

South Australia

Education and Children's Services (Barring Notices and Other Protections) Amendment Act 2025

An Act to amend the *Education and Children's Services Act 2019*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Education and Children's Services (Barring Notices and Other Protections) Amendment Act 2025*.

2—Commencement

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

Part 2—Amendment of *Education and Children's Services Act 2019*

3—Amendment of section 90—Application of Part

Section 90(1)—after paragraph (a) insert:

- (ab) the premises of an approved learning program prescribed by the regulations for the purposes of this paragraph;

4—Insertion of section 90A

After section 90 insert:

90A—Interpretation

- (1) In this Part—

public place includes—

- (a) a place that—
 - (i) the public is entitled to use; or
 - (ii) is open to members of the public; or
 - (iii) is used by the public,

whether or not on payment of money; and

- (b) a place that the occupier allows members of the public to enter, whether or not on payment of money;

related premises, of a school, preschool, children's services centre, approved education and care service or prescribed departmental premises, means—

- (a) any premises or place (other than the premises of the school, preschool, children's services centre or approved education and care service or the prescribed departmental premises), including a public place, used, or to be used—
 - (i) in the case of a school, preschool, children's services centre or approved education and care service—by the school, preschool, children's services centre or approved education and care service (as the case requires); or
 - (ii) in the case of prescribed departmental premises—by the Department,

in relation to the provision of education or children's services; or

- (b) any premises or place (other than the premises of the school, preschool, children's services centre or approved education and care service or the prescribed departmental premises), including a public place, on which there is an activity conducted, or to be conducted, by or in connection with—

- (i) in the case of a school, preschool, children's services centre or approved education and care service—the school, preschool, children's services centre or approved education and care service (as the case requires); or
- (ii) in the case of prescribed departmental premises—the Department; or

Example—

Examples of activities are camps, sports or swimming carnivals, swimming lessons, excursions or functions.

- (c) any other premises or place, or premises or place of a kind, prescribed by the regulations for the purposes of this definition,

but does not include a premises or place, or a premises or place of a kind, excluded from the ambit of this definition by any guidelines published by the Minister under section 93(5);

safety or wellbeing, of a person, means the physical, emotional or psychological safety or wellbeing of the person;

vexatious communication, in relation to a person, means communication with, or regarding, the person that a reasonable person would consider unreasonable, having regard to the circumstances of the communication, in 1 or more of the following forms:

- (a) approaching, communicating with or otherwise contacting the person (whether electronically or otherwise);
 - (b) publishing material about the person (whether electronically or otherwise);
 - (c) causing another person to engage in a behaviour referred to in a previous paragraph;
 - (d) any other type of communication prescribed by the regulations for the purposes of this definition.
- (2) Subject to subsection (3), for the purposes of this Part, a person will be taken to be related to a school, preschool, children's services centre, approved education and care service or prescribed departmental premises if the person is (as the case requires)—
- (a) a student of the school or a child attending the preschool, children's services centre or approved education and care service; or
 - (b) a student or child attending the prescribed departmental premises; or
 - (c) a person responsible for a student of the school, a child attending the preschool, children's services centre or approved education and care service or a student or child attending the prescribed departmental premises; or

- (d) a member of staff of, or other person employed at, the school, preschool, children's services centre, approved education and care service or prescribed departmental premises; or
 - (e) any other person who is present at the premises, or related premises, of the school, preschool, children's services centre or approved education and care service or the prescribed departmental premises or related premises of the prescribed departmental premises—
 - (i) in the case of premises, or related premises, of a school, preschool, children's services centre or approved education and care service—for a reason connected with the school, preschool, children's services centre or approved education and care service (as the case requires); or
 - (ii) in the case of prescribed departmental premises or related premises of prescribed departmental premises—for a reason connected with the operations or activities of the Department; or
 - (f) any other person prescribed by the regulations for the purposes of this subsection.
- (3) The regulations may specify a person, or person of a class, who will not be taken to be a person related to a school, preschool, children's services centre, approved education and care service or prescribed departmental premises for the purposes of this Part.

