

TO: THE PREMIER FOR CABINET SUB-COMMITTEE

RE: *CHILDREN'S PROTECTION (MISCELLANEOUS) AMENDMENT ACT 2005 - PROCLAMATION OF PROVISIONS 6 (1), 7, 9, 10 and 12*

1. PROPOSAL

- 1.1 That Cabinet recommends that Her Excellency the Governor in Executive Council issue a proclamation to declare 31 December 2006 as the date of operation for provisions 6 (1), 7, 9, 10 and 12 of the *Children's Protection (Miscellaneous) Amendment Act 2005* that deal with the interpretation of the Aboriginal Child Placement Principle, the establishment of child safe environments and criminal history checking; extending the categories of persons required to make a mandatory notification of suspected child abuse; establishment of a duty of care for a notifier beyond making a notification; and requiring that Families SA provide multiple strategies to respond where a child may be at risk.
- 1.2 That Cabinet recommends that Her Excellency the Governor in Executive Council make the *Children's Protection Variation Regulations 2006* made under the provisions of the *Children's Protection (Miscellaneous) Amendment Act 2005* that deal with the interpretation of the Aboriginal Child Placement Principle, and the establishment of child safe environments and criminal history checking, and that the operation of the regulations commence on 31 December 2006.
- 1.3 For Cabinet to note that it is necessary for the *Children's Protection Variation Regulations 2006* to come into operation on 31 December 2006, the day on which the related provisions of the *Children's Protection (Miscellaneous) Amendment Act 2005* will come into operation, as the regulations are required for operation of the provisions to which they relate.
- 1.4 For Cabinet to note that proclamation of these remaining provisions of the *Children's Protection (Miscellaneous) Amendment Act 2005* and the accompanying *Regulations* completes the staged implementation of this legislation.

2. BACKGROUND

- 2.1 The amendments to the *Children's Protection Act 1993* strengthened the legislative base for the care and protection system in South Australia and introduced a number of changes designed to provide greater protection for children.
- 2.2 Her Excellency the Governor in Executive Council assented to the *Children's Protection (Miscellaneous) Amendment Act 2005* on 8 December 2005.

- 2.3 Cabinet approved staged implementation of the provisions of the *Children's Protection (Miscellaneous) Amendment Act 2005* on 16 January 2006 (see Attachment A).
- 2.4 On 19 January 2006, Her Excellency the Governor in Executive Council issued a Proclamation declaring 1 February 2006 as the date of operation of the *Children's Protection (Miscellaneous) Amendment Act 2005*, suspending the operation of sections 6(1), 7, 9, 10 and 12 to 16 (inclusive) until days or times to be fixed by subsequent Proclamations.
- 2.5 On 21 September 2006, Her Excellency the Governor in Executive Council issued a Proclamation declaring 1 October 2006 as the date of operation of sections 13 to 16 (inclusive) of the *Children's Protection (Miscellaneous) Amendment Act 2005*.

3. DISCUSSION

3.1 Purpose

- 3.1.1 The *Children's Protection (Miscellaneous) Amendment Act 2005* underpins *Keeping Them Safe*, the Government's child protection reform program, by placing the protection and care of children as the first consideration in all planning and decision making; providing a stronger commitment to make sure that children and their families have access to support services; building community capacity to protect children through the establishment of child safe environments; establishing common standards across all sectors for criminal history checking; extending mandatory reporting of suspected child abuse to ministers of religion, workers and employees in religious and spiritual organisations and those working with children in sporting and recreational services; and establishing the Child Death and Serious Injury Review Committee, the Guardian for Children and Young People; and a Council for the Care of Children to replace the Children's Interests Bureau and the Children's Protection Advisory Panel.
- 3.1.2 Implementing the *Act* in stages is necessary because many provisions have considerable consequences for both Government and community organisations.
- 3.1.3 Due to the considerable community awareness about *Keeping Them Safe* and the new legislation, the Government demonstrated its commitment to the care and protection of children by proclaiming the less complex provisions on 1 February 2006.
- 3.1.4 Amendments regarding the seeking of drug assessment and drug treatment orders in those situations where children are at risk because of an adult's abuse of an illicit drug were proclaimed on 1 October 2006. Families SA has established an innovative partnership with Drug and Alcohol Services SA to provide service pathways to implement this legislation.

