

Children's Protection (Implementation of Report Recommendations) Amendment Bill 2009

FREQUENTLY ASKED QUESTIONS

Why is the Government amending the *Children's Protection Act 1993*?

The *Children's Protection (Implementation of Report Recommendations) Amendment Bill 2009* is the South Australian Government's legislative response to the findings of the Mullighan Inquiry.

The Bill introduces important reforms aimed at strengthening South Australia's child protection system and protecting children as they interact in the community.

Under the reforms, some organisations will be required to:

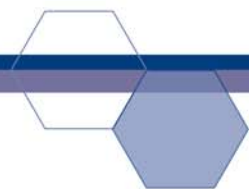
- conduct criminal history assessments on certain employees, contractors and volunteers; and
- lodge a statement outlining their child safe environment policies and procedures with the Department for Families and Communities.

The Bill also provides stronger protection for people who have a legal obligation to report any suspected child abuse and/or neglect (mandatory notifiers).

What organisations are affected by the reforms?

The amendments will apply to all non-government and local government organisations that provide the following services wholly or partly for children:

- health
- welfare
- education
- sporting or recreational
- religious or spiritual
- child care
- residential services



What will these organisations need to do?

These organisations will need to conduct a criminal history assessment on any person in their organisation who is working with children (unless an exemption applies).

This includes people who:

- have regular contact with children and are not directly supervised at all times; or
- work in close proximity to children on a regular basis and are not directly supervised at all times; or
- supervise or manage persons who:
 - have regular contact with children or
 - work in close proximity to children on a regular basis; or
- have access to records relating to children in connection with child protection services, education services, health services, disability services and court orders and proceedings.

The requirement will apply any person who is employed, contracted, subcontracted, acting as agent of, or volunteering for, a government or non-government organisation.

State Government organisations and non-government schools are already required to undertake criminal history assessments on people working with children in their organisation.

What is a criminal history assessment?

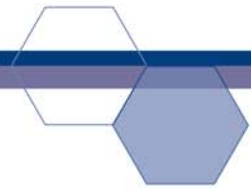
A criminal history assessment is a decision about whether a particular person is suitable to work with children. This decision is made on the basis of the person's criminal history (if any) and the assessed risk to children served by the organisation.

Certain organisations (usually Government organisations such as the Department for Families and Communities and South Australia Police) are able to obtain information about a person's criminal history from the national CrimTrac database.

Who is exempt?

In some cases, the law will exempt a person from the requirement to undergo a criminal history assessment. Organisations will need to examine the exemptions to see if any exemptions apply to people working or volunteering in their organisation.





The following organisations, persons and positions are exempt from the requirement to conduct a criminal history assessment:

- A person volunteering for a service or activity in which their child ordinarily participates;

Example 1: Jane coaches her daughter's netball team on a voluntary basis. As a parent volunteering in her own child's activity, Jane is exempt from the requirement to undergo a criminal history assessment, even if her daughter is not present on a particular day due to illness or some other reason.

- A person who volunteers who is less than 18 years of age;
- A person working or volunteering for a short-term event or activity of less than 10 days duration or for no more than 1 day in any month;

Example 2: Lisa lives in Western Australia and coaches a swimming team that is competing in a weekend event in Adelaide. Lisa is not required to undergo a criminal history assessment to attend this event because she is participating in a short-term activity of less than 10 days duration.

- A person occupying a position in which all work involving children is undertaken in the physical presence of the child's parents or guardians and in which there is ordinarily no physical contact with the children;
- A person who undertakes, or a position that only involves, work that is primarily provided to adults or provided to the community generally and is not provided to any child on an individual basis;

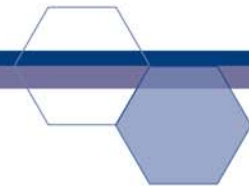
Example 3: A coach of a senior sporting team that has a team member who has not yet attained 18 years of age is not required to undergo a criminal history assessment.

- An organisation that provides equipment, food or venues for children's parties or events but does not provide any other services;
- A person who has regular contact with a child as part of an employment relationship with the child (such as a person working alongside a child or supervising an employee who is a child);

Example 4: Andrew is 16 and employed as a trainee administrative officer for a community organisation. Although the organisation provides services to children, Andrew's position does not involve working with children. His supervisor and fellow employees are not required to undergo a criminal history assessment in order to work with him, unless they are also otherwise engaged in child-related work.

- A person who is appointed as a police officer or is a registered teacher.





No exemption is available to people who work in positions involving commercial child care; family day care; the administration of the juvenile justice system; child protection; disability services; or residential care and other overnight accommodation specifically for children (unless the overnight accommodation is provided by a visiting interstate worker who does not ordinarily live or perform work in South Australia).

Example 5: Sue often volunteers at her children's child-care centre in her lunch hour. Sue is required to undergo a criminal history assessment, regardless of whether her children are present or participating in the activity.

It is important to note that organisations may still require people to undergo a criminal history assessment as a matter of good organisational practice, even if an assessment is not required by law.

Further information about the proposed exemptions is available in the discussion paper available at www.sa.gov.au/mullighaninquiry.

