

South Australia

Child Safety (Prohibited Persons) Bill 2016

A BILL FOR

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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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

- 5
- (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

- 10
- (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.

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 - (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:

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 - (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;

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 - (b) persons who pose an unacceptable risk to children should 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—

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 - (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;

5 (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.

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

(a) procedures to be followed by the central assessment unit when conducting assessments of relevant history; or

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

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

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

20 (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.

25 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;

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

child-related work—see section 6;

35 *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—

- 5 (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);

10 (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
- 15 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
- 20 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;

25 (iii) section 272.8;

 - (iv) section 272.9;
 - (v) section 272.10;
 - (vi) section 272.11;
 - (vii) section 272.12;

30 (viii) section 272.13;

 - (ix) section 272.14;
 - (x) section 272.15;
 - (xi) section 272.18;
 - (xii) section 272.19;

35 (xiii) section 272.20;

 - (xiv) section 471.16;
 - (xv) section 471.17;
 - (xvi) section 471.19;

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- (xvii) section 471.20;
 (xviii) section 471.22;
 (xix) section 471.24;
 (xx) section 471.25;
 5 (xxi) section 471.26;
 (xxii) section 474.19;
 (xxiii) section 474.20;
 (xxiv) section 474.22;
 (xxv) section 474.23;
 10 (xxvi) section 474.24A;
 (xxvii) section 474.25A;
 (xxviii) section 474.25B;
 (xxix) section 474.26;
 (xxx) section 474.27;
 15 (xxxix) section 474.27A; 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
 20 (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;

25 ***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;

30 ***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;

35 ***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;

5 **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.

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- (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 guilty of the offence, 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).

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- (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*

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- (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;

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(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.

(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 themselves 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;
- 5 (f) information that relates to the cancellation of an approval of a foster parent under the *Family and Community Services Act 1972*;
- (g) information that relates to a notification made pursuant to Part 4 Division 1 of the *Children's Protection Act 1993*;
- 10 (h) information (whether or not obtained under the *Children's Protection Act 1993*) held by the administrative unit of the Public Service that is responsible for assisting a Minister in the administration of the *Children's Protection Act 1993* and that relates to the possible abuse or neglect of a child;
- (i) information provided by the person for the purposes of a working with children check;
- 15 (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;
- 20 (b) whether the relevant offence or conduct was committed or occurred in South Australia or elsewhere; and
- (c) regardless of the outcome of the charges;
- (d) whether the information was obtained before or after the commencement of this section;
- 25 (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.

30 **9—Meaning of *excluded person***

- (1) For the purposes of this Act, the following persons are *excluded persons*:
- (a) a person who is under 18 years of age;
- (b) a person who undertakes child-related work in the same capacity as the child or children to whom the work relates;
- 35 (c) a person who employs a child, or who supervises an employed child, where the work undertaken by the child is not child-related work;
- (d) a member of South Australia Police or the Australian Federal Police;

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- (e) parents or guardians who provide or undertake services or activities on a voluntary basis to children including their own child (not being a service or activity consisting of overnight excursions or stays, or involving close personal contact with children with disabilities);
- 5 (f) a person to whom subsection (4) applies;
- (g) 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)):
- 10 (a) a person who is, or has ever been, a prohibited person;
- (b) a person working with children who are in care;
- (c) a person providing education or early childhood services or residual early childhood services under *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
- 15 secondary education to children;
- (d) any other class of person prescribed by the regulations for the purposes of this subsection.
- (3) For the purposes of subsection (2)(b), a reference to children who are in care will be
- 20 taken to be a reference to—
- (a) children who are in care (however described) under the *Children's Protection Act 1993* or the *Family and Community Services Act 1972*;
- (b) children who are in a training centre or are otherwise lawfully imprisoned in this State;
- 25 (c) children who are in any other care of a kind prescribed by the regulations for the purposes of this subsection.
- (4) 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;
- 30 (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
- 35 not) in any calendar year.
- (5) To avoid doubt, the lawfulness of anything done or not done by a person while subsection (4) 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—
- 40 (a) claiming to be a person to whom this Division does not apply; or
- (b) claiming to be a person to whom subsection (4) applies,

to prove that fact.

10—Criminal intelligence

- 5 (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.
- 10 (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
- 15 (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

- 20 (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 *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—
- 25 (a) the status of the offence as a prescribed offence for the purposes of this Act; or
- (b) the ability for the offence to be taken into account in a working with children check.
- 30 (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.
- 35 (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

- 40 (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.

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- (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;
 - 5 (b) a person working with children who are in care;
 - (c) a person providing education or early childhood services or residual early childhood services under *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 10 secondary education to children;
 - (d) applicants for a working with children check;
 - (e) any other class of person prescribed by the regulations for the purposes of this subsection.
- (3) For the purposes of subsection (2)(b), a reference to children who are in care will be 15 taken to be a reference to—
- (a) children who are in care (however described) under the *Children's Protection Act 1993* or the *Family and Community Services Act 1972*;
 - (b) children who are in a training centre or are otherwise lawfully imprisoned in this State;
 - 20 (c) children who are in any other care of a kind prescribed by the regulations for the purposes of this subsection.
- (4) An exemption may be conditional or unconditional.
- (5) The Minister may, for any reason the Minister thinks fit, vary or revoke an exemption.
- (6) An exemption remains in force for the period specified in the notice or until the 25 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 30 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);
 - 35 (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.