- 3.1.5 Cabinet approved drafting of regulations under the provisions of the *Children's Protection (Miscellaneous) Act 2005* on 13 June 2006. These regulations relate to the Aboriginal Child Placement Principle and to the establishment of child safe environments including criminal history checking. Consultation on the draft *Children's Protection Variation Regulations 2006* has occurred. The regulations have been edited and refined within the scope of the original drafting instructions approved by Cabinet in response to consultation. Parliamentary Counsel has settled the *Regulations*. A report for the Legislative Review Committee of Parliament has been prepared (see Attachment B).
- 3.1.6 Families SA has been working extensively with Government and non-Government schools and a range of other Government and non-Government organisations and Unions towards developing the policies and standards required to establish child safe environments under the legislation to be proclaimed on 31 December 2006.
- 3.1.7 As per the attached schedule, proclamation of the remaining provisions of the *Children's Protection (Miscellaneous) Act 2005* and making the *Children's Protection Variation Regulations 2006* on 31 December 2006 will complete the amendments to the *Children's Protection Act 1993* (Attachment A).

3.2 Economic, financial and budgetary implications

- 3.2.1 The major costs associated with the implementation of these provisions of the *Children's Protection Act 1993* and the *Children's Protection Variation Regulations 2006* will be borne by the organisations with responsibilities under this legislation.
- 3.2.2 The changes arising from the *Children's Protection (Miscellaneous) Amendment Act 2005* will be implemented by redirecting existing resources. Costs arising from implementation will be met by the Department for Families and Communities and other Departments involved with implementing initiatives as part of *Keeping Them Safe*.
- 3.2.3 Minor costs will accrue to the DFC Families SA due to the importance of supporting small non-Government not-for-profit organisations to implement their responsibilities under the legislation. These costs will be absorbed by the Department.
- 3.2.4 Assessment by the Department of Treasury and Finance for the submission to draft the regulations was that there will be no impact on the general government lending position or net operating cost.

3.3 Resources required for implementation

- 3.3.1 Will be met within existing resources.

3.4 South Australia's State Strategic Plan

3.4.1 This proposal is consistent with *Keeping Them Safe*, the Government's child protection reform agenda. It will contribute to the achievement of the following objectives of South Australia's Strategic Plan: Objective 2 – Quality of Life (T2.1), Healthy South Australians (T2.2), Infant Mortality (T2.3), Psychological Distress (T2.4), Crime Rates (T2.8). Objective 6 – Aboriginal wellbeing (T6.1).

3.5 Information and Communication Technology Requirements

Not Applicable.

3.6 Staffing implications

3.6.1 Will be met within existing resources.

3.7 Impact on the community and the environment

3.7.1 Regulatory Impact

These provisions increase agency powers to:

- plan, provide for and require culturally appropriate placement of an Aboriginal child who requires alternative living arrangements for their care and safety
- require all Government departments and non-Government schools to undertake criminal history checks of current and new employees or volunteers who occupy or act in prescribed positions where they may work with or in close proximity to children or young people and/or their records
- require appropriate management of information obtained by criminal history checks where a check is undertaken
- provide guidance regarding codes and standards of conduct and principles of good practice for dealing or working with children and for ensuring the safety of children
- require all Government departments and non-Government schools to undertake criminal history checks of employees or volunteers who occupy or act in positions where they work with children or young people and/or their records
- require that multiple strategies are available to respond to situations where a child may be at risk of abuse and neglect.

The Children's Protection (Miscellaneous) Amendment Act 2005 increases the extent of regulation imposed on organisations dealing with children on the basis that it will improve the care and protection afforded to children.

3.7.2 Regional Impact

Care and protection of children and support for families in regional locations will be improved. A regional consultation process was undertaken during the draft stages of these legislative changes. Consultation on the *Children's Protection Variation Regulations 2006* was extensive and is outlined in the attached report for the Legislative Review Committee. Consultation to develop the *Children's Protection (Miscellaneous) Amendment Act 2005* was more extensive and targeted peak bodies (including relevant unions) and organisations for recreation, sporting and volunteer groups; churches and other spiritual organisations and their representative bodies; the three school sectors – public, independent and catholic schools; government agencies, non-government agencies and any other organisations who are affected by the proposed changes.

The Office of Regional Affairs has been consulted on this proposal and supports the submission.

3.7.3 Business Impact

Together with the *Children's Protection Variation Regulations 2006*, Section 8C of the *Children's Protection (Miscellaneous) Amendment Act 2005* requires organisations covered under the section to develop policies and procedures to ensure that appropriate reports of abuse or neglect are made and that child safe environments are established and maintained. The section applies to a government department, agency or instrumentality, or a local government or non-government organisation that provides health, welfare, education, sporting or recreational, religious or spiritual, child care or residential services wholly or partly for children. Government organisations and non-Government schools are also required to conduct criminal history checking under section 8B. Other organisations covered under section 8C, are not required, but may choose, to implement criminal history checking as part of establishing a child safe environment. An organisation that implements criminal history checks will be required to meet the relevant standards for information handling established under the *Children's Protection (Miscellaneous) Amendment Act 2005*. Provision 8C may have some resource implications for a range of organisations associated with meeting the requirements for child safe environments, and/or for meeting the standards for information handling if criminal history checking is voluntarily adopted.