5—Amendment of section 91—Offensive or threatening behaviour

- (1) Section 91, heading—after "Offensive" insert:
 , disorderly, intimidating
- (2) Section 91(1)—after "offensive" insert:
 , disorderly, intimidating
- (3) Section 91(1), penalty provision—delete the penalty provision and substitute:
 Maximum penalty: \$7 500.
- (4) Section 91(2)(b)—after "offensive" insert:
 , disorderly, intimidating
- (5) Section 91(2), penalty provision—delete the penalty provision and substitute:
 Maximum penalty: \$7 500.

6—Amendment of section 92—Trespassing on premises

- Section 92, penalty provision—delete the penalty provision and substitute:
 Maximum penalty: \$7 500.

7—Amendment of heading to Part 8 Division 3

Heading to Part 8 Division 3—delete "orders" and substitute:
notices

8—Substitution of section 93

Section 93—delete the section and substitute:

93—Power to bar person from premises, etc

- (1) Subject to this section, a designated person in respect of premises to which this Part applies may issue a notice (a **barring notice**) to a person on 1 or more of the following grounds:
 - (a) the designated person reasonably believes that the person, while on those premises, poses, or would pose, a risk to the safety or wellbeing of any other person on the premises;
 - (b) the designated person reasonably believes that the person, while on any related premises of a relevant school, preschool, children's services centre, approved education and care service or prescribed departmental premises poses, or would pose, a risk to the safety or wellbeing of—
 - (i) in the case of a school, preschool, children's services centre or approved education and care service—any person related to the school, preschool, children's services centre or approved education and care service on the related premises while they are being used by, or for an activity conducted by or in connection with, that school, preschool, children's services centre or approved education and care service (as the case requires); or
 - (ii) in the case of prescribed departmental premises—any person related to the prescribed departmental premises on the related premises while they are being used by the Department, or for an activity conducted by, or in connection with, the Department, that relates to the prescribed departmental premises;
 - (c) the designated person reasonably believes that the person poses, or would pose, a risk to the safety or wellbeing of any person related to a relevant school, preschool, children's services centre, approved education and care service or prescribed departmental premises while the related person is in transit between the premises of that school, preschool, children's services centre or approved education and care service or that prescribed departmental premises and a related premises of that school, preschool, children's services centre, approved care and education service or prescribed departmental premises (as the case requires);

- (d) the designated person reasonably believes that the person, while on—
 - (i) in the case of a school, preschool, children's services centre or approved education and care service—the premises or related premises of the school, preschool, children's services centre or approved education and care service (as the case requires); or
 - (ii) in the case of an approved learning program—the premises of the approved learning program; or
 - (iii) in the case of prescribed departmental premises—the prescribed departmental premises or related premises of the prescribed departmental premises,

poses, or would pose, a risk of causing significant disruption to the learning or working environment, or to activities carried on, at those premises or related premises (as the case requires);
 - (e) the designated person reasonably believes that the person has engaged in vexatious communication with, or regarding, a member of staff or other person employed at the premises.
- (2) To the extent that the designated person issuing the notice considers that it is reasonably necessary to address the ground or grounds on which the notice is proposed to be issued, a barring notice issued by the person may do 1 or more of the following:
- (a) bar a person from premises to which this Part applies, or a part of such premises, specified in the notice (being premises in respect of which the person issuing the notice is a designated person for the purposes of this section);
 - (b) bar a person from any related premises, or a part of any related premises, specified in the notice (being related premises of the school, preschool, children's services centre, approved education and care service or prescribed departmental premises in relation to which the notice is issued) for any period specified in the notice during which the related premises are being used—
 - (i) in the case of related premises of a school, preschool, children's services centre or approved education and care service—by, or for an activity conducted by, or in connection with, the school, preschool, children's services centre or approved education and care service (as the case requires); or

