the victim cannot subsequently lodge a complaint under the *Equal Opportunity Act 1984* and, conversely, if the victim lodges a complaint under that Act, the victim cannot subsequently commence proceedings in a court seeking a remedy in tort.

(4) If a complaint alleging an act of victimisation under this Act has been lodged with the Commissioner for Equal Opportunity and the Commissioner is of the opinion that the subject matter of the complaint has already been adequately dealt with by a competent authority, the Commissioner may decline to act on the complaint or to proceed further with action on the complaint.

(5) In proceedings against a person seeking a remedy in tort for an act of victimisation committed by an employee or agent of the person, it is a defence to prove that the person exercised all reasonable diligence to ensure that the employee or agent would not commit an act of victimisation.

(6) A person who personally commits an act of victimisation under this Act is guilty of an offence.

Maximum penalty: $20 000.

(7) Proceedings for an offence against subsection (6) may only be commenced by a police officer or a person approved by either the Commissioner of Police or the Director of Public Prosecutions.

(8) In this section—

detriment includes—

(a) injury, damage or loss; or

(b) intimidation or harassment; or

(c) discrimination, disadvantage or adverse treatment in relation to a person's employment; or

(d) threats of reprisal.

51—Service

Except where this Act requires otherwise, a notice or other document required or authorised to be given to or served on a person under this Act may—

(a) be given to the person personally; or

(b) be left for the person at the person's place of residence or business with someone apparently over the age of 16 years; or

(c) be posted to the person at the person's last known place of residence or business; or

(d) be transmitted by fax or email to a fax number or email address provided by the person (in which case the notice or other document will be taken to have been given or served at the time of transmission); or

(e) if the person is a company or registered body within the meaning of the *Corporations Act 2001* of the Commonwealth, be served in accordance with that Act.

52—Evidentiary provision

(1) In proceedings for an offence against this Act, an allegation in an information—

(a) that a working with children check relating to a specified person had, or had not, been conducted on a specified day or within a specified period; or

(b) that a prohibition notice had, or had not, been issued to a specified person; or

(c) that a specified person had, or had not, been issued with a specified unique identifier,

must be accepted as proved in the absence of evidence to the contrary.

(2) In any disciplinary proceedings, a document apparently signed by the Registrar and certifying—

(a) that a working with children check relating to a specified person had, or had not, been conducted on a specified day or within a specified period; or

(b) that a prohibition notice had, or had not, been issued to a specified person; or

(c) that a specified person had, or had not, been issued with a specified unique identifier,

must be accepted as proved in the absence of evidence to the contrary.

(3) In any legal or disciplinary proceedings, a document apparently signed by the Registrar and purporting to be an extract of the records management system must be accepted as proved in the absence of evidence to the contrary.

53—Regulations

(1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.

(2) Without limiting the generality of subsection (1), the regulations may provide for—

(a) the exemption of a person, or a class of persons, from the operation of a specified provision or provisions of this Act; and

(b) fees in respect of any matter under this Act and their payment, recovery or waiver; and

(ba) requirements relating to the provision of information or documents to the central assessment unit; and

(c) fines, not exceeding $10 000, for offences against the regulations; and

(d) facilitation of proof of the commission of offences against the regulations.

(3) The regulations may—

(a) be of general or limited application; and

(b) make different provision according to the matters or circumstances to which they are expressed to apply; and

(c) make provisions of a saving or transitional nature consequent on the enactment of this Act or on the commencement of specified provisions of this Act or on the making of regulations under this Act;

(d) provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Minister, the Registrar or any other specified person or body; and

(e) apply or incorporate, wholly or partially and with or without modification, a code, standard, policy or other document prepared or published by the Minister or another specified person or body.

(4) If a code, standard or other document is referred to or incorporated in the regulations—

(a) a copy of the code, standard or other document must be kept available for public inspection, without charge and during ordinary office hours, at an office or offices specified in the regulations; and

(b) evidence of the contents of the code, standard or other document may be given in any legal proceedings by production of a document apparently certified by the Minister to be a true copy of the code, standard or other document.

Legislative history

Notes

- Amendments 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 this Act (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.

Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
2016	49	*Child Safety (Prohibited Persons) Act 2016*	10.11.2016	1.7.2019 (*Gazette 17.1.2019 p93*)
2017	64	*Children's Protection Law Reform (Transitional Arrangements and Related Amendments) Act 2017*	12.12.2017	Pt 2 (ss 5 to 17) & Pt 7 (ss 43(2) & 44)—1.7.2019 (*Gazette 17.1.2019 p93*) (s 43(1) deleted by 9/2019 without coming into operation)
2019	9	*Statutes Amendment (Screening) Act 2019*	16.5.2019	Pt 2 (ss 4 to 15)—1.7.2019 (*Gazette 27.6.2019 p2322*)
2025	**12**	***Criminal Law Consolidation (Mental Competence) Amendment Act 2025***	**27.3.2025**	**Sch 1 (cl 2)—14.7.2025 (*Gazette 5.6.2025 p1385*)**
2025	25	*Children and Young People (Safety and Support) Act 2025*	12.6.2025	Sch 2 (cl 8)—uncommenced

Provisions amended

New entries appear in bold.

Provision	How varied	Commencement
Pt 3		
s 5		
s 5(1)		
prescribed offence	amended by 64/2017 s 43(2)	1.7.2019
s 5(2)	**amended by 12/2025 Sch 1 cl 2**	**14.7.2025**
s 6		
s 6(1a)	inserted by 9/2019 s 4	1.7.2019
s 8		
s 8(1)	amended by 64/2017 s 44(1)—(3)	1.7.2019
	amended by 25/2025 Sch 2 cl 8(1)—(4)	uncommenced—not incorporated

s 9		
s 9(1)	(a) deleted by 9/2019 s 5(1)	1.7.2019
	(b) deleted by 9/2019 s 5(2)	1.7.2019
s 12		
s 12(2)	amended by 9/2019 s 6	1.7.2019
Pt 5		
Pt 5 Div 1		
s 21		
s 21(1)	amended by 9/2019 s 7	1.7.2019
Pt 5 Div 2		
s 26A	inserted by 9/2019 s 8	1.7.2019
s 33A	inserted by 9/2019 s 9	1.7.2019
Pt 5 Div 3		
s 34		
s 34(2)	amended by 9/2019 s 10	1.7.2019
Pt 5 Div 4		
s 38	amended by 9/2019 s 11	1.7.2019
s 39	substituted by 9/2019 s 12	1.7.2019
s 39A	inserted by 9/2019 s 13	1.7.2019
Pt 5 Div 5	inserted by 9/2019 s 14	1.7.2019
Pt 7		
s 53		
s 53(2)	amended by 9/2019 s 15	1.7.2019

Transitional etc provisions associated with Act or amendments

Children's Protection Law Reform (Transitional Arrangements and Related Amendments) Act 2017

Part 2—Transitional provisions relating to Child Safety (Prohibited Persons) Act 2016

5—Interpretation

Unless the contrary intention appears, a term or phrase used in this Part that is defined in the *Child Safety (Prohibited Persons) Act 2016* has the same meaning as in that Act.

6—Expiry of Part

This Part will expire on the day that the transitional period ends.

7—Certain applications for assessments of relevant history taken to be application for working with children check

(1) This section applies to an application for an assessment of relevant history made to an authorised screening unit before the commencement of this section but not determined before such commencement.

(2) An application to which this section applies will, for the purposes of the *Child Safety (Prohibited Persons) Act 2016*, be taken to be an application to the central assessment unit for a working with children check under section 27 of that Act (and the application will, unless the central assessment unit determines otherwise, be taken to have satisfied the requirements set out in section 27(1) of that Act).

8—Recognition of certain assessments of relevant history as working with children checks

(1) An assessment of relevant history conducted in respect of a person within the 3 years preceding the commencement of this section will, for the purposes of the *Child Safety (Prohibited Persons) Act 2016*, be taken to be a working with children check in respect of the person conducted under that Act.

(2) However, this section ceases to apply to an assessment of relevant history in respect of a particular person if either of the following occurs:

(a) the person becomes a prohibited person;

(b) a working with children check is conducted in relation to the person.

(3) To avoid doubt, an assessment of relevant history referred to in subsection (1) clearing a person for child-related employment (however described) will, for the purposes of the *Child Safety (Prohibited Persons) Act 2016*, be taken to be a determination of the central assessment unit made at the relevant time that the person is not to be prohibited from working with children.

