South Australia

Office for Early Childhood Development Act 2024

An Act to provide for an Office for Early Childhood Development, and for other purposes.

Contents

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Office for Early Childhood Development Act 2024*.

2—Commencement

This Act comes into operation on a day to be fixed by proclamation.

3—Interpretation

In this Act—

Aboriginal child or ***Aboriginal person*** means a child or person (as the case requires) who—

(a) is of Aboriginal and/or Torres Strait Islander descent; and

(b) regards themselves as Aboriginal and/or Torres Strait Islander (or, in the case of a young child, is regarded as Aboriginal and/or Torres Strait Islander by a member of their family or community); and

(c) is accepted as Aboriginal and/or Torres Strait Islander by a relevant Aboriginal or Torres Strait Islander community,

(and a reference to Aboriginal, or an Aboriginal family or organisation, is to be construed accordingly);

Chief Executive means the Chief Executive of the Office for Early Childhood Development, and includes a person acting in that position;

Department has the same meaning as in the *Education and Children's Services Act 2019*;

early childhood development system—see section 4;

Office for Early Childhood Development or ***Office*** means the Office for Early Childhood Development referred to in section 5;

State authority means—

(a) a person who holds an office established by an Act; or

(b) a public sector agency (within the meaning of the *Public Sector Act 2009*); or

(c) a local council; or

(d) any incorporated or unincorporated body—

(i) established for a public purpose by an Act; or

(ii) established for a public purpose under an Act (other than an Act providing for the incorporation of companies or associations, co-operatives, societies or other voluntary organisations); or

(iii) established, or subject to control or direction, by the Governor, a Minister of the Crown or any instrumentality or agency of the Crown or a local council (whether or not established by or under an Act or an enactment); or

(e) any other entity, or entity of a class, prescribed by the regulations,

but does not include—

(f) the Guardian for Children and Young People; or

(g) the Commissioner for Children and Young People; or

(h) the Commissioner for Aboriginal Children and Young People; or

(i) any other entity prescribed by the regulations for the purposes of this paragraph.

4—Meaning of early childhood development system

(1) For the purposes of this Act, a reference to the ***early childhood development system*** will be taken to be a reference to any system or systems that contribute to or affect the development of children in early childhood, and in particular (but not limited to) health services, human services and education and care services provided in early childhood.

(2) To avoid doubt, the early childhood development system includes infrastructure and services, whether provided by the State, or by communities, local government providers or non-government providers.

Part 2—Office for Early Childhood Development

5—Office for Early Childhood Development

The Minister must ensure that there is an *Office for Early Childhood Development*.

6—Functions

(1) The primary function of the Office is to act as a steward of the State's early childhood development system, and in particular to reduce the proportion of children in the State who are developmentally vulnerable when starting school.

(2) The Office also has the following additional functions:

(a) to facilitate, commission and support research relating to early childhood development;

(b) to support and facilitate the development of systems, policies and processes for the secure sharing of data across the early childhood development system;

(c) to support the universal reach of child health and development checks;

(d) to drive a vision of place-based, responsive and connected service delivery, building early childhood education and care as the backbone of a universal early childhood development system;

(e) to drive universal access to 3 and 4 year old preschool, developing and implementing funding models and connecting preschool providers to the broader early childhood development system;

(f) to develop, implement and fund fit-for-purpose infrastructure and targeted programs and services, including commissioning integrated service hubs, to support the early childhood development of children at increased risk of developmental vulnerability;

(g) to align supports and services with the needs of children by partnering with families, State authorities, non-government organisations and local and Commonwealth governments;

(h) to provide overall strategic direction in relation to government early childhood development services;

(i) to commission or recommission government services, as required;

(j) to drive the recognition of the cultural and linguistic diversity of children accessing services within the early childhood development system;

(k) to drive the participation of children with disability in the early childhood development system;

(l) to drive the participation of children in care, children who are in contact with the child protection system and children who are receiving child and family support services in the early childhood development system;

(m) to undertake strategic workforce planning to support early childhood reforms and service provision;

(n) any other functions conferred on the Office by or under this or any other Act or by the Minister.

(3) In performing its functions under this Act, the Office will consider the views of children and their families.

(4) In performing its functions under this Act, the Office will have regard, and seek to give effect, to the *UN Convention on the Rights of the Child* and any other relevant international human rights instruments affecting children.

7—Additional functions and principles in respect of Aboriginal children

(1) Without limiting section 6, the Office has the following additional functions in respect of Aboriginal children:

(a) to drive the cultural safety of early childhood education and care services for Aboriginal children;

(b) to align supports and services with the needs of Aboriginal children by partnering with Aboriginal families and organisations;

(c) to support measures aimed at implementing national agreements relevant to the early childhood development of Aboriginal children;

(d) to drive Aboriginal data sovereignty in relation to early childhood development data.