- (ii) in the case of related premises of prescribed departmental premises—by the Department, or for an activity conducted by, or in connection with, the Department, that relates to the relevant prescribed departmental premises;
 - (c) prohibit a person from communicating with or otherwise contacting (whether electronically or by some other means) a member of staff or other person, or member of staff or other person of a class, specified in the notice, employed at premises to which this Part applies (being premises in respect of which the person issuing the notice is a designated person for the purposes of this section);
 - (d) prohibit a person from communicating on any online platforms specified in the notice, being—
 - (i) in the case of a notice issued in relation to a school, approved learning program, preschool, children's services centre or approved education and care service—platforms controlled by, or set up in relation to, the school, approved learning program, preschool, children's services centre or approved education and care service (as the case requires); or
 - (ii) in the case of a notice issued in relation to prescribed departmental premises—platforms controlled by the Department or set up in relation to the relevant prescribed departmental premises;
 - (e) prohibit a person from causing another person to engage in behaviour referred to in paragraph (c) or (d).
- (3) Without limiting subsection (1), a person will be taken to pose a risk to the safety or wellbeing of another person if the person has—
- (a) behaved in an offensive, disorderly, intimidating or threatening manner while on relevant premises to which this Part applies or related premises, or any area within 25 m of a boundary of the premises or related premises; or
 - (b) used abusive, threatening or insulting language to a prescribed person acting in the course of their duties (whether on relevant premises to which this Part applies or related premises, or elsewhere); or
 - (c) trespassed on relevant premises to which this Part applies or related premises; or
 - (d) committed or threatened to commit any other offence on, or in relation to, relevant premises to which this Part applies or related premises.

- (4) Subject to any guidelines published by the Minister, as in force from time to time, a barring notice may, in specifying a premises or related premises (or a part of such premises or related premises) in relation to which a person is barred, include any area within 25 m of a boundary of the premises or related premises (or a part of such premises or related premises) specified in the notice.
- (5) The Minister may publish guidelines in relation to barring notices, including guidelines relating to—
 - (a) the circumstances in which barring notices may be issued; and
 - (b) the kinds of premises that may not be related premises; and
 - (c) the area that may be included as part of the premises to which a barring notice may apply; and
 - (d) the consideration of the particular needs of—
 - (i) Aboriginal students and children, and their families; and
 - (ii) Aboriginal members of staff; and
 - (e) conditions that may be attached to barring notices; and
 - (f) applications for the variation or revocation of barring notices; and
 - (g) any other matter that the Minister thinks fit.
- (6) A designated person must, in issuing a barring notice, comply with any guidelines published by the Minister in relation to barring notices.
- (7) Subsection (1) (as it applies to particular premises) does not apply in relation to the following persons:
 - (a) in the case of premises that are premises or related premises of a school or premises of an approved learning program—the principal of the school or the head of the approved learning program;
 - (b) in the case of premises that are premises or related premises of a stand-alone preschool or children's services centre—the director of the stand-alone preschool or children's services centre;
 - (c) in the case of premises that are premises or related premises of an approved education and care service—the nominated supervisor of the service under the *Education and Care Services National Law (South Australia)*;
 - (d) in the case of prescribed departmental premises or related premises of prescribed departmental premises—a student or child attending at the premises or related premises in relation to the provision of education or children's services;
 - (e) in any case—

