

Children's Protection Act 1993 (SA): relevant sections

The **Children's Protection Act 1993** At:

<http://www.legislation.sa.gov.au/LZ/C/A/CHILDRENS%20PROTECTION%20ACT%201993.aspx>

The **Children's Protection Regulations 2006** At:

<http://www.legislation.sa.gov.au/LZ/C/R/CHILDRENS%20PROTECTION%20REGULATIONS%202006/CURRENT/2006.12.UN.PDF>

Child Safe Environments (re policy and code of conduct)

Children's Protection Act 1993 (SA) s8C: Obligations of certain organisations

- 1) An organisation to which this section applies must, as soon as practicable following the formation of the organisation, or, in the case of an organisation in existence when this section comes into operation, as soon as possible following the prescribed date, establish appropriate policies and procedures for ensuring—
 - a) that appropriate reports of abuse or neglect are made under Part 4; and
 - b) that child safe environments are established and maintained within the organisation.

Maximum penalty: \$10 000.
- 2) Policies and procedures—
 - a) may vary according to the size, nature and resources of the organisation; but
 - b) must include—
 - (i) the provisions (if any) prescribed by regulation; and
 - (ii) provisions relating to the matters (if any) prescribed by regulation.
- 3) This section applies to an organisation that—
 - a) provides health, welfare, education, sporting or recreational, religious or spiritual, child care or residential services wholly or partly for children; and
 - b) is a government department, agency or instrumentality or a local government or non-government organisation.

Children's Protection Regulations 2006 (SA) s7: Obligations of certain organisations

- 1) For the purposes of section 8C(1) of the Act, the prescribed date is 1 January 2008.
- 2) For the purposes of section 8C(2)(b) of the Act, the policies and procedures established under section 8C(1) must include provisions—
 - a) taking into account the guidance provided by the Chief Executive on appropriate standards of conduct for adults in dealing with children; and

- b) reflecting the appropriate standards of care for ensuring the safety of children as defined by the Chief Executive; and
- c) reflecting the standards developed and issued by the Chief Executive to be observed in dealing with information obtained about the criminal history of employees and volunteers.

Obtaining criminal history reports

Children's Protection Act 1993 (SA) s8B: Powers and obligations of responsible authority in respect of criminal history

- 1) The responsible authority for an organisation to which this section applies must ensure—
 - a) that, as soon as reasonably practicable following the commencement of this section, a report on the criminal history (if any) of each person occupying or acting in a prescribed position (whether as an employee, volunteer, agent, contractor or subcontractor) in an organisation for which the authority is responsible on that commencement is obtained from the Commissioner of Police or some other prescribed source; and
 - b) that, before a person is appointed to, or engaged to act in, a prescribed position (whether as an employee, volunteer, agent, contractor or subcontractor) in an organisation for which the authority is responsible, a report on the person's criminal history (if any) is obtained from the Commissioner of Police or some other prescribed source.
- 2) The responsible authority for an organisation to which this section applies may, at any time, as the authority thinks necessary or desirable for the purpose of establishing or maintaining child safe environments, obtain a report from the Commissioner of Police or some other prescribed source on the criminal history (if any) of any person who—
 - a) occupies or acts in a prescribed position (whether as an employee, volunteer, agent, contractor or subcontractor) in an organisation for which the authority is responsible; or
 - b) carries out, or is to carry out, as an indirect service provider, prescribed functions for an organisation for which the authority is responsible.
- 3) The responsible authority must ensure that information about the criminal history contained in reports obtained under this section is dealt with in accordance with the relevant standards.
- 4) If a person comes into possession, in the course of relevant employment, of information about the criminal history of another, the person must not disclose the information except as may be required by or authorised under law.

Maximum penalty: \$10 000.
- 5) The Chief Executive may, at the request of the responsible authority for a non-government organisation to which this section applies, exercise powers of the responsible authority under this section if satisfied that—
 - a) the responsible authority has sought, but failed to obtain, the cooperation of a person on whose criminal history (if any) the responsible authority is required or authorised to obtain a report; or
 - b) there is some other good reason for doing so.