Section 11 of the *Children's Protection (Miscellaneous) Amendment Act 2005* expands the category of people who are mandatory notifiers to include ministers of religion; employees and volunteers of spiritual and religious organisations; and employees and volunteers of non-government organisations involved in the actual delivery of relevant services to children. Section 11 may have resource implications for these organisations in respect of training of staff and development of policies concerning notification.

At this time, the scope of organisations that may be included under sections 8C and 11 is not certain. I have received advice that it may include businesses which provide the relevant services to children, and may include businesses that provide such services to children as an incidental part of their business. I have sought further advice on this issue. The extent of the business impact is therefore uncertain.

The Department of Trade and Economic Development has been consulted on this proposal.

3.7.4 Environmental Impact

There are no identifiable impacts.

The Department for Environment and Heritage, Environment Protection Authority and Zero Waste SA have been consulted and have no comment on the environmental impacts of this proposal.

3.7.5 Impact on families and society

In line with *Keeping Them Safe*, proclamation of these sections of the *Children's Protection (Miscellaneous) Act 2005* puts priority on:

- making the most appropriate arrangements for an Aboriginal child who requires alternative living arrangements for their care and protection
- establishing organisations undertaking prescribed functions with children or young people and or their records as child safe environments, including undertaking criminal history checks of employees or volunteers in prescribed positions and appropriately managing related records
- extending the range of people who are mandated notifiers
- providing multiple strategies to respond to situations of risk, abuse and neglect.

Implementation of these provisions will reduce the negative outcomes for children by providing a strong commitment to ensure as far as practicable that children are safe from abuse and neglect in a wide range of contexts, ensuring that Aboriginality is one key consideration in determining the best interests of Aboriginal children, and that children and their families have access to appropriate services in situations where a child may be at risk of abuse and neglect.

3.8 Risk Management Strategy

- 3.8.1 Organisations that provide services to children and/or families and will be affected by the provisions of the *Children's Protection (Miscellaneous) Amendment Act 2005* are being assisted to meet their responsibilities in relation to the care and protection of children.

3.8.2 Policies, standards and codes are being developed to implement child safe environments including criminal history checking in conjunction with relevant organisations with additional responsibilities under the provisions of the *Children's Protection (Miscellaneous) Amendment Act 2005*. This will enable management of the resource and budget implications of these provisions from within existing resources of organisations.

3.9 Consultation

3.9.1 Consultation with relevant Government and non-Government agencies was conducted prior to assent to the *Children's Protection (Miscellaneous) Amendment Bill 2005*.

3.9.2 Consultation to implement these provisions, including the Regulations, has included a wide range of stakeholders with active participation from the Crown Solicitors Office; key Government departments; non-Government schools; the Local Government Association; unions; the Office of the Health & Community Services Complaints Commissioner; the Legal Services Commission; the Guardian for Children and Young People; the Aboriginal Legal Rights Movement; the Law Society of South Australia; and Anglican Community Care. Consultation on the Regulations is further detailed in the report to the Legislative Review Committee (see Attachment B).

3.10 Implementation Plan

3.10.1 DFC Families SA has rewritten the Mandatory Notification training package based on the child safe environments framework and will update this further in light of implementation of these provisions.

3.10.2 DFC Families SA has provided a specific training package for DECS and has allocated \$100,000 to engage Child Wise¹ to assist with the provision of information and training for community organisations (especially sport and recreation and religious organisations) regarding the establishment of child safe environments.

3.10.3 DFC Families SA is working with key Government departments, non-Government schools, the Local Government Association and unions to assist in developing model policy and standards relating to criminal history checking.

3.10.4 DFC Families SA will establish policy and update existing practice guidelines in consultation with key Government and non-Government agencies, including agencies involved in making alternative care

¹ Child Wise is an Australian not-for-profit organisation working to prevent, protect and reduce the sexual abuse and exploitation of children in Australia and overseas. Child Wise specialises in development and implementation of participatory training programs, capacity building, addressing and preventing child abuse, awareness raising, community education, research and advocacy, law reform and policy development.

placements for Aboriginal Children, to ensure effective implementation of the Aboriginal Child Placement Principle.