What is the difference between a criminal history assessment and a police check?

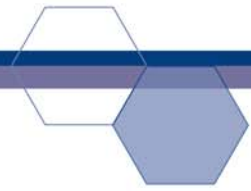
A National Police Check (also known as a National Police Certificate or National Criminal History Record Check) provides a national summary of an individual's offender history. It includes information about whether a person:

- has any recorded convictions; or
- has been convicted of an offence; or
- has been charged with, and found guilty of, an offence but discharged without conviction; or
- is the subject of any criminal charge still pending before the court.

This is different from a criminal history assessment. A criminal history assessment requires an organisation to use the information in a police check to conduct an assessment of a person's criminal history and to make a decision about whether to employ or retain a person to work with children.

In making the assessment, organisations also consider the level of risk posed by the person and position. For example, the organisations will take into account factors including seriousness and relevance of the conviction, the level of unsupervised access the person has to children and the length of time since the conviction.





How does an organisation conduct a criminal history assessment?

To conduct a criminal history assessment, an organisation must ensure that:

- a report is obtained on the criminal history (if any) of each person occupying or acting in a prescribed position. The report must be obtained from South Australia Police or an authorised screening unit that is accredited with CrimTrac; and
- the information in that report is assessed in accordance with the *Child Safe Environments: Standards for dealing with information obtained about the criminal history of employees and volunteers who work with children* issued by the Chief Executive of the Department for Families and Communities under section 8A (j) of the *Children's Protection Act 1993*.

The Government is meeting the cost of obtaining criminal history reports for some volunteers who work with children in volunteer organisations through the Volunteer Organisation Authorisation Number (VOAN) system.

For further information about the VOAN scheme, go to

http://www.sapolice.sa.gov.au/sapol/services/information_requests/national_police_certificate.jsp.

I am self-employed. How do I obtain a criminal history assessment for myself?

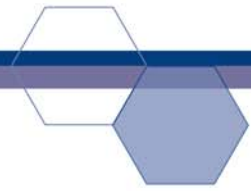
Once this requirement commences, self-employed people will be able to apply to the Department for Families and Communities' Screening and Licensing Unit for a full criminal history assessment. A letter of clearance will be provided to the applicant as evidence that they have no criminal history that would pose a risk to children.

Do organisations need to conduct criminal history assessments on staff or volunteers who provide services or activities primarily to adults, if the service or activity may also be accessed by children or occasionally include children?

Services and activities that are provided primarily for adults, but may also be accessed by children or occasionally include children, are generally exempt.

Organisations that also provide services specifically for children must ensure that the employees or volunteers involved in these services undergo a criminal history assessment.





Can an organisation require me to undergo an assessment even if I am not legally required to?

The Bill establishes a minimum standard that organisations must meet in order to help ensure that their organisations are a safe place for children. It does not prevent organisations from requiring other people within the organisation to also undergo an assessment as a matter of good organisational practice.

How long is a criminal history report valid?

The *Child Safe Environments: Standards for dealing with information obtained about the criminal history of employees and volunteers who work with children* issued by the Department for Families and Communities establish a maximum validity period for criminal history reports of three years.

When will this requirement commence?

The requirement to conduct criminal history assessments will be phased in over a three year period, commencing in January 2011. This incremental approach will provide sufficient time for organisations to become familiar with their new obligations.

A complete phasing-in schedule is available at www.sa.gov.au/mullighaninquiry.

How much will this cost?

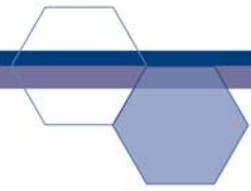
The cost of obtaining a criminal history report (or a “police check”) from South Australia Police varies depending on whether the report is for a paid employee, a concession holder, or a volunteer.

The Government is meeting the cost of obtaining criminal history reports for some volunteers who work with children in volunteer organisations through the Volunteer Organisation Authorisation Number (VOAN) system.

Organisations may also apply to the Department for Families and Communities’ Screening and Licensing Unit for a full criminal history assessment.

This service includes an independent assessment of a person’s suitability to work with children, conducted by trained and experienced staff in strict confidence and in accordance with legislative requirements and standards. Once the assessment is complete, a letter of clearance is provided to the applicant.





The fees and charges for obtaining a report are:

Applicant	SAPOL	DFC
Individual	\$50.00	\$50 (plus GST if applicable)
Concession	\$36.00	N/A
Volunteer	\$32.25	\$33 (plus GST if applicable)
VOAN volunteer	Free	N/A

Further information is available at:

http://www.sapolice.sa.gov.au/sapol/services/information_requests/national_police_certificate.jsp

and

<http://www.dfc.sa.gov.au/pub/tabid/238/itemid/1613/Screening-and-licensing.aspx>.

Who is required to pay for a criminal history report?

While organisations are responsible conducting a criminal history assessment for all relevant employees and volunteers, arrangements for obtaining the report are a matter for negotiation between the organisation and the individual, as part of their employment arrangements.