- 6) This section applies to—
 - a) government organisations; and
 - b) non-government organisations to which its operation is extended by regulation.
- 7) The regulations may, however, exempt organisations, persons and positions, or particular classes of organisations, persons and positions, from the application of this section.

Children's Protection Regulations 2006 (SA) s6: Powers and obligations of responsible authority in respect of criminal history

- 1) For the purposes of section 8B(1) and (2) of the Act, CrimTrac is a prescribed source.
- 2) For the purposes of section 8B(6)(b) of the Act, the operation of the section is extended to apply to non-Government schools within the meaning of the *Education Act 1972*.
- 3) For the purposes of the definition of *responsible authority* in section 8B(8) of the Act, the following bodies are approved bodies:
 - a) the Association of Independent Schools of South Australia Incorporated;
 - b) the Catholic Church Endowment Society Incorporated;
 - c) the Lutheran Schools Association of South Australia, Northern Territory and Western Australia Incorporated.
- 4) In this regulation *CrimTrac* means the CrimTrac Agency established under the *Public Service Act 1999* of the Commonwealth.

Mandated Notification (reporting child abuse and neglect)

Children's Protection Act 1993 (SA) s11: Notification of abuse or neglect

- 1) If—
 - a) a person to whom this section applies suspects on reasonable grounds that a child has been or is being abused or neglected; and the suspicion is formed in the course of the person's work (whether paid or voluntary) or of carrying out official duties, the person must notify the Department of that suspicion as soon as practicable after he or she forms the suspicion.

Maximum penalty: \$10 000.
- 2) This section applies to the following persons:
 - a) a medical practitioner;
 - ab) a pharmacist;
 - b) a registered or enrolled nurse;
 - c) a dentist;
 - d) a psychologist;
 - e) a police officer;
 - f) a community corrections officer (an officer or employee of an administrative unit of the Public Service whose duties include the supervision of young or adult offenders in the community);
 - g) a social worker;
 - ga) a minister of religion;
 - gb) a person who is an employee of, or volunteer in, an organisation formed for religious or spiritual purposes;
 - h) a teacher in an educational institution (including a kindergarten);
 - i) an approved family day care provider;

- j) any other person who is an employee of, or volunteer in, a Government department, agency or instrumentality, or a local government or non-government organisation, that provides health, welfare, education, sporting or recreational, child care or residential services wholly or partly for children, being a person who—
 - i) is engaged in the actual delivery of those services to children; or
 - ii) holds a management position in the relevant organisation the duties of which include direct responsibility for, or direct supervision of, the provision of those services to children.
- 3) A notification under this section must be accompanied by a statement of the observations, information and opinions on which the suspicion is based
- ...
- 5) A person does not necessarily exhaust his or her duty of care to a child by giving a notification under this section.

Children's Protection Act 1993 (SA) s12: Protection from liability for voluntary or mandatory notification

A person who (whether voluntarily or pursuant to a requirement of this Act) notifies the Department of a suspicion that a child has been or is being abused or neglected or provides any information to the Department in respect of such a notification—

- a) cannot, by virtue of doing so, be held to have breached any code of professional etiquette or ethics, or to have departed from any accepted form of professional conduct; and
- b) insofar as he or she has acted in good faith, incurs no civil or criminal liability in respect of the notification or the provision of the information.

Children's Protection Act 1993 (SA) s13: Confidentiality of notification of abuse or neglect

- 1) For the purposes of this section, a notifier is a person who notifies the Department that he or she suspects that a child has been or is being abused or neglected.
- 2) Subject to this section, a person who receives a notification of child abuse or neglect from a notifier, or who otherwise becomes aware of the identity of a notifier, must not disclose the identity of the notifier to any other person unless the disclosure—
 - a) is made in the course of official duties to another person acting in the course of official duties; or
 - b) is made with the consent of the notifier; or
 - c) is made by way of evidence adduced in accordance with subsections (3) and (4).

Maximum penalty: \$5 000.