3.10.5 DFC Families SA will negotiate referral to existing NGO programs funded through DFC Community Connect Family and Community Development Program and to existing agencies funded by the DH under the Families SA-Health Memorandum of Understanding and will monitor referrals and outcomes of participation.

3.11 Communication Strategy

3.11.1 Stakeholders are being regularly informed about the process for implementing the range of legislative changes through a range of strategies which will continue including:

- key stakeholders are involved in ongoing consultation to develop model policies and standards
- relevant information will be posted to the DFC intranet and internet sites as it becomes available
- individual key stakeholders will continue to be responsible for using their own strategies to ensure access to information for their networks/ constituents
- information regarding training or other significant events is distributed directly by mass post and/or electronic mail out.

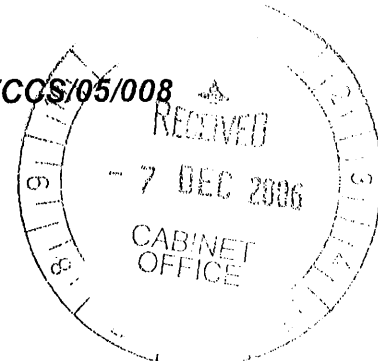
3.11.2 I propose to issue a press release when these provisions of the *Act* and *Regulations* are gazetted.

3.11.3 The Strategic Communication Unit, Department of Premier and Cabinet has been consulted in relation to this proposal.

3.12 Executive Council

3.12.1 A proclamation is required to be made by Her Excellency the Governor in Executive Council.

821



4. RECOMMENDATIONS

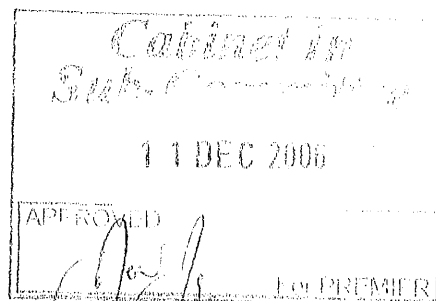
It is recommended:

- 4.1 That Cabinet recommends that Her Excellency the Governor in Executive Council issue a proclamation to declare 31 December 2006 as the date of operation for provisions 6 (1), 7, 9, 10 and 12 of the *Children's Protection (Miscellaneous) Amendment Act 2005* that deal with the interpretation of the Aboriginal Child Placement Principle, the establishment of child safe environments and criminal history checking; extending the categories of persons required to make a mandatory notification of suspected child abuse; establishing a duty of care for a notifier beyond making a notification; and requiring that Families SA provide multiple strategies to respond where a child may be at risk.
- 4.2 That Cabinet recommends that Her Excellency the Governor in Executive Council make the *Children's Protection Variation Regulations 2006* made under the *Children's Protection (Miscellaneous) Amendment Act 2005* that deal with the interpretation of the Aboriginal Child Placement Principle, and the establishment of child safe environments and criminal history checking, and that the *Regulations* come into operation on 31 December 2006.
- 4.3 That Cabinet notes that it is necessary for the *Children's Protection Variation Regulations 2006* to come into operation on 31 December 2006, the day on which the related provisions of the *Children's Protection (Miscellaneous) Amendment Act 2005* will come into operation, as they are required for operation of the provisions to which they relate.
- 4.4 That Cabinet notes that proclamation of these remaining provisions of the *Children's Protection (Miscellaneous) Amendment Act 2005* and the accompanying *Regulations* completes the staged implementation of the provisions of this legislation.

