

# Child & Vulnerable People Safe Environment Guidelines

## 1. Introduction

The 2014 Child Protection Systems Royal Commission (Nyland Royal Commission) reinforced the need for all organisations to be vigilant in creating a safe environment and minimising the risk of harm to children and other vulnerable people in their care.

At first glance, Local Government may not appear to be an environment where there is a high risk of children and vulnerable people being exposed to exploitation or abuse. However, Councils are increasingly engaged in activities in which employees, volunteers and elected members may work with or around children and vulnerable people. These activities include child care services, school holiday programs, and social and recreational programs. Through the provision of these services and programs, Council employees, volunteers and elected members may be in a position to recognise the signs of possible harm and report this suspicion to the relevant authority.

By demonstrating leadership and ensuring effective policies and procedures are in place, Councils must ensure they are confident that they are taking all steps necessary to provide a safe environment for children and other vulnerable people for whom they have a legislative or duty of care responsibility.

These Guidelines incorporate new legislative changes in the area of child protection, including the working with children checks that were introduced on 1 July 2019.

These Guidelines focus on the requirements of the:

- *Children and Young People (Safety) Act 2017 (SA)* (the Safety Act);
- *Children and Young People (Safety) Regulations 2017 (SA)* (the Safety Regulations);
- *Child Safety (Prohibited Persons) Act 2016 (SA)* (the Prohibited Persons Act); and
- *Child Safety (Prohibited Persons) Regulations 2019 (SA)* (the Prohibited Persons Regulations).

## 2. Children and Young People (Safety) Act 2017

The paramount consideration underpinning the *Children and Young People (Safety) Act 2017* (the Safety Act) is ensuring that children and young people are always protected from harm.

**Harm** is broadly defined, and includes physical and psychological harm (whether caused by an act or omission) and includes harm caused by sexual, physical, mental or emotional abuse or neglect.

Note: Importantly, psychological harm does not include emotional reactions such as distress, grief, fear or anger that are a response to the ordinary vicissitudes (or difficulties) of life.

The Safety Act sets out responsibilities for both government and non-government organisations including local government councils and subsidiaries, sporting clubs, churches and religious groups, and volunteer organisations.

More detailed information about child protection legislation and child safe environments and can be accessed via: <https://dhs.sa.gov.au/services/community-and-family-services/child-safe-environments>.

A range of information sheets can also be accessed via this website, and reference has been made to relevant information sheets throughout this document.

## 2.1 Child Safe Environment Policy and Procedures

Section 114(1) of the Safety Act requires Councils and local government bodies to prepare or adopt policies and procedures that ensure:

- mandatory reporting obligations (as set out in Chapter 5, Part 1 of the Safety Act) are complied with; and
- safe environments for children and young people are established and maintained in respect of the services or activities provided or undertaken.

The policies and procedures must meet the minimum requirements of the National Principles for Child Safe Organisations.

**Note:** These requirements were in place under the previous child protection legislation for Councils and local government bodies that provided services wholly or partly for children and therefore, organisations should already have child safe environment policies and procedures in place (that will likely require an update).

Councils and local government bodies must:

- review such policies and procedures at least once in every 5-year period; and
- provide a copy of the current policies and procedures to a person to whom it provides such services upon request.

A penalty of up to \$10,000 may apply for non-compliance.

## 2.2 Lodging a Child Safe Environments Compliance Statement

As soon as is reasonably practicable after preparing or adopting, or varying or substituting, the policies and procedures, Councils and local government bodies must lodge a child safe compliance statement.

The compliance statement must:

- certify that the organisation has child safe environments policies and procedures in place; and
- set out any information required by the Safety Regulations.

Statements can be lodged online at:

<https://dhs.sa.gov.au/services/community-and-family-services/child-safe-environments/lodging-a-child-safe-environments-compliance-statement>

A penalty of up to \$10,000 may apply for non-compliance.