(4) The central assessment unit may issue a unique identifier under section 29 of the *Child Safety (Prohibited Persons) Act 2016* to each person contemplated by subsection (1) (being a person to whom a unique identifier has not previously been issued under that Act).

8A—Transitional provisions—persons the subject of assessment of relevant history conducted by responsible authority

(1) This section applies to a person in respect of whom the responsible authority for an organisation had conducted an assessment of relevant history in accordance with regulation 6(1)(a) of the *Children's Protection Regulations 2010* within the 3 years preceding the commencement of this section.

(2) The following provisions of the *Child Safety (Prohibited Persons) Act 2016* do not apply to, or in relation to, a person to whom this section applies:

(a) section 16;

(b) section 17;

(c) section 18.

(3) However, this section ceases to apply to a person referred to in subsection (1)—

(a) if either of the following occurs:

(i) the person becomes a prohibited person;

(ii) a working with children check is conducted in relation to the person; or

(b) 12 months after the commencement of this section,

whichever occurs first.

(4) The central assessment unit may issue a unique identifier under section 29 of the *Child Safety (Prohibited Persons) Act 2016* to each person to whom this section applies (being a person to whom a unique identifier has not previously been issued under that Act).

(5) In this section—

responsible authority for an organisation has the same meaning as in section 8B of the *Children's Protection Act 1993*, as in force immediately before that section is repealed.

8B—Transitional provisions—certain emergency service workers

(1) This section applies to a person who, immediately before the commencement of this section, was an emergency service worker.

(2) However, this section ceases to apply to a person referred to in subsection (1) if any of the following occurs:

(a) the person becomes a prohibited person;

(b) a working with children check is conducted in relation to the person;

(c) the person ceases to be an emergency service worker.

(3) The following provisions of the *Child Safety (Prohibited Persons) Act 2016* do not apply to, or in relation to, a person to whom this section applies:

(a) section 16;

(b) section 17;

(c) section 18.

(4) The central assessment unit may issue a unique identifier under section 29 of the *Child Safety (Prohibited Persons) Act 2016* to each person to whom this section applies (being a person to whom a unique identifier has not previously been issued under that Act).

(5) In this section—

emergency service worker means—

(a) a member of—

(i) SAMFS; or

(ii) SACFS; or

(iii) SASES; or

(b) a member of the SA Ambulance Service; or

(c) a person providing ambulance services pursuant to a restricted ambulance service licence under section 58 of the *Health Care Act 2008*.

9—Transitional provisions—teachers

(1) This section applies to a person who, immediately before the commencement of this section—

(a) was a registered teacher (within the meaning of the *Teachers Registration and Standards Act 2004*) whose registration was in force; or

(b) was the subject of a special authority to teach granted under section 30 of the *Teachers Registration and Standards Act 2004* that was in force.

(2) However, this section ceases to apply to a person referred to in subsection (1) if any of the following occurs:

(a) the person becomes a prohibited person;

(b) a working with children check is conducted in relation to the person;

(c) the person's current registration as a teacher, or the special authority to teach, (as the case requires) expires;

(d) the person's registration as a teacher, or the special authority to teach, (as the case requires) is cancelled or revoked for any reason.

(3) The following provisions of the *Child Safety (Prohibited Persons) Act 2016* do not apply to, or in relation to, a person to whom this section applies:

(a) section 16;

(b) section 17;

(c) section 18.

(4) The central assessment unit may issue a unique identifier under section 29 of the *Child Safety (Prohibited Persons) Act 2016* to each person to whom this section applies (being a person to whom a unique identifier has not previously been issued under that Act).

10—Transitional provisions—persons employed under *Children's Services Act 1985*

(1) This section applies to a person who—

(a) was, immediately before the commencement of this section, employed in a registered children's services centre under section 12 of the *Children's Services Act 1985*; and

(b) either—

(i) is the subject of an assessment of relevant history undertaken in the 3 years immediately preceding the commencement of this section; or

(ii) did both of the following:

(A) obtained a criminal history report in the 3 years immediately preceding the commencement of this section;

(B) provided a copy of the report to the employing authority under the *Children's Services Act 1985*.

(2) However, this section ceases to apply to a person referred to in subsection (1) if either of the following occurs:

(a) the person becomes a prohibited person;

(b) a working with children check is conducted in relation to the person.