No change required 1993

Hon Jay Weatherill MP
MINISTER FOR FAMILIES AND COMMUNITIES

61111 2006



ATTACHMENT A

PROCLAMATION SCHEDULE

CHILDREN'S PROTECTION (MISCELLANEOUS) AMENDMENT ACT 2005

Amendment No.	Heading/Relative Section Title	Proclamation Schedule
1.	Short title	Proclaimed 1 February 2006
2.	Commencement	Staged approach to proclamation
3.	Amendment provisions	
4.	Objects of Act	Proclaimed 1 February 2006
5.	Fundamental principles	Proclaimed 1 February 2006
6.	Interpretation – Section 6 (1)	31 December 2006
	Interpretation – Section 6 (2), (3), and (4)	Proclaimed 1 February 2006
7.	Substitution of heading to Part 2	31 December 2006
8.	General functions of the Minister	Proclaimed 1 February 2006
9.	8A - General functions of the Chief Executive	31 December 2006
	8B - Powers and obligations of Chief Executive in respect of criminal history	
	8C - Obligations of certain organisations	
10.	Notification of abuse or neglect	31 December 2006
11.	Power to remove children from dangerous situations	Proclaimed 1 February 2006
12.	Investigations	31 December 2006
13.	Application for order (for parent/guardian to undergo parenting/drug assessment)	Proclaimed 1 October 2006
14.	Orders Court may make	Proclaimed 1 October 2006
15.	Application for care and protection order (if child is at risk as a result of drug abuse by a parent/guardian)	Proclaimed 1 October 2006
16.	Court's power to make orders (for parent/guardian to undergo parenting program/drug treatment)	Proclaimed 1 October 2006
17.	Legal representation of child	Proclaimed 1 February 2006
18.	7A The Guardian	Proclaimed 1 February 2006
	7B The Council for the Care of Children	Proclaimed 1 February 2006
	7C The Child Death and Serious Injury Review Committee	Proclaimed 1 February 2006
19.	Repeal of Section 55	Proclaimed 1 February 2006

ATTACHMENT B

TO: LEGISLATIVE REVIEW COMMITTEE

RE: **CHILDREN'S PROTECTION VARIATION REGULATIONS 2006**

Background

Attached are the *Children's Protection Variation Regulations 2006*. I have certified that it is necessary for these regulations to come into operation on 31 December 2006, the day on which the related provisions of the *Children's Protection (Miscellaneous) Amendment Act 2005* will come into operation, as they are required for operation of the provisions to which they relate.

Issues

Her Excellency the Governor in Executive Council assented to the *Children's Protection (Miscellaneous) Amendment Act 2005* on 8 December 2005:

This made a number of amendments to the *Children's Protection Act 1993* designed to strengthen the legislative base for the care and protection system in South Australia to provide greater protection for children.

These legislative changes underpin *Keeping Them Safe*, the Government's child protection reform program.

Consultation to prepare drafting instructions for regulations was undertaken with the Department of Education and Children's Services, the Office of Recreation and Sport, the Association of Independent Schools South Australia, the Professional Standards Office of the Catholic Archdiocese of Adelaide, and the Department of Trade and Economic Development.

Cabinet approved drafting of regulations under the provisions of the *Children's Protection (Miscellaneous) Act 2005* on 13 June 2006.

The *Children's Protection Variation Regulations 2006* relate to describing the Aboriginal Child Placement Principle in legislation and to establishing child safe environments including criminal history checking.

Consultation has occurred as outlined below. Parliamentary Counsel have edited and refined the regulations in response to comment from consultation. This has fine-tuned the regulations to ensure the intent and philosophy of the legislation and the instruction is well-represented in light of the comment received.

Parliamentary Counsel has indicated that in their opinion the settled *Children's Protection Variation Regulations 2006* match the drafting instructions approved by Cabinet and that any change in response to consultation does not reflect a change in policy.

Insertion of Regulation 4***Aboriginal Child Placement Principle***

Section 6(1) of the *Children's Protection (Miscellaneous) Amendment Act 2005* requires that the Aboriginal Child Placement Principle is defined in regulations. Bringing this provision into force requires that the relevant regulations are made at the same time to satisfy the requirement of the provision.

The Aboriginal Child Placement Principle was agreed to by national, state and territory Social Welfare Ministers in the mid 1980s and has been policy in South Australia since 1988.

The Aboriginal Child Placement Principle describes an order of preference to be used in determining an appropriate placement for an Aboriginal child who cannot remain with their immediate family because of concerns for the child's care or protection. The Principle recognises that where an Aboriginal child must be placed in care away from their immediate family the child's Aboriginality and the relevant cultural considerations must be considered as one key factor in determining the best interests of the child. This is entirely consistent with the Fundamental principles underpinning the *Children's Protection Act 1993*.

The drafting instructions endorsed by Cabinet and provided to Parliamentary Counsel reflect the existing DFC Families SA policy on placement of Aboriginal children.

Interpreting the Aboriginal Child Placement Principle in the *Children's Protection Act 1993* and *Children's Protection Variation Regulations 2006* will have policy and practice implications for DFC Families SA and for other agencies involved in arranging or providing alternative care for Aboriginal Children.