(2) The Office will, in performing functions under this Act that affect Aboriginal children, have regard, and seek to give effect, to the following principles:

(a) the cultural identity of Aboriginal children will be safeguarded and driven (including by driving the maintenance of connections to family, community, culture and Country);

(b) Aboriginal self-determination will be supported (including, but not limited to, by working in partnership with Aboriginal communities in decisions that affect them);

(c) partnership with, and the participation of, Aboriginal communities and Aboriginal organisations is necessary to support an early childhood development system that recognises the particular needs of Aboriginal children (including any developmental trauma) and reduces the proportion of Aboriginal children in the State who are developmentally vulnerable when starting school.

(3) In performing functions under this Act that affect Aboriginal children, the Office will have regard, and seek to give effect, to the *UN Declaration on the Rights of Indigenous Peoples*.

8—Committees

(1) The Chief Executive or the Minister may establish such committees to advise the Office as the Chief Executive or Minister (as the case requires) considers appropriate.

(2) The membership of a committee will be determined by the Chief Executive or Minister (as the case requires) and may, but need not, consist of or include members of the Office.

(3) Without otherwise limiting subsection (2), at least 1 member of each committee must be an Aboriginal person.

(4) A member of a committee will hold office for a term, and on conditions, determined by the Chief Executive or Minister (as the case requires).

(5) A member of a committee is entitled to such fees, expenses and allowances as may be determined by the Minister.

(6) The Chief Executive or Minister (as the case requires) will determine who will be the presiding member of a committee.

(7) The procedures to be observed in relation to the conduct of the business of a committee will be as determined by—

(a) the Chief Executive; and

(b) insofar as a procedure is not determined under paragraph (a)—the committee.

9—Delegation

(1) The Chief Executive may delegate a function under this Act, or a function of the Office under this Act, to a specified entity (including, to avoid doubt, a person acting in a specified position or office).

(2) 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 Chief Executive or the Office (as the case requires) to act in any matter; and

(d) is revocable at will.

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

Part 3—Information gathering and sharing

10—Chief Executive may require State authority to provide report

(1) The Chief Executive may, if of the opinion that it may assist the Office in the performance of functions under this Act, by notice in writing, require a State authority to prepare and provide a report to the Chief Executive in relation to the matters, and in accordance with any requirements, specified in the notice.

(2) Without limiting the matters that may be included in a notice under subsection (1), a notice must set out—

(a) the reason why the report is required; and

(b) the purposes for which any information contained in the report will be used; and

(c) the period within which the report must be provided to the Chief Executive; and

(d) any other information required by the regulations.

(3) If a State authority refuses or fails to comply with a notice under subsection (1), the Chief Executive may, after consultation with the State authority—

(a) report the refusal or failure to the Minister and to the Minister responsible for the State authority (if any); and

(b) include details of the refusal or failure in the annual report of the Office.

(4) The Minister may, by notice in writing, exempt a State authority from the operation of this section.

11—Chief Executive may require information

(1) The Chief Executive may, by notice in writing, require a specified entity (whether or not the entity is a State authority, or an officer or employee of a State authority) to provide to the Chief Executive such information, or such documents, as may be specified in the notice (being information or documents in the possession of the entity that the Chief Executive reasonably requires for the performance of functions under this Act).

(2) Without limiting the matters that may be included in a notice under subsection (1), a notice must set out—

(a) the reason why the information or document is required; and

(b) the purposes for which the information or document will be used; and

(c) any other information required by the regulations.

(3) An entity of whom a requirement is made under subsection (1) must give the specified information or documents to the Chief Executive within the period specified in the notice.

(4) An entity who refuses or fails to comply with a notice under subsection (1) is guilty of an offence.

Maximum penalty: $5 000.

(5) If a State authority refuses or fails to comply with a notice under subsection (1), the Chief Executive may, after consultation with the State authority—

(a) report the refusal or failure to the Minister and to the Minister responsible for the State authority (if any); and

(b) include details of the refusal or failure in the annual report of the Office.

(6) The Minister may, by notice in writing, exempt an entity from the operation of this section.

12—Sharing of information between certain entities

(1) This section applies to the following entities:

(a) the Office;

(b) the Department;

(c) the Commissioner for Children and Young People;

(d) the Commissioner for Aboriginal Children and Young People;

(e) the Guardian for Children and Young People;

(f) the Child Development Council;

(g) a State authority;

(h) government and non-government schools;

(i) an education and care service within the meaning of the *Education and Care Services National Law*;

(j) the Association of Independent Schools of South Australia;

(k) Catholic Education South Australia;

(l) the South Australian Aboriginal Community Controlled Organisation Network Inc;

(m) any other entity, or entity of a class, prescribed by the regulations.

(2) Despite any other Act or law, an entity to which this section applies (the ***provider***) may, in accordance with any requirement set out in the regulations, provide prescribed information and documents to another entity to which this section applies (the ***recipient***) if the provider reasonably believes that the provision of the information or documents—

(a) would assist the recipient to perform official functions relating to—

(i) the education or early childhood development of a child or class of children; or

(ii) the health, safety, welfare or wellbeing of a child or class of children; or

(b) would otherwise further the purposes of this Act.