(3) The following provisions of the *Child Safety (Prohibited Persons) Act 2016* do not apply to, or in relation to, a person to whom this section applies:

(a) section 16;

(b) section 17;

(c) section 18.

(4) The central assessment unit may issue a unique identifier under section 29 of the *Child Safety (Prohibited Persons) Act 2016* to each person to whom this section applies (being a person to whom a unique identifier has not previously been issued under that Act).

11—Transitional provisions—health practitioners

(1) This section applies to a person who, immediately before the commencement of this section, was a registered health practitioner.

(2) However, this section ceases to apply to a person referred to in subsection (1) if any of the following occurs:

(a) the person becomes a prohibited person;

(b) a working with children check is conducted in relation to the person;

(c) the person's registration as a registered health practitioner expires or is cancelled or revoked for any reason.

(3) The following provisions of the *Child Safety (Prohibited Persons) Act 2016* do not apply to, or in relation to, a person to whom this section applies:

(a) section 16;

(b) section 17;

(c) section 18.

(4) The central assessment unit may issue a unique identifier under section 29 of the *Child Safety (Prohibited Persons) Act 2016* to each person to whom this section applies (being a person to whom a unique identifier has not previously been issued under that Act).

(5) In this section—

registered health practitioner has the same meaning as in the *Health Practitioner Regulation National Law (South Australia)*.

12—Transitional provisions—foster parents

(1) This section applies to a person who—

(a) was, immediately before the commencement of this section, an approved foster parent under section 43 of the *Family and Community Services Act 1972*; and

(b) is the subject of an assessment of relevant history undertaken in the 3 years immediately preceding the commencement of this section.

(2) To avoid doubt, this section does not apply to a person merely because the Chief Executive was satisfied that the person was a fit and proper person under section 42 of the *Family and Community Services Act 1972*, or because a criminal history report was obtained by or in relation to the person.

(3) However, this section ceases to apply to a person referred to in subsection (1) if any of the following occurs:

(a) the person becomes a prohibited person;

(b) a working with children check is conducted in relation to the person;

(c) the current period of the person's approval as an approved carer (as continued under section 27 of this Act) expires;

(d) the person's approval as an approved carer (as continued under section 27 of this Act) is cancelled or revoked for any reason.

(4) The following provisions of the *Child Safety (Prohibited Persons) Act 2016* do not apply to, or in relation to, a person to whom this section applies:

(a) section 16;

(b) section 17;

(c) section 18.

(5) The central assessment unit may issue a unique identifier under section 29 of the *Child Safety (Prohibited Persons) Act 2016* to each person to whom this section applies (being a person to whom a unique identifier has not previously been issued under that Act).

13—Transitional provisions—licensed foster care agencies

(1) This section applies to a person who—

(a) was, immediately before the commencement of this section, licensed as a foster care agency under section 48 of the *Family and Community Services Act 1972*; and

(b) is the subject of an assessment of relevant history undertaken in the 3 years immediately preceding the commencement of this section.

(2) To avoid doubt, this section does not apply to a person merely because the Chief Executive was satisfied that the person was a fit and proper person under section 48 of the *Family and Community Services Act 1972*, or because a criminal history report was obtained by or in relation to the person.

(3) However, this section ceases to apply to a person referred to in subsection (1) if any of the following occurs:

(a) the person becomes a prohibited person;

(b) a working with children check is conducted in relation to the person;

(c) the current period of the person's licence as a foster care agency (as continued under section 28 of this Act) expires;

(d) the person's licence as a foster care agency (as continued under section 28 of this Act) is cancelled for any reason.

(4) The following provisions of the *Child Safety (Prohibited Persons) Act 2016* do not apply to, or in relation to, a person to whom this section applies:

(a) section 16;

(b) section 17;

(c) section 18.

(5) The central assessment unit may issue a unique identifier under section 29 of the *Child Safety (Prohibited Persons) Act 2016* to each person to whom this section applies (being a person to whom a unique identifier has not previously been issued under that Act).

14—Transitional provisions—licensed children's residential facilities

(1) This section applies to a person who—

(a) was, immediately before the commencement of this section, the holder of a licence to maintain a children's residential facility under section 51 of the *Family and Community Services Act 1972*; and

(b) is the subject of an assessment of relevant history undertaken in the 3 years immediately preceding the commencement of this section.