The opportunity to have input into the development of the Regulations was provided to the Aboriginal Women's State Advisory Council; the Aboriginal Family Support Service; the Port Lincoln Aboriginal Health Service; the Aboriginal Legal Rights Movement; the Legal Services Commission; The Law Society of South Australia; the CREATE Foundation; the Children in State Care Commission of Inquiry; the Eyre Regional Health Service; the Care and Protection Unit, Courts Administration Authority; the Aboriginal Elders Group, Council of Aboriginal Elders SA Inc; the Aboriginal Link Up, Nunkuwarrin Yunti of SA Inc; the Office of the Guardian for Children and Young People; the Council for the Care of Children and Young People; Aboriginal Placement Services, Anglicare; Anglican Community Care; the Aboriginal Health Division, Department of Health; the Statewide Aboriginal Alternative Care Providers Group; the NPY Women's Council; The Grannies Group; the Office of the Health & Community Services Complaints Commissioner; and the Aboriginal Senior Leadership Group, relevant Directorates and staff of Families SA.

Significant comment on the draft Regulations was received from Mr Hamish Gilmore, Director, Legal Services Commission; Ms Pam Simmons, the Guardian for Children and Young People; Mr Neil Gillespie, Chief Executive Officer, Aboriginal Legal Rights Movement; Ms Deej Eszenji, President, The Law Society of South Australia; Ms Annette Groat, Ms Tracy Ritchie and Ms Mickelina Barlow, Principal Cultural Consultants, DFC Families SA; Ms Susanne Cirocco, Lead Program Officer,

Guardianship and Alternative Care Directorate, DFC Families SA; the Statewide Alternative Care Committee; Ms April Lawrie-Smith, Executive Director and Mr Stan Butler, Senior Policy and Monitoring Officer of the Aboriginal Health Division, Department of Health; Ms Jo Battersby, Manager of the Office of the Health & Community Services Complaints Commissioner; Ms Monica Hart, Aboriginal Fostercare Placement, Anglican Community Care; Ms Janine Haynes, Executive Officer, the Council of Aboriginal Elders – South Australia; Vicki Gillick, Coordinator, NPY Women's Council.

All responses to the draft Regulations supported the inclusion of the Aboriginal Child Placement Principle provisions in the *Children's Protection Act 1993*, and the intent of the regulations. Some specifically acknowledged the importance of recognising and valuing culture and community for Aboriginal children and young people who require alternative care. Some suggestions for change deemed important to meet the intention of the Aboriginal Child Placement Principle in the regulations were suggested.

All recommendations for change to the draft regulations have been accommodated where they were consistent with legal and policy considerations.

Insertion of Regulations 6 and 7

Consultation on Regulations 6 and 7 was done as a single consultation with the range of stakeholders. A summary of the policy context and arrangements established under each of the regulations is described below followed by a summary of the consultation process and outcomes.

Powers and obligations of responsible authority in respect of criminal history

Section 8B of the *Children's Protection (Miscellaneous) Amendment Act 2005* places responsibility on government and non-government organisations defined in the regulations to undertake a criminal history check of people employed in, volunteering in, or directly or indirectly contracted to work in "prescribed positions" which are defined in the Act.

The purpose of these provisions is to minimise the possibility for children to be abused when in contact with any of these organisations, and to deter or detect sexual predators who may seek out employment which provides them with access to children. Mechanisms for the screening of relevant employees are already in place in most government and non government organisations which regularly deal with children, as a matter of policy, however, the amendments will now make it a legal requirement for some organisations.

Section 8B(1) and (2) of the *Children's Protection (Miscellaneous) Amendment Act 2005* provide for other organisations in addition to the Commissioner of Police to be prescribed as a source of criminal history checks. The CrimTrac Agency as established under the Public Service Act 1999 of the Commonwealth is specified here. The CrimTrac Agency provides national police record checking services to accredited agencies to assist in pre-employment probity checking.

Section 8B(6)(b) of the *Children's Protection (Miscellaneous) Amendment Act* provides the opportunity to extend by regulation the scope of non-government organisations to be covered by the provisions of section 8B. Non-government schools are included by regulation to provide equivalent responsibilities and protections for children across all government and non-government schools as defined under the *Education Act 1972*. The Minister for Education and Children's Services does not have the power to direct non-government schools in regard to this matter.

Section 8B(8) of the *Children's Protection (Miscellaneous) Amendment Act* provides a definition of the "responsible authority" that must ensure that criminal history checking is instituted in an organisation to which section 8 applies. For a Government organisation this will be the Chief Executive. For a non-government organisation this is the managing authority of the organisation, such as the board, committee or other body or person with vested responsibility for management. A non-government organisation to which section 8 applies has the option to delegate its responsibilities under the section to a body approved by regulation. Non-government schools have nominated the Association of Independent Schools of South Australia Incorporated; the Catholic Church Endowment Society Incorporated; and the Lutheran Schools Association of South Australia, Northern Territory and Western Australia Incorporated as the appropriate bodies to manage screening processes within these three groups of the non-government school sector. These three bodies are approved by regulation.

