Extracts from the

South Australia Children’s Protection Act 1993

An Act to provide for the care and protection of children; and for other purposes

Part 1—Preliminary

3—Objects of Act

The objects of this Act are—
(a) to ensure that all children are safe from harm; and
(b) to ensure as far as practicable that all children are cared for in a way that allows them to reach their full potential; and
(c) to promote caring attitudes and responses towards children among all sections of the community so that the need for appropriate nurture, care and protection (including protection of the child’s cultural identity) is understood, risks to a child’s wellbeing are quickly identified, and any necessary support, protection or care is promptly provided; and
(d) to recognise the family as the primary means of providing for the nurture, care and protection of children and to accord a high priority to supporting and assisting the family to carry out its responsibilities to children.

4—Fundamental principles

(1) Every child has a right to be safe from harm.

6—Interpretation

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

Aboriginal and Torres Strait Islander Child Placement Principle means the Aboriginal and Torres Strait Islander Child Placement Principle as stated in the regulations;

Aboriginal child means a child—
(a) who is a descendant of the indigenous inhabitants of Australia; and
(b) who regards himself or herself as an Aboriginal or, if he or she is a young child, is regarded as an Aboriginal by at least one of his or her parents;

abuse or neglect, in relation to a child, means:
(a) sexual abuse of the child
(b) physical or emotional abuse of the child, or neglect of the child, to the extent that:
   (i) the child has suffered, or is likely to suffer, physical or psychological injury detrimental to the child’s wellbeing, or
   (ii) the child’s physical or psychological development is in jeopardy.

(2) For the purposes of this Act, a child is at risk if:

(aa) there is a significant risk that the child will suffer serious harm to his or her physical, psychological or emotional wellbeing against which he or she should have, but does not have, proper protection; or
(a) the child has been, or is being, abused or neglected
(b) a person with whom the child resides (whether a guardian of the child or not)
   (i) has threatened to kill or injure the child and there is a reasonable likelihood of the threat being carried out
   (ii) has killed, abused or neglected some other child or children and there is a reasonable likelihood of the child in question being killed, abused or neglected by that person.
 (c) the guardians of the child:
   (i) are unable to maintain the child, or are unable to exercise adequate supervision and control over the child
   (ii) are unwilling to care for and protect the child, or are unwilling to exercise adequate supervision and control over the child
(iii) are dead, have abandoned the child, or cannot, after reasonable inquiry, be found.
(d) the child is of compulsory school age but has been persistently absent from school without satisfactory explanation of the absence.
(e) the child is under 15 years of age and is of no fixed address.

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Division 3—Child safe environments

8B—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 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 the organisation, an assessment of the person’s criminal history is undertaken in accordance with the regulations.

Maximum penalty: $10 000.

(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, cause an assessment of the person’s criminal history to be undertaken in accordance with the regulations 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.

(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 in respect of whom the responsible authority is required or authorised to cause a criminal history assessment to be undertaken in accordance with the regulations; or
(b) there is some other good reason for doing so.

(6) This section applies to—
(a) government organisations; and
(b) non-government organisations that provide health, welfare, education, sporting or recreational, religious or spiritual, child care or residential services wholly or partly for children.

(7) The regulations may (without limitation)—
(a) make provision in relation to the manner in which an assessment of a person’s relevant history may be undertaken; and
(b) provide for the authorisation of persons or bodies to undertake assessments of a person’s relevant history for the purposes of this section or section 8BA, or any other purpose prescribed by regulation and relating to the care and protection of children; and
(c) make provision in relation to the release of information relating to a person’s relevant history to another jurisdiction; and
(d) make provision in relation to the use of information relating to a person’s relevant history received from another jurisdiction; and
(e) make provision in relation to confidentiality of information relating to, or obtained in the course of an assessment of, a person’s relevant history; and
(g) prescribe fees and provide for their waiver or remission; and
(h) in the case of a regulation of a kind referred to in paragraph (b) or a regulation providing for the waiver or remission of a fee—confer discretionary powers on the Minister, the Chief Executive or another person or body; and
(i) prescribe penalties, not exceeding $10 000, for offences against the regulations.

