Children’s Protection Act 1993 (South Australia)

NB: Child protection and child related work screening requirements will change during 2017

Contact Legal and Risk Branch for more information: legalcompliance@adelaide.edu.au
What does the Children’s Protection Act do?

- Provides for the care and protection of children

- Gives authority to the Department for Child Protection to intervene when a child is at risk

- Requires anyone who is employed in a position which involves working closely with children (i.e. a prescribed position) to undergo a child related employment assessment before being cleared to work with children
  - A child related employment assessment is one aspect of the recruitment process to determine if a person is suitable to work with children
  - The decision is made on the basis of the person’s criminal history (if any) and the assessment of risk to children who access the services provided.

- Makes it mandatory for people in some occupations to report suspected child abuse
How does the Act apply to the University?

• **A child** is a person under the age of 18
  – Tertiary students are *not* excluded from the definition of a child

• The Act applies whether the person working with children is an employee, volunteer, agent, contractor or subcontractor

• The University is required under the Act to establish and maintain policies and procedures to ensure a child safe environment

• In addition to a general responsibility to report abuse, people who work closely with children are legally obliged to report suspected abuse to Families (SA)

• Before engaging a person to work in a **prescribed position**, the University **must** undertake a child related employment assessment of that person
  – Sometimes a prescribed position is exempt under the Act and a child related employment assessment is *not* required

• The University may require a child related employment assessment for any person working at the University, if it is ‘necessary or desirable’ to do so to maintain a child safe environment.
What is a ‘prescribed position’?

- **A prescribed position** means any position which involves:
  - having regular contact with children, unless directly supervised at all times
  - working in close proximity to children on a regular basis, unless directly supervised at all times
  - supervising or managing someone who is in regular contact with children or who works in close proximity to children on a regular basis or
  - access to educational records relating to children

- **Regular contact** implies contact that has a constant or definite pattern, or which recurs at short uniform intervals or on several occasions during short periods of time, such as a week

- University staff who work in prescribed positions may include:
  - *Staff, titleholders, contractors, volunteers or students involved in research projects, clinical placements or marketing activities with children*
  - *Staff, contractors or volunteers employed at Bradford College, Eynesbury College and University Senior College*
  - *Staff or volunteers involved in programs for children (eg: The Young Conservatorium, Urrbrae House School’s Program)*

*Please note that new legislation will be implemented during 2017 and these exemptions may not apply or will be varied under the [Child Safety (Prohibited Persons) Act 2016](https://www.legislation.sa.gov.au/LA/legislation/1893-04-22-PROHIBITED-PERSONS) and Regulations*
When is a child related employment assessment not required?

- For an under 18 year old volunteer working with children

- If someone is only working with children for a short time, i.e. for no more than 10 days in a row or not more than one day each month
  - *eg. A person working with a child who is undertaking work experience for a week at the University*

  - If the work is generally for the wider University population and not specifically for children
    - *eg. A staff member working with student records that are not specifically kept for children*

UNLESS there are other potential risks – like on overnight camps or field trips

*Please note that new legislation will be implemented during 2017 and these exemptions may not apply or will be varied under the [Child Safety (Prohibited Persons) Act 2016](https://www.gov.au/child-safety/prohibited-persons-act-2016) and Regulations*
Under the Children’s Protection Act*, a DCSI may not be required:

- For registered teachers

- For someone who is working with a volunteer who is under 18, provided the work is not child-related

- For child-related work which takes place in the presence of the children’s parents or guardians and where there is ordinarily no physical contact
  - *eg. Outreach programs for children where teachers or parents are present*

*Please note that new legislation will be implemented during 2017 and these exemptions may not apply or will be varied under the [Child Safety (Prohibited Persons) Act 2016](https://www.legislation.sa.gov.au/Legislation/1704) and Regulations*
**What is child ‘abuse or neglect’?**

<table>
<thead>
<tr>
<th>Child abuse can occur;</th>
<th>Child abuse or neglect under The Children's Protection Act means;</th>
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<tr>
<td>• through someone doing something harmful to a child; or</td>
<td>• <strong>Sexual abuse</strong></td>
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<tr>
<td>• by someone not doing something to provide for or protect a child</td>
<td>• <strong>Physical or emotional abuse, or neglect of the child</strong> to the extent that;</td>
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- the child has suffered, or is likely to suffer, physical or psychological injury detrimental to the child's wellbeing; or
- the child's physical or psychological development is in jeopardy.