**Note:** These requirements were in place under the previous child protection legislation. If Council or local government body has previously complied with the provisions under section 8C(3) of the now repealed *Children's Protection Act 1993* (SA), then it will be taken to have complied with the current compliance statement requirements of s114(3) of the Safety Act. However, given the recent legislative changes, all Councils and local government bodies are strongly encouraged to review their policies and procedures to ensure ongoing compliance.

## 2.3 Mandatory Reporting

A mandated notifier must report to the Department for Child Protection if they suspect on reasonable grounds that a child or young person is, or may be, at risk and that suspicion arose in the course of the person's employment.

A mandated notifier must make a notification as soon as reasonably practicable after forming the suspicion.

Harm includes physical and psychological harm (whether caused by an act or omission) and includes harm caused by sexual, physical, mental or emotional abuse or neglect.

**Note:** A reminder that psychological harm does not include emotional reactions such as distress, grief, fear or anger that are a response to the ordinary difficulties of life.

A penalty of up to \$10,000 may apply for non-compliance.

*Who has mandatory reporting obligations?*

Mandatory reporting applies to a number of professions including health practitioners, police officers and teachers. Importantly for Councils and local government bodies, mandatory reporting also applies to:

- employees, volunteers, contractors and persons undertaking educational/vocational training at an organisation that provides health, welfare, education, sporting or recreational, childcare or residential services wholly or partly for children and young people, being a person who:
  - o provides such services directly to children and young people; or
  - o holds a management position in the organisation the duties of which include direct responsibility for, or direct supervision of, the provision of those services to children and young people.

Common examples of mandated notifiers in local government include (but are not limited to):

- Child care workers;
- Library staff providing children's library programs;
- Community bus drivers;
- Swimming pool attendants;
- Vaccination nurses;
- Persons involved in youth groups and/or associated activities/events; and
- Persons working in school holiday and education programs for children.

*When is a child or young person 'at risk'?*

A child or young person will be at risk if:

- they have suffered harm (being a harm of a kind against which a child or young person is ordinarily protected) or there is a likelihood that the child or young person will suffer harm;
- there is a likelihood they will be removed from South Australia for the purpose of:
  - o a medical procedure that would be unlawful if performed in South Australia (including female genital mutilation);
  - o taking part in a marriage ceremony that would be void or invalid if performed in South Australia; or
  - o taking part in an activity that would constitute a criminal offence under South Australian or Commonwealth law;
- the parents or guardians are unable or unwilling to care for the them, have abandoned them or who cannot be found after reasonable enquiry, or are dead;
- they are of compulsory school age but have been persistently absent from school without satisfactory explanation; or
- they are homeless or of no fixed address.

*Exceptions*

A mandated notifier does not need to report a suspicion if:

- they believe on reasonable grounds that another person has reported the matter;
- the suspicion was solely due to being informed of the circumstances that gave rise to the suspicion by a police officer or child protection officer acting in the course of their official duties; or

- if they believe on reasonable grounds that the Department for Child Protection is already aware of all of the information that forms the basis for the suspicion.

**Remember:** All people have a moral responsibility to ensure the safety of children. People who do not have a legal obligation to make notifications may make voluntary notifications. If you have a reasonable, genuine concern that a child is at risk, and that concern does not clearly fall within one of the above exceptions, you must consider reporting that concern.

#### 2.3.1 Methods of Reporting

Mandatory notifiers can make a notification by:

- making a telephone notification via Child Abuse Report Line (CARL) 13 14 78; or
- making an online notification via eCARL at:

<https://my.families.sa.gov.au/IDMProv/landing.html> However, all serious concerns must be reported via CARL 13 14 78.

Serious concerns include when it is suspected that a child or young person is in imminent or immediate danger of serious harm, serious injury, chronic neglect or when a child is in care of the Department for Child Protection and it is suspected they are at risk.

#### *Online reporting*

Online reporting by mandated notifiers requires a registration process. Registering to use the online reporting system for the first time will take longer, however subsequent notifications will be swift as details of the notifier are stored. In using the online reporting system, mandated notifiers need to note the following.

