

# Submission

*Children and Young People (Safety) Regulations 2017*

24 July 2018



Government of  
South Australia



Child  
Development  
Council

Enquiries about or comments on this submission should be addressed to:

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24 July 2018

Hon Rachel Sanderson MP  
Minister for Child Protection  
GPO Box 1836  
Adelaide SA 5001

Dear Minister

On behalf of the Child Development Council, I write to thank you for allowing a period of consultation regarding the *Children and Young People (Safety) Regulations 2017* until 27 July 2018.

Please consider the attached feedback from the Council on the draft Regulations.

In addition, with reference to your ministerial functions pursuant to Part 5, Section 14 of the *Children and Young People (Safety) Act 2017* (Safety Act), the Council would ask that you consider how you might use those functions to establish and support the evidence base for future interventions. This is not a matter for the regulations. Rather, in determining how best to carry out your 'research-related' functions, that you might consider precedents such as Part 6, Section 97 of the New South Wales *Public Health Act 2010* that enables the creation of registers eg to support research.

I may be contacted through the Council Secretariat by telephone on (08) 8463 6429 or email: ChildrenSA@sa.gov.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Anne Glover', is written in a cursive style.

Dr Anne Glover AO  
Chair  
Child Development Council

Att Excerpts of Pt 5, S14, SA Safety Act; and Pt 6, S97, NSW Public Health Act  
cc Chief Executive, Department for Child Protection

## Attachment:

### Excerpt of Part 5, Section 14, *Children and Young People (Safety) Act 2017 (SA)*

#### Part 5—Additional functions of Minister

##### 14—Additional functions of Minister

- (1) In addition to any other functions the Minister may have under this Act, the Minister must, in order to promote the wellbeing of children and young people and early intervention where they may be at risk of harm—
  - (a) promote a partnership approach between the Government, local government, non-government agencies and families; and
  - (b) promote and assist in the development of co-ordinated strategies for early intervention in cases where children and young people may be at risk of harm; and
  - (c) promote, support and adequately resource evidence-based programs delivering preventative and support services directed towards strengthening and supporting families, reducing the incidence of child abuse and neglect and maximising the wellbeing of children and young people; and
  - (d) promote, encourage or undertake research into matters affecting children and young people; and
  - (e) generally do such other things as the Minister believes will promote the wellbeing of children and young people, and promote and support early intervention where they may be at risk of harm.
- (2) Without limiting a provision of any other Act or law, the Minister must, in relation to the operation of this Act—
  - (a) collaborate with and assist Aboriginal and Torres Strait Islander communities to develop and implement strategies to ensure that Aboriginal and Torres Strait Islander children and young people are, so far as is reasonably practicable, protected from harm; and
  - (b) ensure that education relating to the operation of section 31 is made available to persons who are required under that section to report a suspicion that a child or young person is, or may be, at risk; and
  - (c) promote and support the provision of courses of instruction relating to the prevention of child abuse and neglect by tertiary institutions in this State; and
  - (d) collect and publish statistical data in relation to the protection of children and young people in this State.
- (3) Without limiting a preceding subsection, the Minister must also ensure that—
  - (a) assistance is provided to evidence-based programs delivering services directed towards strengthening and supporting families and maximising the wellbeing of children and young people; and
  - (b) those services are offered to children and young people and their families; and
  - (c) genuine efforts are made to encourage children and young people and their families to avail themselves of the services.

### Excerpt of Part 6, Section 97, *Public Health Act 2010 No 127 (NSWA)*

#### 97 Registers that may be established

- (1) A public health or disease register may be established and maintained under this Part for any of the following purposes:
  - (a) to facilitate the care, treatment and the follow up of persons who have diseases or have been exposed to diseases,
  - (b) to facilitate the identification of sources of infection and the control of outbreaks of diseases,
  - (c) to facilitate the identification and monitoring of risk factors for diseases or conditions that have a substantial adverse impact on the population,
  - (d) to facilitate the measurement and monitoring of outcomes of specified population health interventions,
  - (e) to facilitate the identification and monitoring of exposure to chemicals or other environmental factors that impact, or may impact, adversely on the health of individuals,
  - (f) any other purpose prescribed by the regulations for the purpose of this section.
- (2) The Minister may, by order published in the Gazette, specify public health or disease registers, or classes of public health or disease registers, that may be established and maintained under this Part.
- (3) The order may specify the following:
  - (a) the information that a specified register may contain,
  - (b) the particular objects or purposes of a specified register.