- The legal age of consent in South Australia is 17 years of age for both boys and girls in heterosexual or homosexual relationships.
What is child ‘abuse or neglect’? (cont)

- **Physical abuse** is commonly characterised by physical injury resulting from:
  - hitting, punching, kicking *(eg. marks from belt buckles, fingers)*
  - shaking
  - burns *(eg. irons, cigarettes)*
  - biting
  - pulling out hair
  - the administration of alcohol or other drugs

- **Sexual abuse** occurs when someone in a position of power to the child uses that power to involve the child in sexual activity. It can include:
  - sexual suggestion
  - exhibitionism, mutual masturbation, oral sex
  - showing of pornographic material *(eg. DVDs, internet)*
  - using children in the production of pornographic material
  - penile or other penetration of the genital or anal region
  - child prostitution

*Excerpt from Guidelines for reporting Child Abuse and Neglect, Department for Education and Child Development*
What is child ‘abuse or neglect’? (cont)

- **Emotional abuse** tends to be a chronic behavioural pattern directed at a child so that a child’s self-esteem and social competence are undermined or eroded over time. It can include:
  - devaluing or ignoring
  - rejecting or isolating
  - corrupting
  - terrorising
  - chronic or extreme domestic violence in the child’s presence

- **Neglect** is characterised by the failure to provide for the child’s basic needs. It may include:
  - inadequate supervision of young children for long periods of time
  - failure to provide adequate nutrition, clothing or personal hygiene
  - failure to provide needed or appropriate health care, or medical treatment
  - disregard for potential hazards in the home
  - forcing the child to leave home early
  - allowing the child to engage in chronic truancy


* University of Adelaide
Who is a ‘mandated notifier’?

- Certain people have a legal obligation to report reasonable suspicions of abuse or neglect of children and can face penalties for failing to do so.

- **Mandated notifiers** include:
  - medical practitioners, psychologists, dentists, enrolled nurses and pharmacists
  - police and probation officers
  - teachers and social workers
  - voluntary workers providing children’s services

- In the University context, a mandated notifier is any staff member who is engaged in the delivery of services to children, or is a manager with direct responsibility for or supervision of the provision of these services to children.

- A fine of $10,000 may be incurred for failing to report.
Who is a ‘mandated notifier’? (cont)

• When making a report of suspected child abuse, proof of harm is not required, **however**, notification to a police officer must be accompanied by a written statement of the observations, background information and opinions upon which the suspicion is based.

• In making a report, mandated notifiers;
  – are assured of confidentiality (subject to certain exceptions)
  – are immune from civil or criminal liability, when acting in good faith; and
  – cannot be held to have breached any code of professional etiquette or ethics for reporting their suspicions in good faith.
How and when to make a report?

- If you suspect on reasonable grounds, that a child or young person is being abused or neglected, report it to the:
  - **Child Abuse Report line: 13 14 78** (24 hours)

- **Reasonable grounds** may include:
  - when your own observations of a particular child’s behaviour &/or injuries, or your knowledge of children generally lead you to suspect abuse is occurring;
  - when a child tells you they have been abused;
  - a child telling you that they know of someone who has been abused; or
  - when you hear about it from someone who is in a position to provide reliable information (eg. the child’s relative or friend)
University Obligations: Child Safe Environments

- The University is obliged to create and maintain a **child safe environment** which helps protect children from abuse and harm.

- The University is required to establish and maintain **policies and procedures** to help promote the safety and well-being of children.

- As part of this requirement, the University:
  - Must conduct **child related employment assessments** on employees, contractors and volunteers who, as part of their employment, interact with children on a regular basis; and
  - Has lodged a Child Safe Environment Compliance Statement with the Department for Education and Child Development.
University Obligations: Notifying abuse and neglect

- University staff employed in positions where an inherent requirement of the position is to interact directly with children must report suspicion of child abuse or neglect as soon as it becomes known
  - Merely notifying your suspicions on reasonable grounds that a child has been or is being abused, does not necessarily exhaust your duty of care to the child

- All staff and volunteers should be aware of what is meant by abuse and neglect of children as defined in the Act

- Every step should be taken to protect the safety of persons under the age of 18 (ie. children), including;
  - taking steps to ensure that staff and volunteers are safe people to work with children and
  - making sure that staff know how to report concerns about child safety
Additional Resources

- Kathryn Nankervis, Manager, Workplace Relations
  - 8313 9285

- Richard Duddy, Legal Counsel and Senior Project Officer (Policy)
  - 8313 0085

- Children’s Protection Act 1993

- Children’s Protection Regulations 2010

- Department for Child Protection

- Department for Communities and Social Inclusion (for child related employment screening)

- Guidelines for Reporting Child Abuse and Neglect, Department for Child Protection

- Child Abuse Report line: 13 14 78 (24 hours)
Disclaimer

The content of this material is intended only to provide a summary & general overview of the *Children’s Protection Act* as it applies to the University of Adelaide.

It is not intended to be comprehensive nor does it constitute legal advice.

Please contact [Kathryn Nankervis](mailto:kathryn.nankervis@adelaide.edu.au) or [legalcompliance@adelaide.edu.au](mailto:legalcompliance@adelaide.edu.au) if you are unsure of your compliance obligations under the Act.