

South Australia

Disability (Mandatory Reporting) Bill 2012

A BILL FOR

An Act to provide for the protection of persons with a disability; and for other purposes.

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The Parliament of South Australia enacts as follows:

1—Short title

This Act may be cited as the *Disability (Mandatory Reporting) Act 2012*.

2—Commencement

This Act will come into operation 6 months after assent.

3—Interpretation

(1) In this Act, unless the contrary intention appears—

abuse or neglect, in relation to a person, means physical or emotional abuse of the person, or neglect of the person, to the extent that the person has suffered, or is likely to suffer, physical or psychological injury detrimental to the person's wellbeing and includes a reasonable likelihood of the person being killed, injured, abused, neglected or sexually abused by another person;

dentist means a person registered under the *Health Practitioner Regulation National Law*—

(a) to practise in the dental profession as a dentist (other than as a student); and

(b) in the dentists division of that profession;

detainee means a person who—

(a) is detained in a training centre within the meaning of the *Young Offenders Act 1993*; or

(b) is detained as a result of being declared liable to supervision under Part 8A of the *Criminal Law Consolidation Act 1935*;

developmental educator means a person who holds the degree of Bachelor of Disability and Community Rehabilitation conferred by the Flinders University of South Australia or who has completed a course of education or training approved by the Minister for the purposes of this definition;

disability means any of the following:

(a) a disability within the meaning of the *Disability Services Act 1993*;

(b) a chronic illness, including a mental illness within the meaning of the *Mental Health Act 2009*;

(c) a condition prescribed by regulation;

government custody means custody as a prisoner or detainee;

government organisation means a government department, agency or instrumentality;

medical practitioner means a person registered under the *Health Practitioner Regulation National Law* to practise in the medical profession (other than as a student);

non-government organisation means—

(a) a business; or

(b) a service provider; or

(c) a group organised for some purpose, work or undertaking (such as a society, club, institution or body),

whether incorporated or unincorporated, and includes a local government organisation;

notifier means a person who makes a notification under section 5(1);

occupational therapist means a person who is registered as an occupational therapist under the *Health Practitioner Regulation National Law*;

person to whom this Act applies—see section 4;

pharmacist means a person registered under the *Health Practitioner Regulation National Law* in the pharmacy profession (other than as a student);

physiotherapist means a person who is registered as a physiotherapist under the *Health Practitioner Regulation National Law*;

prisoner has the same meaning as in the *Correctional Services Act 1982*;

psychologist means a person who is registered as a psychologist under the *Health Practitioner Regulation National Law*;

Public Advocate means the person holding or acting in the office of Public Advocate under the *Guardianship and Administration Act 1993*, and includes any person acting on behalf of the Public Advocate in accordance with that Act.

(2) For the purposes of this Act, an organisation may consist of a single person.

4—Person to whom this Act applies

This Act applies to a person who has a disability and—

(a) is, or is likely to be, unable to communicate to another person a complaint about abuse or neglect; or

(b) is, or is likely to be, unable to understand the nature of abuse or neglect in order to make a complaint about it; or

(c) is a protected person within the meaning of the *Aged and Infirm Persons' Property Act 1940* or the *Guardianship and Administration Act 1993*; or

- (d) resides at premises where an accommodation service funded under the *Disability Services Act 1993* is provided; or
- (e) resides at a supported residential facility within the meaning of the *Supported Residential Facilities Act 1992*; or
- 5 (f) is a patient in a treatment centre, or limited treatment centre, that is approved under Part 12 Division 5 of the *Mental Health Act 2009*; or
- (g) is in government custody; or
- (h) is a person of a class prescribed by regulation.

5—Notification of abuse or neglect

10 (1) If—

- (a) a prescribed person suspects on reasonable grounds that a person to whom this Act applies has been, or is being, abused or neglected; and
- (b) the suspicion is formed in the course of the person's work (whether paid or voluntary) or of carrying out official duties,

15 the person must notify the Public Advocate of that suspicion as soon as practicable after he or she forms the suspicion.

Maximum penalty: \$10 000.

- (2) A notification under this section must be accompanied by a statement of the observations, information and opinions on which the suspicion is based.

- 20 (3) It is a defence to a charge of an offence against this section relating to the suspected abuse or neglect of a person for the defendant to prove that he or she—

- (a) made a notification under section 11 of the *Children's Protection Act 1993* in relation to that suspected abuse or neglect; or
- 25 (b) if the suspected abuse or neglect constitutes a reportable assault within the meaning of the *Aged Care Act 1997* of the Commonwealth—made a report under section 63-1AA of that Act.

- (4) A person does not necessarily exhaust his or her duty of care to a person by giving a notification under this section.

- 30 (5) A person must not threaten or intimidate, or cause damage, loss or disadvantage to, a prescribed person because the person has discharged, or proposes to discharge, his or her duty under subsection (1).