Obligations of certain organisations

Section 8A of the *Children's Protection (Miscellaneous) Amendment Act* establishes the responsibility of the Department for Families and Communities to lead the development of policy models and standards for establishing child safe environments.

Section 8C requires organisations covered under this section to develop policies and procedures to ensure that appropriate reports of abuse or neglect are made and that child safe environments are established and maintained. The section applies to a wide and diverse range of organisations including any organisation that provides health, welfare, education, sporting or recreational, religious or spiritual, child care or residential services wholly or partly for children; and is a government department, agency or instrumentality, or a local government or non-government organisation.

Section 8C(1) identifies the time within which an organisation must establish the relevant policies and procedures. A newly formed organisation must establish these as soon as practicable following the formation of the organisation. An organisation existing at the time this legislation is proclaimed must establish these as soon as possible following 1 January 2008 as the date prescribed by regulation. Given the range and number of existing organisations to which this section applies, and the fact that some are advanced in implementing the necessary policies and procedures while others are just developing their understanding in this area, the time frame provided by regulation offers a fair opportunity for all organisations to understand and adopt the requirements.

If an organisation that is not mandated to implement criminal history checks chooses to do so under the requirements for establishing child safe environments, they will also be required to meet the relevant standards for information handling established under the *Children's Protection (Miscellaneous) Amendment Act 2005*. Provision 8C may have some resource implications for a range of organisations, associated with meeting the requirements for child safe environments, and/or for meeting the standards for information handling if criminal history checking is voluntarily adopted.

Under the provisions of section 8C(2)(b) the elements which all organisations must include in their policies and procedures can be prescribed in regulation. Due to the diversity of organisations included in the scope of this section, the only matter prescribed and therefore mandatory for all such organisations at this stage is that the policies and procedures established under section 8C(1) must include provisions relating to the standards described by the Chief Executive of the Department for Families and Communities under the provisions of 8A of the *Children's Protection (Miscellaneous) Amendment Act*.

Consultation on Regulations 6 and 7

Because of the diverse scope of organisations included under the provisions of section 8C, a large number were provided with the opportunity to contribute to the development of the regulations including. Approximately 250 government and non-government organisations receiving funding from DFC Community Connect received a written invitation to comment. These organisations cover country and metropolitan South Australia and service diverse populations. The opportunity to comment was also provided to the Local Government Association; the Office for Youth; the Attorney-General's Department; the Archbishop of Adelaide; South Australia Police; the Department for Further Education and Employment, Science and Technology; the Office for Recreation and Sport; the Department of Education and Children's Services; the Catholic Education Office; the Association of Independent Schools of South Australia; and the Office for Volunteers. In addition, an advertisement was placed in the Advertiser of 6 September 2006 to broadly notify any interested stakeholders of the opportunity to contribute to public consultation on the regulations with both phone and internet access to the relevant documents available.

Comment on the regulations was received from Ms Sue Cain, Director, Professional Standards Office, Catholic Education Office; Mr Garry Le Duff, Executive Director, Association of Independent Schools of SA; Mr Andrew Murray, Senior Industrial Officer, South Australian Salaried Medical Officers Association (SASMOA); Ms Jan McMahon, General Secretary, Public Service Association of South Australia Incorporated (PSA); Kris Edwards, Industrial Officer, Australian Nursing Federation (ANF); Georgina Goodrich, Volunteers Unit, Department for Families & Communities; Ms Aileen Milazzo, Royal Life Saving Society Australia – SA Branch; and Ms Tanya Donaghy, Director, Office for Youth, Department for Further Education Employment Science & Technology.

All responses to consultation, except that from Mr Murray of SASMOA, indicated that respondents recognised and/or supported and/or welcomed the intention and requirement of the legislation and regulations regarding criminal history checks. The three Unions (PSA, ANF and SASMOA) indicated that they found it difficult to

comment on the regulations without the policy and standards to which the regulations relate also being available for consideration. Ms McMahon of the PSA and Ms Edwards of the ANF did not suggest any changes to the regulations. Mr Murray, however, rejected the regulations on the grounds that he could not at the same time consider the policy and standards and made no statement in support of the intent of the legislation. The concern raised by each of the Unions was for active involvement in the consultation and development of the policy and standards that will be established by DFC Families SA under section 8A of the amended *Children's Protection Act 1993*. Each of these unions has been informed and involved in consultation since development of the *Children's Protection (Miscellaneous) Amendment Bill 2005*, and each is now actively participating in the working group DFC Families SA has established to contribute to development of the policy and standards to be established by DFC Families SA under section 8A of the amended *Children's Protection Act 1993*. Several other comments added useful specification to the regulations that clarify the scope of organisations to which the regulations apply.