- (i) any other person employed at the premises or related premises; or
 - (ii) a student of the school or approved learning program or a child attending the preschool, children's services centre or education and care service to which the premises or related premises relate; or
 - (iii) a student or child (other than a student or child that falls within the ambit of subparagraph (ii)) attending the school or approved learning program to which the premises or related premises relate in relation to the provision of education services.
- (8) A barring notice—
 - (a) must be in a form approved by the Minister; and
 - (b) may be conditional or unconditional; and
 - (c) must specify all premises or places (or parts of premises or places) and manners of communication to which it relates; and
 - (d) in the case of a barring notice that bars a person from related premises—must specify the days and times on, or at which, the person is barred from such premises; and
 - (e) has effect from the time it is served on the person to whom it is issued, and (subject to this Division) remains in force—
 - (i) for the period (not exceeding 6 months) specified in the notice; or
 - (ii) until it is revoked under this Act,whichever occurs first; and
 - (f) must comply with any other requirements prescribed by the regulations.
- (9) A barring notice may, by notice in writing served on the person to whom the notice was issued, be varied or revoked by—
 - (a) in the case of a barring notice issued in relation to a Government school, Government approved learning program, Government preschool or children's services centre—the Chief Executive or the designated person who issued the barring notice; or
 - (b) in any other case—the designated person who issued the barring notice,on the written application of the person to whom the notice was issued, in a form approved by the Minister or, in any event, on the designated person's, or if paragraph (a) applies, the Chief Executive's, own initiative.

- (10) A person who contravenes a barring notice is guilty of an offence.
Maximum penalty: \$7 500.
- (11) In proceedings for an offence against subsection (10) where the contravention of the barring notice that constitutes the offence relates to a prohibition against communicating with or otherwise contacting a member of staff of a class, or other person of a class, specified in the notice, it is a defence for the defendant to prove that they did not know, and could not reasonably be expected to have known, that the person they communicated with or contacted was such a member of staff or other person.
- (12) In proceedings for an offence against subsection (10) it is a defence for the defendant to prove that they engaged in the conduct comprising the contravention of the barring notice constituting the offence in accordance with the written permission of the designated person who issued the barring notice.
- (13) For the avoidance of doubt, reasonable communication or contact in the form of a written application for variation or revocation of a barring notice by a person to whom a barring notice has been issued (as contemplated by subsection (9)) does not constitute an offence against subsection (10) that relates to a contravention of a barring notice which prohibits communicating with or otherwise contacting a member of staff or other person, or member of staff or other person of a class, specified in the notice.
- (14) In any proceedings for an offence against subsection (10), an apparently genuine document purporting to be a barring notice, or a copy of a barring notice, issued by a designated person will be accepted as such in the absence of proof to the contrary.
- (15) In this section—

Aboriginal child, student or member of staff means a child, student or member of staff (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 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;

designated person, in respect of premises to which this Part applies, means—

- (a) in the case of the premises of a school or an approved learning program—
 - (i) the principal of the school or the head of the approved learning program; or

- (ii) a person authorised in writing by the principal of the school or the head of the approved learning program (as the case requires) for the purposes of this section; or
- (b) in the case of the premises of a stand-alone preschool or children's services centre—
 - (i) the director of the preschool or children's services centre; or
 - (ii) a person authorised in writing by the director for the purposes of this section; or
- (c) in the case of the premises of an approved education and care service—the nominated supervisor of the service under the *Education and Care Services National Law (South Australia)*; or
- (d) in the case of prescribed departmental premises—
 - (i) the Chief Executive; or
 - (ii) a person authorised in writing by the Chief Executive in respect of the premises for the purposes of this section;

family, in relation to an Aboriginal and/or Torres Strait Islander child or student, includes any person regarded as a member of the family of the child or student in accordance with Aboriginal or Torres Strait Islander concepts of family, including extended family structures and kinship systems based on practice and custom;

prescribed person means—

- (a) the principal of a school or the head of an approved learning program; or
- (b) a director of a stand-alone preschool or children's services centre; or
- (c) an officer of the teaching service; or
- (d) an employee of the administrative unit of the Public Service that is responsible for assisting a Minister in the administration of this Act; or
- (e) any other person employed at a school, approved learning program, preschool, children's services centre, approved education and care service or prescribed departmental premises;

relevant premises, in relation to a barring notice, means the premises of the school, approved learning program, preschool, children's services centre, approved education and care service or the prescribed departmental premises in respect of which the notice is made or proposed to be made.

