

## Child Protection Systems – The Nyland Report – What it Means for Non-Government Entities

The Honourable Margaret Nyland AM delivered her report as Royal Commissioner inquiring into the adequacy of existing laws in South Australia on “Child Protection Systems” in August 2016.

While the general focus of Commissioner Nyland’s inquiry arose out of and was directed towards the workings of the Child Protection System as it relates to the Government’s (and its agencies’) roles and responsibilities, a number of the Commissioner’s findings and recommendations will impact on each and every organisation and individual that has a role in and interacts with children in this State.

The Commissioner in her introduction to the report notes that:

*“The Child Protection System in South Australia involves numerous Government and non-Government agencies who should work together to improve the State’s capacity to protect children.”*

Below are two areas where the Commissioner’s recommendations will impact not only the Government sections but all non-Government entities that interact with children.

### Screening for Risk

One significant area of proposed reform that will have broad ramifications is in the area of “Screening for Risk.” The Commissioner states:

*“Screening adults who come into contact with children through paid or voluntary employment is a strategy by which children’s environments can be kept safe. However it is not the only strategy required. Caution must always be exercised to ensure that people are not lulled into a false set of security by the fact that a person holds a screening clearance.”*

Historically, there have been a number of complaints relating to the dysfunctional and inconsistent nature of the screening process. The Commissioner notes that SA and the NT are the only two jurisdictions that do not have specific standalone legislation on this topic. The Commissioner has recommended that this change with dedicated legislation to be enacted. The Commissioner’s

recommendation in this regard includes recommendations that such a legislative framework (recommendation 238):

- (a) *“declares that the paramount consideration in screening assessment must be the best interest of children, having regard to their safety and protection;*
- (b) *invests powers in only one authorised government screening unit which is charged with maintaining a public register of all clearances and their expiration dates;*
- (c) *empowers the screening authority to take into account in its assessments criminal offence and child protection history, professional misconduct or disciplinary proceedings, and deregistration as a foster parent or other type of carer under the Family and Community Services Act 1972;*
- (d) *provides a clear definition of child-related work, including the meaning of incidental or usual contact;*
- (e) *declares that the outcome of a screening assessment will be limited to either a clearance or a refusal and that all applications, even if withdrawn, will be assessed;*
- (f) *requires individuals to seek and maintain a personal clearance, valid for a period of up to five years, through a card or unique electronic identifier system, which has portability across roles and organisations in the state; and to notify the screening authority of relevant changes in their offence, conduct or child protection circumstances;*
- (g) *requires employers to ensure that all relevant personnel in their organisations, at all times, hold current clearances;*
- (h) *precludes exemptions from screening requirements for:*
  - i. *registered teachers*

- ii. *applicants waiting on screening outcomes decisions*
  - iii. *those working or volunteering with children who are in care*
  - iv. *those who have been refused a WWCC;*
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- (i) *details offences for individuals and organisations who fail to comply with the provisions of the legislation, including engagement in or for child-related work without a clearance, and dishonesty in the application process; and*
  - (j) *permits appeals from decisions of the screening authority to the South Australian Civil and Administrative Tribunal or other independent body."*

The Commissioner goes on to recommend further changes to the screening process to ensure that changes in a screened person's history are brought to account and that ongoing evaluation of a person's suitability are identified and communicated to appropriate parties.

It must be remembered as the Commissioner says:

*"...that a screening process is only one part of a whole system to ensure that suitable workers work with vulnerable children and poor or high risk workers do not. Screening can never be a substitute for proper vigilance by individuals and society."*

## **Mandatory Reporting**

Mandatory reporting is already obligatory in certain circumstances in this State. Section 8C of the *Childrens Protection Act* requires organisations to have in place policies and procedures dealing with mandatory notifications. Historically Families SA has recommended that mandatory notifiers undergo training but there is no legal obligation to do so. The Commissioner has recommended a mandatory notification training regime and in particular, recommends as follows (recommendation 44):

*"Make mandatory notification training compulsory for:*

- (a) *registered teachers;*
- (b) *general medical practitioners;*
- (c) *police officers; and*
- (d) *other mandated notifiers who are employees of, or volunteer in, a government or non-government organisation that provides health, welfare, education, sporting or recreational, childcare or residential services wholly or partly for children, where the notifier either (a) is engaged in the actual delivery of those services to children or (b) holds a management position in the relevant organisation, the duties of which include direct responsibility for, or direct supervision of, the provision of those services to children."*

The categories of people captured by sub-paragraph (d) is extremely broad and seeks to capture almost every organisation or body that in some way interacts with children including a large number of volunteers who participate in community based activities.

## **Further Recommendations**

Multiple recommendations are made in relation to the structure and organisation of the relevant Government departments and agencies. Recommendations are also made in relation to children with diverse needs, such as Aboriginal and Torres Strait Island children, children in regional areas and children with disabilities. In total 260 recommendations are made. These can be viewed on the Commission's website:

[www.childprotectionroyalcommission.sa.gov.au](http://www.childprotectionroyalcommission.sa.gov.au)

The State Government has set up a steering committee to review and implement the Commissioner's recommendations. The drafting of some legislation has already commenced which will incorporate a new child protection Act.

While changes of the magnitude recommended by the Commissioner will not occur overnight starting the process now will ensure that you are able to adequately prepare and inform both yourself, your organisation and its staff in addition to other parties with whom you engage as to what your expectations are now and what they will be moving forward.

The starting point may be to audit your current compliance against existing requirements and then develop a flow chart to establish action required as against timelines. Being proactive will prevent an adverse outcome.

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