Due to the high number of notifications, response to online notifications is not immediate.

For this reason, the online reporting system will automatically screen some types of notifications out through questioning. At this point, mandated notifiers will be prompted to call CARL.

**Please Note:** The online reporting system is not equipped or appropriate for reports made on suspected sexual abuse or any notification that may require immediate intervention to ensure a child's safety. For example, online reporting to CARL is not appropriate for the following high-risk scenarios:

- The notification concerns a child or children currently in Families SA care;
- The child is in imminent danger or at a very high risk of harm;
- The child has serious injuries as a result of abuse and/or neglect;
- The report is about an infant (under 12 months) with any injury that you suspect is a result of abuse and/or neglect;
- A child who is abandoned or currently unsupervised and is at risk; or
- A plausible threat has been made to kill or seriously harm the child.

In these circumstances mandated notifiers must call the Child Abuse Report Line.

### 3. Child Safety (Prohibited Persons) Act 2016

#### 3.1 Working with Children Check

From 1 July 2019, the working with children check (**WWCC**) replaced all prior child related screening practices, including the child-related employment screening offered by the Department of Human Services or National Police Check previously carried out by employers.

The WWCC is issued by the Department of Human Services Screening Unit and is valid for a period of five years.

A person who is in a '**prescribed position**' must hold a valid working with children check (**WWCC**). There

is more information below about whether a particular individual is in 'prescribed position'. The requirement to hold a WWCC applies to persons over the age of 14.

#### *Transitional Arrangements*

A current and valid DHS/DCSI child-related check (as at 1 July 2019) will be recognised as a working with children check until it expires.

People with a National Police Certificate assessed by their Council or local government body must get a WWCC by 1 July 2020.

An incomplete child-related check application will be recognised as a working with children check on completion until it expires. If you applied for a child-related employment screening before 1 July 2019, and your application has not yet been finalised, the application will be treated as an application for a working with children check.

### 3.2 What is a 'prescribed position'?

A 'prescribed position' is a position in which a person works with children or a position in which it is reasonably foreseeable that the person will work with children, including people who:

- provide a service or **undertake an activity that is child-related** work in the course of their employment;
- carry on or **manage a business in which an employee works with children** (whether or not the person works with children); or
- are employed to **provide preschool, primary or secondary education** to a child (whether or not the person is a registered teacher).

Prescribed positions may be held by employees, volunteers, contractors, persons undertaking educational/vocational training or elected members.

#### *What is child-related work / work with children?*

Examples of child-related work that are directly relevant to local government include:

- childcare or child-minding services;
- aquatic programs provided to children
- library services provided to children;
- education services for children;
- transport services for children; or
- services consisting of care provided to a child overnight and involving sleeping arrangements (whether such care is provided on a short term or ongoing basis, and including such services provided in the course of an excursion of camp).

### 3.3 What exemptions apply?

In some cases, the Prohibited Persons Act exempts a person from the requirement to hold a WWCC.

The following list provides examples of exemptions relevant to Councils.

- A member of the South Australian Police or the Australian Federal Police.
- 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, but does not include child-related work that includes overnight excursions or stays or close contact with children with a disability. Note: The exemption ceases to apply once a person exceeds 7 days.
- A volunteer parent or guardian providing a service or activity that is child-related work where the children to whom the service or activity provided includes their own child and the service or activity does not consist of or include accommodation and residential services for a child (other than the person's own child) or close personal contact with a child other than the person's own child (i.e. assistance toileting).
- Persons who employ or supervise children in the workplace (i.e. a 17-year-old undertaking outdoor work traineeship).

- Persons who work with children in the workplace in the same capacity / role as the child (i.e. a colleague of a 17 year old outdoor worker).

**Note:** These exemptions are not mandatory and Councils should consider making it mandatory for all persons involved in child-related work to hold a WWCC, to ensure best practice.