5 Maximum penalty: \$

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

Maximum penalty: \$

10 **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: \$

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

15 **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 unique identifier; and

20 (b) verified, in accordance with subsection (3), 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—

25 (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: \$

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

(3) An employer verifies a matter referred to in subsection (1) by—

(a) interrogating the records management system in accordance with the regulations; and

35 (b) obtaining evidence of that fact under section 35.

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Part 4—Restrictions on working with children

Division 2—Steps employers must take in relation to employing 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: \$

- (2) An employer who employs a person in a prescribed position must, at least once in every 5 year period, verify, in accordance with subsection (3), 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: \$

- (3) An employer verifies a matter referred to in subsection (2) by—

(a) interrogating the records management system in accordance with the regulations; and

(b) obtaining evidence of that fact under section 35.

- (4) 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: \$

- (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.
- 5 (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)—
- 10 (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 screening 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.

15 21—Functions

- (1) The functions of the central assessment unit are—
- 20 (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 operation of this Act; and
- (d) to assist in education programs relating to the operation of this 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.

25 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—
- 30 (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—
- 35 (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

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- (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

- 5 (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).
- 10 (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—
- 15 (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

- 20 (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—
- 25 (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;
- 30 (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.

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.

Child Safety (Prohibited Persons) Bill 2016

Part 5—Working with children checks

Division 2—Working with children checks

- (2) 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 applicant 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.
- (3) 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 who has made an application under section 27 whether or not the person subsequently withdraws the application (and, to avoid doubt, this Act will continue to apply in respect of the application as if 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
 - 5 (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
 - 10 (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 written 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
 - 30 (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;
 - 35 (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.

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

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- (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.
- 5 (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.
- 10 (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

- 15 (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 following parts of the records management system may be inspected without charge by any person:
- 20 (a) the part referred to in section 34(2)(a);
- (b) the part referred to in section 34(2)(b);
- (c) the part referred to in section 34(2)(c);
- (d) any other part prescribed by the regulations.
- 25 (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) Except as is provided for in a preceding subsection, the records management system may only be inspected in accordance with the regulations.

Division 4—Information gathering powers etc

36—Registrar may require information from public sector agencies

- 30 (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 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.
- 35 (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

- 5 (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 purposes of this Act.
- 10 (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: \$

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

15 A court that finds a person guilty of a prescribed offence must ensure that the prescribed information relating to the finding of guilt is provided to the central assessment unit as soon as is reasonably practicable after the person is found guilty.

39—Commissioner of Police to provide information to central assessment unit

- 20 (1) Without limiting any other Act or law that requires or authorises the Commissioner of Police to disclose information, the Commissioner of Police—
- 25 (a) must ensure that, if a police officer lays a charge of a prescribed offence 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; and
- (b) may disclose to the central assessment unit any information on any matter relevant to the operation of this Act.
- (2) The prescribed information referred to in subsection (1)(a) must be provided to the central assessment unit as soon as is reasonably practicable after the person is charged.

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

- 30 (1) A person to whom a unique identifier has been issued must notify the central assessment unit if any of the following occurs:
- 35 (a) the person is prohibited from working with children under a law of the Commonwealth, or of another State or Territory; or
- (b) the person becomes a registrable offender under the *Child Sex Offenders Registration Act 2006*; or
- (c) the person makes a disclosure to their employer under section 66 of the *Child Sex Offenders Registration Act 2006*; or

(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; or

(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: \$

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 has 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 50, a notification under subsection (1) may be made by email sent to an email address provided by the employer.

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

42—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

43—Parents etc may require person to provide unique identifier

(1) A parent, guardian or carer of 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 unique identifier.

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

Maximum penalty: \$

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

44—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: \$

(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: \$

45—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: \$

46—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.

47—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.

48—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: \$

49—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.

- 5 (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.
- 10 (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.
- 15 (6) A person who personally commits an act of victimisation under this Act is guilty of an offence.
Maximum penalty: \$
- (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.
- 20 (8) In this section—
detriment includes—
- (a) injury, damage or loss; or
 - (b) intimidation or harassment; or
 - 25 (c) discrimination, disadvantage or adverse treatment in relation to a person's employment; or
 - (d) threats of reprisal.

50—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—

- 30 (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
- 35 (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
- 40 (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.

51—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
 - 5 (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.

- 10 (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
- 15 (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.

52—Regulations

- 20 (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—

- 25 (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.

- 30 (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
- 35 (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.

5 (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

10 (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.

Schedule 1—Related amendments and transitional provisions