9—Amendment of section 94—Review of barring notice by Minister

- (1) Section 94(1)—delete subsection (1) and substitute:
- (1) Subject to this section, a person who has been issued with a barring notice under section 93 which will operate for a period of 2 weeks or more may apply to the Minister for a review of the barring notice.
- (2) Section 94(5)—delete subsection (5) and substitute:
- (5) Subsection (1) does not apply to a barring notice insofar as the notice bars the person from premises to which this Part applies that are premises of—
 - (a) a non-Government school; or
 - (b) a non-Government preschool; or
 - (c) a non-Government approved education and care service; or
 - (d) a non-Government approved learning program.

10—Amendment of heading to Part 8 Division 4

Part 8 Division 4, heading—after "applies" insert:
or related premises

11—Amendment of section 95—Certain persons may restrain, remove from or refuse entry to premises

- (1) Section 95(1)—delete subsection (1) and substitute:
- (1) Subject to this section, if an authorised person in respect of premises to which this Part applies—
 - (a) reasonably believes that a person—
 - (i) while on those premises poses, or would pose, a risk to the safety or wellbeing of any other person on the premises; or
 - (ii) while on any related premises of a school, preschool, children's services centre, approved education and care service or prescribed departmental premises poses, or would pose, a risk to the safety or wellbeing of—
 - (A) in the case of a school, preschool, children's services centre or approved education and care service—any person related to the school, preschool, children's services centre or approved education and care service on the related premises while they are being used by, or for an activity conducted by or in connection with, that school, preschool, children's services centre or approved education and care service (as the case requires); or

- (B) in the case of prescribed departmental premises—any person related to the prescribed departmental premises on the related premises while they are being used by the Department, or for an activity conducted by, or in connection with, the Department, that relates to the prescribed departmental premises; or
 - (iii) while on—
 - (A) in the case of a school, preschool, children's services centre or approved education and care service—the premises or related premises of the school, preschool, children's services centre or approved education and care service (as the case requires); or
 - (B) in the case of an approved learning program—the premises of the approved learning program; or
 - (C) in the case of prescribed departmental premises—the prescribed departmental premises or related premises of the prescribed departmental premises, poses, or would pose, a risk of causing significant disruption to the learning or working environment, or to activities carried on, at those premises or related premises (as the case requires); or
 - (iv) has engaged in vexatious communication with, or regarding, a member of staff or other person employed at the premises; and
 - (b) in the case of paragraph (a)(i), (ii) or (iii)—reasonably believes that the risk is imminent,
- the authorised person may direct the person—
- (c) to not enter the premises or related premises; or
 - (d) to leave the premises or related premises.
- (1a) Without limiting subsection (1), a person will be taken to pose a risk to the safety or wellbeing of another person if the person—
- (a) has behaved in an offensive, disorderly, intimidating or threatening manner while on premises to which this Part applies, related premises or any area within 25 m of a boundary of the premises or related premises; or

- (b) has used abusive, threatening or insulting language to a prescribed person acting in the course of their duties (whether on premises to which this Part applies or related premises, or elsewhere); or
 - (c) has trespassed on premises to which this Part applies or related premises; or
 - (d) has committed or threatened to commit any other offence on, or in relation to, premises to which this Part applies or related premises.
- (1b) A direction under subsection (1) may be given orally or by written notice to the person to whom the direction applies.
- (2) Section 95(2)—after "premises" first occurring insert:
or related premises
- (3) Section 95(2)(b)—delete paragraph (b) and substitute:
 - (b) having left the premises—return, or attempt to return, to the premises within—
 - (i) in the case of premises that are related premises of a school, preschool, children's services centre or approved education and care service—2 business days after the day on which the direction is given under subsection (1), or until the related premises are no longer being used by, or for an activity conducted by, or in connection with, the school, preschool, children's services centre or approved education and care service (as the case requires), whichever is the shorter; or
 - (ii) in the case of premises that are related premises of prescribed departmental premises—2 business days after the day on which the direction is given under subsection (1), or until the related premises are no longer being used by the Department, or for an activity conducted by, or in connection with, the Department, that relates to the prescribed departmental premises, whichever is the shorter; or
 - (iii) in any other case—2 business days after the day on which the direction is given under subsection (1).
- (4) Section 95(2), penalty provision—delete the penalty provision and substitute:
Maximum penalty: \$7 500.