Maximum penalty: \$10 000.

- (6) In this section—

prescribed person means any of the following persons:

- 35 (a) a medical practitioner;
- (b) a pharmacist;
- (c) a registered or enrolled nurse;
- (d) a dentist;
- (e) a psychologist;

- (f) a developmental educator;
- (g) a physiotherapist;
- (h) an occupational therapist;
- (i) a police officer;
- 5 (j) a social worker;
- (k) a minister of religion;
- (l) a person who is an employee of, or volunteer in, an organisation formed for religious or spiritual purposes;
- 10 (m) a person who is an employee of, or volunteer in, a government or non-government organisation that provides a prescribed service (whether or not the organisation also provides any other service), being a person who—
 - (i) is engaged in the actual delivery of the prescribed service; or
 - (ii) holds a management position in the relevant organisation the duties of which include direct responsibility for, or direct supervision of,
 - 15 the provision of the prescribed service;
- (n) a person of a class prescribed by regulation;

prescribed service means a service that is provided wholly or primarily for persons with disabilities or their carers and consists of 1 or more of the following:

- (a) residential services;
- 20 (b) health services;
- (c) sport or recreation services;
- (d) home care and family support services;
- (e) information services;
- (f) education or training services;
- 25 (g) advocacy services;
- (h) transport services;
- (i) government custody services;
- (j) services prescribed by regulation.

6—Protection from liability for voluntary or mandatory notification

30 A person who (whether voluntarily or pursuant to a requirement of this Act) notifies the Public Advocate of a suspicion that a person has been or is being abused or neglected, or provides any information to the Public Advocate in respect of such a notification—

- 35 (a) cannot, by virtue of doing so, be held to have breached any code of professional etiquette or ethics, or to have departed from any accepted form of professional conduct; and
- (b) insofar as he or she has acted in good faith, incurs no civil or criminal liability in respect of the notification or the provision of the information.

7—Confidentiality of notification of abuse or neglect

- (1) Subject to this section, a person who receives a notification under this Act, or who otherwise becomes aware of the identity of a notifier, must not disclose the identity of the notifier to any other person unless the disclosure—

- (a) is made in the course of official duties to another person acting in the course of official duties; or
- (b) is made in accordance with section 10(2); or
- (c) is made with the consent of the notifier; or
- (d) is made by way of evidence adduced in accordance with subsections (2) and (3).

Maximum penalty: \$10 000.

- (2) Subject to subsection (3)—

- (a) no evidence as to the identity of a notifier, or from which the identity of the notifier could be deduced, may be adduced in proceedings before a court without the permission of the court; and
- (b) unless such permission is granted, a party or witness in those proceedings must not be asked, and, if asked, cannot be required to answer, any question that cannot be answered without disclosing the identity of, or leading to the identification of, the notifier.

- (3) A court cannot grant permission under subsection (2) unless—

- (a) the court is satisfied that the evidence is of critical importance in the proceedings and that failure to admit it would prejudice the proper administration of justice; or
- (b) the notifier consents to the admission of the evidence in the proceedings.

- (4) An application for permission to adduce evidence under subsection (2)—

- (a) must not, except as authorised by the court, be heard and determined in public; and
- (b) must be conducted in such a manner as to protect, so far as may be practicable, the identity of the notifier pending the determination of the application.

8—Referral to appropriate authority

The Public Advocate must ensure that a report of each notification under section 5 is made and referred to an appropriate authority of the State for further investigation and action.

9—Investigation by appropriate authority

- (1) An authority that receives a report under section 8 must investigate the matters raised in the report and take appropriate action to deal with such matters.
- (2) An authority must carry out duties under this section expeditiously, with due regard to the degree of urgency in the particular case.

10—Annual review and report

- 5 (1) The Minister must, before 1 July in each year (other than the calendar year in which this section comes into operation), appoint a retired judicial officer to conduct a review in relation to all notifications made under this Act during the preceding period of 12 months to determine whether—
- (a) appropriate reports and referrals have been made in relation to each notification in accordance with section 8; and
 - (b) appropriate investigative and other action has been taken by authorities in accordance with section 9.
- 10 (2) The Minister, Public Advocate and any authority that receives a report under section 8 must ensure that a person appointed to conduct a review is provided with such information as he or she may require for the purpose of conducting the review.
- (3) A report on a review must be presented to the Minister on or before 30 September in each year.
- 15 (4) The Minister must, within 12 sitting days after receipt of a report under this section, cause copies of the report to be laid before each House of Parliament.
- (5) In this section—
- 20 *judicial officer* means a person appointed as a judge of the Supreme Court or the District Court or a person appointed as judge of another State or Territory or of the Commonwealth.

11—Regulations

The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.