Further information in relation to WWCCs for child safe environments is available at:  
<https://dhs.sa.gov.au/services/community-and-family-services/child-safe-environments/working-with-children-checks-for-child-safe-environments>.

The Child Protection SA “Mandatory Reporting Guide” is available at:  
<https://www.childprotection.sa.gov.au/reporting-child-abuse/mandated-notifiers-and-their-role>.

### 3.4 How does this apply to Councils?

Importantly, whether a particular person requires a WWCC must be considered on a case by case basis. It must be considered for all persons interacting with Council and its stakeholders, including employees, contractors, volunteers, and elected members.

### 3.5 Obligations of Local Government Employers

A Council or local government body must not engage a person (including an employee, volunteer, contractor, person undertaking educational/vocational training) in a prescribed position unless the Council has:

- obtained from the person their full name, address, date of birth and unique identifier; and
- verified in accordance with the Prohibited Persons Regulations that:
  - o a WWCC has been conducted within the preceding 5 years; and
  - o the person is not a ‘prohibited person’ from working with children; and
- provided to the DHS screening unit:
  - o the name, address, telephone number and email address of the business at which the person is to be engaged and the name; and
  - o the name and contact details of the person who verified the information referred to above.

A Council who engages a person in a prescribed position must, at least once in every 5-year period, verify in accordance with the regulations that the WWCC has been conducted in the preceding five years and the person is not a prohibited person.

A Council must not employ or continue to employ, a ‘prohibited person’ in a prescribed position.

Prohibited persons include people who have been convicted of ‘prescribed offences’ where the victim is a child such as murder, manslaughter, kidnapping, incest or rape.

Failure to comply with any of the above obligations is an offence and attracts significant penalties. An employer must advise the DHS screening unit of certain information including:

- if they become aware of any ‘assessable information’ in relation to the person;
- if they become aware that the person is prohibited from working with children under a law of the Commonwealth, or of another State or Territory;
- if they become aware that the person is, or becomes, a registrable offender under the *Child Sex Offenders Registration Act 2006* (SA); or
- the person makes a disclosure to the employer under section 66 of the *Child Sex Offenders Registration Act 2006* (SA).

*What is 'assessable information'?*

Information that:

- relates to offences of which the person has been found guilty;
- relates to offences with which the person has been charged;
- relates to disciplinary proceedings in which the person was a defendant or respondent;
- relates to disciplinary action taken against the person;
- relates to findings of misconduct made against the person;
- relates to the cancellation of an approval of a foster parent under the *Family and Community Services Act 1972* (SA);
- relates to the cancellation of an approval of an approved carer under the Safety Act;
- relates to a notification made pursuant to Part 4 Division 1 of the *Children's Protection Act 1993* (SA);
- relates to a notification made pursuant to Chapter 5 Part 1 of the Safety Act;
- information (whether or not obtained under the *Children's Protection Act 1993* or the Safety Act 2017) held by an administrative unit of the Public Service that is responsible for assisting a Minister in the administration of the Safety Act 2017 and that relates to harm caused, or a risk of harm, to a child;
- information provided by the person for the purposes of a working with children check;
- information provided to DHS under section 36 or 37 of the Prohibited Persons Act;
- relates to a restraining order under the *Criminal Procedure Act 1921* (SA) issued against the person;
- relates to an intervention order, associated order or interim intervention order under the *Intervention Orders (Prevention of Abuse) Act 2009* (SA) issued against the person; or
- any other information declared by the Registrar, in accordance with any requirements set out in the guidelines, to be assessable information.

The above information is assessable regardless of:

- whether the relevant conviction, offence or conduct occurred before or after the commencement of this section;
- whether the relevant offence or conduct was committed or occurred in South Australia or elsewhere;
- the outcome of the charges;
- whether the information was obtained before or after the commencement of this section;
- whether or not an appeal has been lodged or finally determined in respect of the relevant matter; or
- the outcome of any proceedings, action or appeal to which the information relates.

**Document history:**

Version	Adopted	Description of Change
1.0	August 2022	New Guidelines