(5) Section 95—after subsection (2) insert:

- (2a) A person who has been directed to not enter premises or related premises under subsection (1) must not enter, or attempt to enter, such premises within—
- (a) in the case of premises that are related premises of a school, preschool, children's services centre or approved education and care service—2 business days after the day on which the direction is given under subsection (1), or until the related premises are no longer being used by, or for an activity conducted by, or in connection with, the school, preschool, children's services centre or approved education and care service (as the case requires), whichever is the shorter; or
 - (b) in the case of premises that are related premises of prescribed departmental premises—2 business days after the day on which the direction is given under subsection (1), or until the related premises are no longer being used by the Department, or for an activity conducted by, or in connection with, the Department, that relates to the prescribed departmental premises, whichever is the shorter; or
 - (c) in any other case—2 business days after the day on which the direction is given under subsection (1).

Maximum penalty: \$7 500.

(6) Section 95(3)—delete "An" and substitute:

Subject to this section, an

(7) Section 95(3)(a)—delete "immediate" and substitute:

imminent

(8) Section 95(3)(b)—delete "the premises under this section during the previous 48 hours" and substitute:

or not enter the premises under this section for the period that the direction operates to prohibit the person from entering the premises (as contemplated by the operation of subsection (2) or (2a))

(9) Section 95—after subsection (3) insert:

- (3a) An authorised person in respect of premises to which this Part applies may not exercise their powers under this section in relation to—
- (a) in the case of premises that are premises or related premises of a school or premises of an approved learning program—the principal of the school or the head of the approved learning program; or
 - (b) in the case of premises that are premises or related premises of a stand-alone preschool or children's services centre—the director of the stand-alone preschool or children's services centre; or

- (c) in the case of premises that are premises or related premises of an approved education and care service—the nominated supervisor of the service under the *Education and Care Services National Law (South Australia)*; or
 - (d) in the case of prescribed departmental premises or related premises of prescribed departmental premises—a student or child attending at the premises or related premises in relation to the provision of education or children's services; or
 - (e) in any case—
 - (i) any other person employed at the premises or at related premises in respect of those premises; or
 - (ii) a student of the school or approved learning program or a child attending the preschool, children's services centre or approved education and care service to which the premises or related premises relate; or
 - (iii) a student or child (other than a student or child that falls within the ambit of subparagraph (ii)) attending the school or approved learning program to which the premises or related premises relate in relation to the provision of education services.
- (10) Section 95(4)—after the definition of ***authorised person*** insert:

prescribed person means—

- (a) the principal of a school or the head of an approved learning program; or
- (b) a director of a stand-alone preschool or children's services centre; or
- (c) an officer of the teaching service; or
- (d) an employee of the administrative unit of the Public Service that is responsible for assisting a Minister in the administration of this Act; or
- (e) any other person employed at a school, approved learning program, preschool, children's services centre, approved education and care service or prescribed departmental premises.

12—Amendment of section 135—Proceedings for offences

Section 135(1)—delete subsection (1) and substitute:

- (1) Proceedings for an offence against this Act may only be commenced—
 - (a) by the Chief Executive, or by a person authorised by the Chief Executive; and
 - (b) with the written consent of the Minister.

Schedule 1—Transitional and savings provisions

1—Barring notices

- (1) A barring notice issued under section 93 of the principal Act in effect immediately before the commencement of this clause will continue to operate and have effect according to its terms and will be taken to be a barring notice issued under section 93 of the principal Act as substituted by this Act.

- (2) In this clause—

principal Act means the *Education and Children's Services Act 2019*.