All recommendations from consultation for change to the draft regulations have been accommodated where they were consistent with legal and policy considerations.

Summary

Parliamentary Counsel has settled the *Children's Protection Variation Regulations 2006* and indicated that in their opinion the regulations match the drafting instructions approved by Cabinet and that any change in response to consultation does not reflect a change in policy.

I have issued a Ministerial certificate for early commencement of the *Children's Protection Variation Regulations 2006* because the regulations are required to specify important aspects of the operation of the provisions to which they relate.

If you require further information in regard to this matter please contact Mr Steve Golding, Principal Program Manager, Child Protection Directorate, Department for Families and Communities Families SA, tel. 82266592.



Hon Jay Weatherill MP
MINISTER FOR FAMILIES AND COMMUNITIES

6/11/2006

CERTIFICATE OF VALIDITY

I certify that the proposed regulations under the

CHILDREN'S PROTECTION ACT 1993

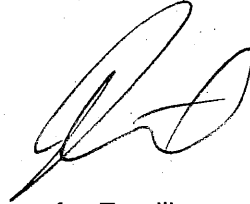
attached to this certificate and initialled by me are within the powers conferred by that Act.

A handwritten signature in black ink, consisting of several fluid, connected strokes.

for **PARLIAMENTARY COUNSEL**
29 November 2006

CERTIFICATE OF EARLY COMMENCEMENT

PURSUANT to section 10AA(2) of the *Subordinate Legislation Act 1978*, I certify that, in my opinion, it is necessary or appropriate that the *Children's Protection Variation Regulations 2006* under the *Children's Protection Act 1993* (copy attached and initialled by me) come into operation as set out in those regulations.



Minister for Families and Communities

DFC CS/05/008

Settled

(1)

SETTLED

DAE
for
PC


MINISTER

South Australia

Children's Protection Variation Regulations 2006

under the *Children's Protection Act 1993*

Contents

Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Variation provisions

Part 2—Variation of *Children's Protection Regulations 2006*

- 4 Redesignation of regulation 4
 - 5 Insertion of regulation 4
 - 4 Aboriginal Child Placement Principle
 - 6 Insertion of regulations 6 and 7
 - 6 Powers and obligations of responsible authority in respect of criminal history
 - 7 Obligations of certain organisations
-

Part 1—Preliminary

1—Short title

These regulations may be cited as the *Children's Protection Variation Regulations 2006*.

2—Commencement

These regulations will come into operation on 31 December 2006.

3—Variation provisions

In these regulations, a provision under a heading referring to the variation of specified regulations varies the regulations so specified.

Part 2—Variation of *Children's Protection Regulations 2006*

4—Redesignation of regulation 4

Regulation 4—redesignate the regulation as regulation 5

5—Insertion of regulation 4

After regulation 3 insert:

4—Aboriginal Child Placement Principle

For the purposes of section 4(5) of the Act, the Aboriginal Child Placement Principle is as follows:

- (a) the fundamental principles contained in section 4 of the Act (the *fundamental principles*) apply to the placement of an Aboriginal child with the additional requirement that in determining a child's best interests under subsection (4) of that section consideration must be given to the child's Aboriginality;
- (b) subject to the fundamental principles, an Aboriginal child who is being placed in alternative care (other than care provided in a detention facility) should be placed with the first in order of priority of the following persons who is available to provide the care:
 - (i) a member of the child's family, as determined by reference to Aboriginal culture;
 - (ii) a member of the child's community who has a relationship of responsibility for the child, as determined by reference to Aboriginal traditional practice or custom;
 - (iii) a member of the child's community, as determined by reference to Aboriginal traditional practice or custom;
 - (iv) a person with the same Aboriginal cultural background as the child;
 - (v) a non-Aboriginal person who is able to ensure that the child maintains significant contact with the child's family (as determined by reference to Aboriginal culture), the child's community or communities and the child's culture;
- (c) if the placement of a child in alternative care in accordance with paragraph (b) is objected to by the child on reasonable grounds, the child should be placed with the next available person as determined by the order of priority referred to in paragraph (b).

6—Insertion of regulations 6 and 7

After regulation 5 (as redesignated by these regulations) insert:

6—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.

7—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.

Note—

As required by section 10AA(2) of the *Subordinate Legislation Act 1978*, the Minister has certified that, in the Minister's opinion, it is necessary or appropriate that these regulations come into operation as set out in these regulations.

Made by the Governor

with the advice and consent of the Executive Council
on

No of 2006

DFCCS/05/008