(3) Subject to this section, but despite any other Act or law, information or documents that do not directly or indirectly disclose the identity of any person may be provided by one entity to whom this section applies to another without restriction.

(4) Subsection (3) applies whether or not the information or documents—

(a) consist of or include prescribed information and documents; and

(b) ever disclosed the identity of a person, or have been redacted so as to de-identify it.

(5) Information or documents may be provided under this section whether or not the provider has been requested to provide the information or documents.

(6) A recipient of prescribed information or documents under this section must not (unless the information or documents are provided to another entity to which this section applies) disclose or communicate the information or documents to another entity except where the disclosure or communication—

(a) is required to assist the recipient in the proper performance of official functions or duties relating to the education, early childhood development, health, safety, welfare or wellbeing of a child; or

(b) is required to assist the recipient in the management of any risk to a child or class of children that might arise in the entity's capacity as an employer or provider of services; or

(c) is reasonably required to lessen or prevent a serious threat to the life, health or safety of a child or other person; or

(d) is required or authorised under this Act or any other Act or law; or

(e) is required or authorised by an order of a court or tribunal; or

(f) is with the consent of—

(i) in the case of information or documents that relate to a particular child—a person responsible for the child to whom it relates; or

(ii) in any other case—the person to whom the information or documents relate; or

(g) is in circumstances or for a purpose prescribed by the regulations.

Maximum penalty: $10 000.

(7) Prescribed information or documents provided under subsection (2) for a particular purpose must not be used for any other purpose by—

(a) the recipient of the information or document; or

(b) any other person who gains access to the information or document (whether properly or improperly and whether directly or indirectly).

Maximum penalty: $10 000.

(8) Despite subsection (6) or (7), the Office may publish information or documents received under this section (including, to avoid doubt, prescribed information and documents) if—

(a) the Office is of the opinion that to do so would further the objects of this Act; and

(b) the publication could not reasonably be expected to lead to the identification of any person to whom the information or document relates.

(9) In this section—

prescribed information and documents means—

(a) information or documents relating to the development, health, education, safety, welfare or wellbeing of a particular child, or children of a particular class; or

(b) any other information or document of a kind prescribed by the regulations.

13—Interaction with *Public Sector (Data Sharing) Act 2016*

Nothing in this Part affects the operation of the *Public Sector (Data Sharing) Act 2016*.

Part 4—Miscellaneous

14—False and 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: $10 000.

15—Confidentiality

(1) A person engaged or formerly engaged in the administration of this Act must not divulge or communicate personal information obtained (whether by that person or otherwise) in the course of official duties except—

(a) as required or authorised by or under this Act or any other Act or law; or

(b) with the consent of the person to whom the information relates; or

(c) in connection with the administration or enforcement of this or any other Act; or

(d) for the purposes of referring the matter to a law enforcement agency; or

(e) to an agency or instrumentality of this State, the Commonwealth or another State or a Territory of the Commonwealth for the purposes of the proper performance of its functions; or

(f) to a person or agency performing functions under an Act relating to the care or protection of children; or

(g) if the disclosure is reasonably necessary for the protection of the lawful interests of that person.

Maximum penalty: $10 000.

(2) Subsection (1) does not prevent disclosure of statistical or other data that could not reasonably be expected to lead to the identification of any person to whom it relates.

(3) Information that has been disclosed under subsection (1) for a particular purpose must not be used for any other purpose by—

(a) the person to whom the information was disclosed; or

(b) any other person who gains access to the information (whether properly or improperly and whether directly or indirectly) as a result of that disclosure.

Maximum penalty: $10 000.

(4) The regulations may make further provision in respect of the disclosure of information obtained in the course of the administration of this Act.

16—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) However, 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: $10 000.

(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; and

(b) intimidation or harassment; and

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

(d) threats of reprisal.

17—Protections, privileges and immunities

(1) Nothing in this Act affects any rule or principle of law relating to—

(a) legal professional privilege; or

(b) "without prejudice" privilege; or

(c) public interest immunity.

(2) A person is excused from answering a question or producing a document or other material under this Act if the person could not be compelled to answer the question or produce the document or material in proceedings in the Supreme Court.

(3) A person who provides information or a document under this Act has the same protection, privileges and immunities as a witness in proceedings before the Supreme Court.

(4) A person who does anything in accordance with this Act, or as required or authorised by or under this Act, cannot by so doing be held to have breached any code of professional etiquette or ethics, or to have departed from any acceptable form of professional conduct.

18—Regulations and fee notices

(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

(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; and

(d) provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of a specified entity; 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 entity.

(4) The Minister may prescribe fees for the purposes of this Act by fee notice under the *Legislation (Fees) Act 2019*.

(5) 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

- 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

Year	No	Title	Assent	Commencement
2024	61	*Office for Early Childhood Development Act 2024*	5.12.2024	6.3.2025 (*Gazette 20.2.2025 p193*)