

South Australia



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ELIZABETHAE II REGINAE
A.D. 2002

CHILD PROTECTION REVIEW (POWERS AND IMMUNITIES) ACT 2002

No. 6 of 2002

[Assented to 1 August 2002]

An Act to facilitate the Child Protection Review by conferring powers and immunities.

SUMMARY OF PROVISIONS

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SCHEDULE

Terms of Reference for Review of Child Protection in South Australia

The Parliament of South Australia enacts as follows:

Short title

1. This Act may be cited as the *Child Protection Review (Powers and Immunities) Act 2002*.

Interpretation

2. In this Act—

"appointed" means appointed by the Chief Executive of the Department of Human Services;

"authorised person" means—

- (a) the person appointed to conduct the Review; or
- (b) any person appointed to assist in the conduct of the Review;

"authorised police officer" means—

- (a) a member of the police force who is of or above the rank of sergeant or who is in charge of a police station, or any other member of the police force designated as an authorised police officer by the Commissioner of Police for the purposes of this Act; or
- (b) a member of the police force of another State or a Territory of the Commonwealth, or of the Commonwealth, who is of or above the rank of sergeant (or an equivalent rank), or any other member of any such police force designated as an authorised police officer by the Commissioner of Police for the purposes of this Act with the agreement of the officer who is in charge of the relevant police force;

"Review" means the processes required by the *Terms of Reference for Review of Child Protection in South Australia* set out in the Schedule.

Procedure

3. (1) The person appointed to conduct the Review—

- (a) is not required to hold a hearing for the purposes of the Review; and
- (b) may obtain information from such persons and in such manner as the person thinks fit; and
- (c) may determine whether a person providing information or making submissions in the course of or for the purposes of the Review may have legal or other representation.

(2) Subject to this Act, the procedure to be adopted in relation to the Review will be as determined by the person appointed to conduct the Review.

(3) An authorised person is not entitled after the completion of the Review to exercise any powers conferred on the authorised person by this Act.

Provision of false information

4. A person must not provide information that the person knows to be false or misleading in a material particular to an authorised person in the course of or for the purposes of the Review.

Maximum penalty: \$10 000.

Confidentiality and disclosure of information

5. (1) Any law requiring a person to keep particular information confidential or in any way restricting the disclosure or publication of information does not prevent a person from providing information in the course of or for the purposes of the Review.

(2) Information obtained in the course of or for the purposes of the Review must not be further disclosed or published if—

- (a) the information is personal information relating to a child, a child's guardians or other family members or any person alleged to have abused, neglected or threatened a child; or
- (b) the information discloses the identity of, or leads to the identification of, a person who has notified an authorised person or the Department that he or she suspects that a child has been, or is being, abused or neglected; or
- (c) the person appointed to conduct the Review, having formed the view that it is necessary to do so in the interests of justice or to prevent hardship or embarrassment to any person, makes a declaration forbidding the further disclosure or publication of the information.

(3) However, subsection (2) does not prevent the further disclosure or publication of information—

- (a) for the purposes of the Review or a report to the Minister; or
- (b) with the consent of the person (not being a child) to whom the information relates; or
- (c) to a person engaged in the administration of the *Children's Protection Act 1993* or a similar law of another State or a Territory of the Commonwealth; or
- (d) an authorised police officer;
- (e) by way of evidence adduced in accordance with subsections (4) and (5); or
- (f) if the information has been made public.

(4) Subject to subsection (5)—

- (a) no evidence of information referred to in subsection (2) may be adduced in proceedings before a court without leave of the court; and
- (b) unless such leave is granted, a party or witness in those proceedings must not be asked, and, if asked, cannot be required to answer, any question that cannot be answered without disclosing such information.

(5) A court cannot grant leave under subsection (4) unless—

- (a) the court is satisfied that the evidence is of critical importance in the proceedings and that failure to admit it would prejudice the proper administration of justice; or
- (b) the person (not being a child) to whom the information relates consents to the admission of the evidence in the proceedings.

(6) An application for leave to adduce evidence under subsection (4)—

- (a) must not, except as authorised by the court, be heard and determined in public; and
- (b) must be conducted in such a manner as to protect, so far as may be practicable, the information concerned pending the determination of the application.

(7) A person who contravenes subsection (2) is guilty of an offence.

Maximum penalty: \$10 000.

(8) An authorised person must, in any event, in preparing a report for the Minister about the Review, take all reasonable steps to avoid the disclosure of information that may identify, or lead to the identification of, a particular child.

(9) Despite the preceding provisions, the Minister or the Chief Executive Officer may, if of the view that it would be in the public interest to do so, publish a report containing information of a kind referred to in this section, or otherwise disclose or authorise the disclosure of such information, as the Minister or the Chief Executive Officer thinks fit, but not if to do so would be contrary to a law other than this Act or contrary to a direction of the person appointed to conduct the Review.

(10) A term used in this section will, if it is defined in the *Children's Protection Act 1993*, have the same meaning as in that Act.

Privileges and immunities

6. (1) An authorised person has, in connection with the conduct of the Review, and in respect of any report prepared in the course of, or at the end of, the Review, the same protection, privileges and immunities as a Judge of the Supreme Court.

(2) A person who provides information to an authorised person that has possible evidentiary value to the Review has the same protection, privileges and immunities as a witness in proceedings before the Supreme Court.

(3) A legal practitioner who represents a person in connection with the Review has the same protection, privileges, immunities and obligations as counsel involved in proceedings before the Supreme Court.

SCHEDULE*Terms of Reference for Review of Child Protection in South Australia*

- To deliver a plan to the Minister that provides effective strategies to improve the provision of child protection services in this State and ensure better outcomes for children, young people and their families.
 - In doing this, the Review will:
 - Review Department of Human Services policy, practice and procedures and include both government and DHS funded services
 - Determine the effectiveness of the legislation, practices and services in protecting children and young people
 - Provide advice on early intervention and prevention strategies that prevent abuse of children
 - Ensure particular attention is given to the needs of indigenous children and their families
 - Consider whether current Acts (*Children's Protection Act 1993* and *Family and Community Services Act 1972*) adequately provide for the care and protection of children and young people and provide advice on any legislative reform.
- To examine the adequacy of the SA criminal law and police procedures in dealing with child abuse.
- To provide advice to government on the strategies and systems required to achieve a whole-of-government, co-ordinated and integrated response to the protection of children.
- To provide advice to government and consider legislation to ensure organisations protect children from sexual and physical violence whilst in their care. Particular attention will be given to screening mechanisms for checking suitability of employees/volunteers, policies, procedures and training.