(2) To avoid doubt, this section does not apply to a person merely because the Chief Executive was satisfied that the person was suitable to maintain a children's residential facility under section 51 of the *Family and Community Services Act 1972*, or because a criminal history report was obtained by or in relation to the person.

(3) However, this section ceases to apply to a person referred to in subsection (1) if any of the following occurs:

(a) the person becomes a prohibited person;

(b) a working with children check is conducted in relation to the person;

(c) the current period of the person's licence to maintain a children's residential facility (as continued under section 29 of this Act) expires;

(d) the person's licence to maintain a children's residential facility (as continued under section 29 of this Act) is cancelled for any reason.

(4) The following provisions of the *Child Safety (Prohibited Persons) Act 2016* do not apply to, or in relation to, a person to whom this section applies:

(a) section 16;

(b) section 17;

(c) section 18.

(5) The central assessment unit may issue a unique identifier under section 29 of the *Child Safety (Prohibited Persons) Act 2016* to each person to whom this section applies (being a person to whom a unique identifier has not previously been issued under that Act).

15—Transitional provisions—employees in training centres etc

(1) This section applies to a person who—

(a) was, immediately before the commencement of this section, employed in—

(i) a training centre established under the *Family and Community Services Act 1972* or the *Youth Justice Administration Act 2016*; or

(ii) a correctional institution (within the meaning of the *Correctional Services Act 1982*) in which children or young people are detained; and

(b) is the subject of an assessment of relevant history undertaken in the 3 years immediately preceding the commencement of this section.

(2) However, this section ceases to apply to a person referred to in subsection (1) if any of the following occurs:

(a) the person becomes a prohibited person;

(b) a working with children check is conducted in relation to the person.

(3) The following provisions of the *Child Safety (Prohibited Persons) Act 2016* do not apply to, or in relation to, a person to whom this section applies:

(a) section 16;

(b) section 17;

(c) section 18.

(4) The central assessment unit may issue a unique identifier under section 29 of the *Child Safety (Prohibited Persons) Act 2016* to each person to whom this section applies (being a person to whom a unique identifier has not previously been issued under that Act).

16—Transitional provisions—passenger transport services

(1) This section applies to the following persons:

(a) a person who was, immediately before the commencement of this section, the holder of a current accreditation for a passenger transport service operated by the person granted under section 27 of the *Passenger Transport Act 1994*;

(b) a person who was, immediately before the commencement of this section, the holder of a current accreditation for a driver of a public passenger vehicle granted under section 28 of the *Passenger Transport Act 1994*;

(c) a person who was, immediately before the commencement of this section, the holder of a current accreditation for an operator of a centralised booking service granted under section 29 of the *Passenger Transport Act 1994*.

(2) However, this section ceases to apply to a person referred to in subsection (1) if any of the following occurs:

(a) the person becomes a prohibited person;

(b) a working with children check is conducted in relation to the person;

(c) the person's accreditation expires or is revoked for any reason.

(3) The following provisions of the *Child Safety (Prohibited Persons) Act 2016* do not apply to, or in relation to, a person to whom this section applies:

(a) section 16;

(b) section 17;

(c) section 18.

(4) The central assessment unit may issue a unique identifier under section 29 of the *Child Safety (Prohibited Persons) Act 2016* to each person to whom this section applies (being a person to whom a unique identifier has not previously been issued under that Act).

17—Evidentiary provision

(1) In any proceedings under the *Child Safety (Prohibited Persons) Act 2016*, a document issued by an authorised screening unit and purporting to be a child-related employment screening letter or a child-related employment screening-cleared letter, or a certificate issued by the authorised screening unit in accordance with regulation 8A of the *Children's Protection Regulations 2010*, and stating that an assessment of relevant history had been conducted in relation to a specified person on a specified date will, in the absence of evidence to the contrary, be taken to be proof of the matters so stated.

(2) In proceedings for an offence against the *Child Safety (Prohibited Persons) Act 2016*, an allegation in an information that an assessment of relevant history relating to a specified person had, or had not, been conducted on a specified day or within a specified period must be accepted as proved in the absence of evidence to the contrary.

Historical versions

1.7.2019