The Government is meeting the cost of obtaining criminal history reports for some volunteers who work with children in volunteer organisations through the Volunteer Organisation Authorisation Number (VOAN) system. For further information about the VOAN scheme, go to http://www.sapolice.sa.gov.au/sapol/services/information_requests/national_police_certificate.jsp.

Does an assessment guarantee safety?

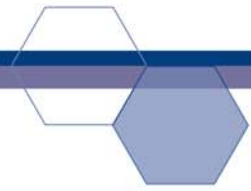
Criminal history assessments help organisations to decide who is suitable to work with children and to manage the risks around engaging people to work in positions of trust with children. However, they cannot be solely relied on to protect children from people who may harm them.

The assessments should be implemented alongside a range of measures directed at keeping children safe from harm. Further information about establishing child safe environments can be found at: <http://www.dfc.sa.gov.au/pub/Default.aspx?tabid=281>.

Who is not allowed to work with children?

It is up to the organisation to determine whether an individual's criminal history should preclude them from being hired or continuing to act in their current role. This must be determined on a case-by-case basis. Even if a police check reveals a criminal record, it may still be acceptable for a





person to work with children. When making an assessment of risk based on a person's criminal history, organisations should consider the seriousness and relevance of the conviction, the level of access the person has to children and the length of time since the conviction.

In assessing a person's suitability to work with children, organisations must adhere to the standards and guidelines set out in the *Child Safe Environments: Standards for dealing with information obtained about the criminal history of employees and volunteers who work with children* issued by the Chief Executive of the Department for Families and Communities under section 8A (j) of the *Children's Protection Act 1993*.

In general, a person convicted of an offence involving serious violence, sexual assault, or where a child was the victim would not be regarded as suitable as to work with children. Organisations must also consider the relevance of the conviction to the job role. For example, where a position involves the transport of children, a history of road traffic offences involving unsafe driving would generally be a bar to employment. In some cases, a long period of good behaviour since conviction may be sufficient to wipe the slate clean. However, no general rule or rule of thumb can replace the need for an examination of the facts of the individual case.

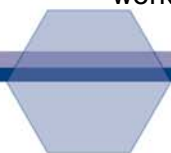
Under the *Child Sex Offenders Registration Act 2006* some people are absolutely prohibited from working with children because they have been convicted of serious offences against children (generally sex offences or offences of violence with a sexual element). These offenders are recorded on the Australian National Child Sex Offenders Register (ANCOR). It is an offence for a registrable offender to apply for child-related work. A maximum penalty of 2 years imprisonment or \$10 000 applies.

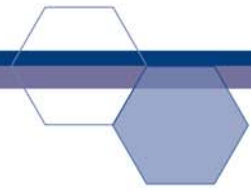
How does South Australia compare to other Australian States and Territories?

These changes will bring South Australia further in line with working with children schemes established in other Australian States and Territories.

Most Australian jurisdictions outside South Australia have introduced 'working with children' checks in recent years or are moving to introduce such checks. For example, Queensland, Victoria, New South Wales and Western Australia have well-established schemes for checking persons working in child-related employment. Other jurisdictions, such as the Australian Capital Territory and the Northern Territory have announced their intention to introduce similar schemes.

The safety and protection of children is a vital consideration for any organisation engaging people to work with children. The Government recognises the important steps that have already been taken





by many South Australian organisations to help ensure that their organisation is a safe place for children. Many organisations have well-established strategies and initiatives in place to help ensure child safety and wellbeing. In addition, a number of organisations already conduct criminal history checks on personnel working with children as part of their commitment to establishing child safe environments.

These changes provide an additional tool to assist organisations to make informed decisions about who is safe to work with children in their organisation.

Why do organisations have to lodge a statement of their child safe environment policies and procedures with the Department for Families and Communities?

Under the *Children's Protection Act 1993* organisations providing health, welfare, education, sporting or recreational, religious or spiritual, child care or residential services wholly or partly for children are required to establish child safe environment policies and practices.

The Bill includes a once-off requirement for these organisations to lodge a statement outlining their child safe environment policies and procedures with the Department for Families and Communities.

This requirement will assist the Department for Families and Communities to monitor progress towards child safe environments, as required under section 8A (i) of the *Children's Protection Act 1993*.

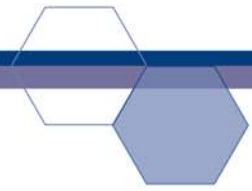
It is expected that this requirement will commence in 2010.

How will the Bill affect mandatory notifiers?

Under section 11 of the *Children's Protection Act 1993*, certain groups of people (including employees and volunteers in organisations providing services wholly or partly for children) are required to report to Families SA if they suspect on reasonable grounds that a child is being abused or neglected and this suspicion is formed in the course of their work. This is a legal obligation that carries a penalty if the individual fails to comply.

The Bill will create a new offence of preventing a person from discharging the obligation of mandatory reporting through threat, intimidation or unfavourable treatment.





Where to from here?

The Bill is now available for comment as part of the public consultation process. Further information, including a copy of the Bill, second reading report and summary of key features can be found on the Service SA website at www.sa.gov.au/mullighaninquiry.