(8) In this section—
indirect service provider—a person carries out functions for an organisation as an indirect service provider if the person carries out the functions for some other body or person which, in turn, makes the person’s services available to the organisation;
managing authority of a non-government organisation, means the board, committee or other body or person in which the management of the organisation is vested (and, in the case of a board, committee or body that is not incorporated, each member of the board, committee or body will be taken to be a managing authority of the organisation);

organisation to which this section applies—see subsection (6);

prescribed functions means—
(a) regular contact with children or working in close proximity to children on a regular basis, unless the contact or work is directly supervised at all times; or
(b) supervision or management of persons in positions requiring or involving regular contact with children or working in close proximity to children on a regular basis; or
(c) access to records of a kind prescribed by regulation relating to children; or
(d) functions of a type prescribed by regulation;

prescribed position, in an organisation, means—
(a) a position that requires or involves the performance of 1 or more prescribed functions; or
(b) a position, or a position of a class, in a government organisation designated (by notice in the Gazette) by the responsible authority for the government organisation as a prescribed position for the purposes of this section;

relevant history, of a person, means—
(a) in the case of an assessment of a person’s relevant history undertaken by a person or body authorised by the regulations to undertake relevant history assessments—information of the following kinds:
   (i) findings of guilt for offences committed by the person in South Australia or elsewhere (whether those findings of guilt relate to offences committed before or after the commencement of this section);
   (ii) offences alleged to have been committed (whether before or after the commencement of this section) by the person in South Australia or elsewhere and with which the person has been charged but which have not yet been finally determined;
   (iii) information relating to findings of guilt and charges referred to in a preceding subparagraph;
   (iv) information relating to charges for offences alleged to have been committed by the person in South Australia or elsewhere (whether those charges relate to offences alleged to have been committed before or after the commencement of this section and regardless of the outcome of those charges);
   (v) information lawfully obtained or held for any purpose by a person or body prescribed by regulation (being information that is relevant to whether a person is a suitable person to perform prescribed functions);
   (vi) information provided by the person for the purposes of an assessment of his or her relevant history; or
(b) in the case of an assessment of a person’s relevant history undertaken by a person or body other than a person or body authorised by the regulations to undertake relevant history assessments—information of the following kinds:
   (i) findings of guilt for offences committed by the person in South Australia or elsewhere (whether those findings of guilt relate to offences committed before or after the commencement of this section);
   (ii) offences alleged to have been committed (whether before or after the commencement of this section) by the person in South Australia or elsewhere and with which the person has been charged but which have not yet been finally determined;
   (iii) information provided by the person for the purposes of an assessment of his or her relevant history,

but does not, in respect of a relevant history assessment of a kind specified in the regulations, include information, or information of a class, declared by the regulations to be excluded from the ambit of this definition;

responsible authority means—
(a) for a government organisation that is a department—the chief executive of that department;
(b) for a government organisation that is an agency or instrumentality—the managing authority of that agency or instrumentality;
(c) for a non-government organisation—
   (i) the managing authority of the organisation; or
(ii) if the managing authority has delegated its responsibilities under this section to a body approved by regulation for the purposes of this definition—that body.

(9) Information of a kind referred to in paragraph (b) of the definition of relevant history may, despite any other Act or law, be disclosed to a person or body that is undertaking an assessment of a person’s relevant history (whether under this section or otherwise).

(10) Any information (whether of a kind referred to in the definition of relevant history or otherwise) may, despite any other Act or law, be disclosed to a person or body authorised by the regulations to undertake relevant history assessments.

8C—Obligations of certain organisations

(1) An organisation to which this section applies must have in place 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.

Part 4—Notification and investigations

Division 1—Notification of abuse or neglect

10—Interpretation

In this Division—

*abuse or neglect*, in relation to a child, has the same meaning as in section 6(1), but includes a reasonable likelihood, in terms of section 6(2)(b), of the child being killed, injured, abused or neglected by a person with whom the child resides.

11—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
(b) 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 any 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 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 organization, the duties of which include direct responsibility for, or direct supervision of, the provision of those services to children.

(2a) In proceedings for an offence against subsection (1), it is a defence for the defendant to prove that his or her suspicion was due solely to having been informed of the suspected abuse or neglect by a police officer acting in the course of his or her official duties.

(2b) In proceedings for an offence against subsection (1), it is a defence for the defendant to prove that—
(a) his or her suspicion was due solely to having been informed of the suspected abuse or neglect by another person to whom this section applies; and
(b) he or she believed on reasonable grounds that the other person had given a notification under this section in respect of the suspected abuse or neglect.

(3) A notification, under this section, must be accompanied by a statement of the observations, information and opinions upon which the suspicion is based.

(4) This section does not require a priest or other minister of religion to divulge information communicated in the course of a confession made in accordance with the rules and usages of the relevant religion.

(5) A person does not necessarily exhaust his or her duty of care to a child by giving a notification under this section.

(6) A person must not threaten or intimidate, or cause damage, loss or disadvantage to, a person to whom this section applies because the person has discharged, or proposes to discharge, his or her duty under subsection (1).
Maximum penalty: $10 000.

12 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.