## Children and Young People (Safety) Regulations 2017

### Feedback from the Child Development Council

Draft regulation(s)	Comment
6 Who may attend family group conferences	<ul style="list-style-type: none"> <li>The Council supports the provision for a person with specialist knowledge, experience or other skills or authority that would be of assistance to be invited.</li> </ul>
7 Procedures at family group conferences	<ul style="list-style-type: none"> <li>Reg 7(2) proposes that, where a person is unable to read or write or otherwise record their acceptance in writing, a co-ordinator <i>'may, if satisfied that the person understands the decision that they are accepting, record the person's acceptance in a manner determined by the co-ordinator'</i>.</li> <li>The Council proposes there should be additional safeguards or checks in place especially if the person is a child or young person.</li> <li>It might be useful to consider the additional safeguards and protections for children and young people contained in the <i>Mental Health Act 2009</i> (MHA) (see attached).</li> </ul>
8 Case plans	<ul style="list-style-type: none"> <li>The plan for the physical health of the child or young person in reg 8(1)(a) should include dental health.</li> <li>Reg 8 should provide for a child or young person's views, plans and/or hopes for the future to be included in the case plan.</li> </ul>
13 Assessments under section 36 of Act	<ul style="list-style-type: none"> <li>Reg 13 sets out what must be included in a 'notice' for the purposes of section 36(4) of the Safety Act but does not provide for an interpreter to be involved if a child or young person cannot communicate in English or understand the contents of a notice.</li> <li>Unless there are explicit provisions elsewhere requiring information in written documentation such as notices under section 36(4) to be conveyed to a person who cannot read or communicate well in English, the Council recommend that provision should be made for an interpreter to be involved to convey information.</li> </ul>
15 notice relating to rehabilitation program under section 38 of the Act	<ul style="list-style-type: none"> <li>As above, reg 15 sets out the information that must be included in a notice.</li> <li>Unless there are explicit provisions elsewhere requiring information in written documentation such as notices under section 36(4) to be conveyed to a person who cannot read or communicate well in English, the Council recommend that provision should be made for an interpreter to be involved to convey information.</li> </ul>
22 Information to be included in long-term care plans	<ul style="list-style-type: none"> <li>The Council supports all of the existing inclusions in this regulation.</li> <li>The Council recommends that reg 22 should provide for a child or young person's views, plans and/or hopes for the future to be included in the case plan.</li> </ul>
32 Record keeping – licensed children's residential facilities	<ul style="list-style-type: none"> <li>The Council recommends that reg 22 should specifically require restraint, seclusion and other restrictive practices to be recorded by residential facilities and to be reported annually to the Parliament.</li> </ul>

## Excerpts from the *Mental Health Act 2009*

In considering whether additional safeguards, protections or checks could be built into the Safety Regs, the Council recommends consideration be given to these protections and safeguards in the MHA 2009 for children and young people.

The protections and safeguards in the MHA 2009 extend up to the age of 18 and, at the same time, the MHA 2009 accommodates and upholds the right to consent to medical treatment from 16 years.

Some of the protections and safeguards in the Guiding Principles include:

### 7—Guiding principles

- (1) The Minister, the Tribunal, the Chief Psychiatrist, health professionals and other persons and bodies involved in the administration of this Act are to be guided by the following principles in the performance of their functions:
  - (c) mental health services should be governed by comprehensive treatment and care plans that are developed in a multi-disciplinary framework in consultation with the patients (including children) and their family or other carers or supporters;
  - (ca) mental health services should take into account—
    - (i) the different developmental stages of infants, children, young persons, adults and older persons; and
    - (ii) the gender or gender identity, or the sexuality or sexual identity or orientation, of persons; and
    - (iii) the particular needs of persons with disability; and
    - (iv) in the case of persons of Aboriginal or Torres Strait Islander descent—the persons' traditional beliefs and practices and, when practicable and appropriate, involve collaboration with health workers and traditional healers from their communities; and
    - (v) the cultural and linguistic backgrounds of persons; and
    - (vi) the background, circumstances and particular needs of persons who have experienced torture or trauma;
  - (d) there should be regular medical examination of every patient's mental and physical health and regular medical review of any order applying to the patient;
  - (e) children and young persons should be cared for and treated separately from other patients as necessary to enable the care and treatment to be tailored to their different developmental stages;
  - (f) the rights, welfare and safety of the children and other dependants of patients should always be considered and protected as far as possible;

Other protections and safeguards in the MHA 2009 include shorter orders and more frequent review of orders than for adults. Orders must expire in the day time (not midnight).

There's provision for support to be provided by a person nominated by the 'patient' in all interactions along the continuum (unless there's a valid reason not to eg it might not be appropriate to have a support person present during a medical examination).

The MHA 2009 also provides the Minister with a responsibility 'to develop or promote ongoing programmes for optimising the mental health of children and young persons who are or have been under the guardianship or in the custody of the Minister pursuant to the *Children's Protection Act 1993*'.

## Division 2—Level 2 community treatment orders

### 16—Level 2 community treatment orders

- (5) A level 2 community treatment order, unless earlier revoked, expires at a time fixed in the order which must be—
- in the case of an order relating to a child—2 pm on a business day not later than 6 calendar months after the day on which it is made; or
  - in any other case—2 pm on a business day not later than 12 calendar months after the day on which it is made.

### 47—Patients' right to be supported by guardian etc

- (1) A patient is entitled to have another person's support, wherever practicable, in—
- the exercise of a right under this Act; or
  - any communications between the patient and a medical practitioner examining or treating the patient or between the patient and the director or staff of a treatment centre in which the patient is an inpatient.
- (2) The support may be provided by—
- if the patient is a child—a parent or guardian of the patient; or
  - a guardian, medical agent, relative, carer or friend of the patient who has been nominated by the patient for the purpose or who has or is assuming responsibility for the care of the patient; or
  - a person who provides advocacy services whether on a professional or voluntary basis; or
  - a community visitor.

### 79—Reviews of treatment orders and other matters

- (1) The Tribunal must conduct the following reviews:
- a review of a level 2 community treatment order that has been made in respect of a child and continues to apply to the person 3 months after the making of the order (which review must be conducted as soon as practicable after the end of the period of 3 months);
  - a review of a level 3 inpatient treatment order that has been made in respect of a child and continues to apply to the person 3 months after the making of the order (which review must be conducted as soon as practicable after the end of the period of 3 months);

### 86—Minister's functions

The Minister has the following functions for the purposes of this Act:

- to develop or promote ongoing programmes for optimising the mental health of children and young persons who are or have been under the guardianship or in the custody of the Minister pursuant to the *Children's Protection Act 1993*;
- to develop or promote programmes to reduce the adverse impact of mental illness on family and community life;