

South Australia

COVID-19 Emergency Response (Schedule 1) Regulations 2020

under the *COVID-19 Emergency Response Act 2020*

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1—Short title

These regulations may be cited as the *COVID-19 Emergency Response (Schedule 1) Regulations 2020*.

2—Commencement

These regulations come into operation on the day on which they are made.

3—Interpretation

In these regulations, unless the contrary intention appears—

Act means the *COVID-19 Emergency Response Act 2020*;

prescribed person, in respect of premises at which a protected person usually resides or is to be detained, has the same meaning as in Schedule 1 clause 11 of the Act.

4—Protected persons

- (1) For the purposes of paragraph (c) of the definition of *protected person* in Schedule 1 clause 1 of the Act, supported accommodation of the following kinds is prescribed:
 - (a) residential aged care facilities (being a facility to which the *Supported Residential Facilities Act 1992* does not apply);
 - (b) specialist disability accommodation under the *National Disability Insurance Scheme Act 2013* of the Commonwealth;

- (c) supported accommodation provided as part of mental health inpatient rehabilitation services (however described);
 - (d) any other supported accommodation (including community housing) in which—
 - (i) personal care services are provided to a mentally incapacitated person (whether or not such services are also provided to other persons); and
 - (ii) the premises at which the protected person resides (and the protected person while at the premises) are supervised 24 hours a day by a person or persons (not being a protected person) present at the premises;
 - (e) any other supported accommodation declared by the Minister by notice in the Gazette for the purposes of this paragraph.
- (2) In this regulation—
- personal care services*** means—
- (a) personal care services within the meaning of the *Supported Residential Facilities Act 1992*; and
 - (b) such other services as may be declared by the Minister by notice in the Gazette to be included in the ambit of this paragraph.

5—Functions of Authorising Officer

For the purposes of Schedule 1 clause 5(5)(b) of the Act, the following functions are prescribed:

- (a) to give advice and assist, where appropriate, in the development or modification of treatment and other plans of protected persons (insofar as they may be affected by the COVID-19 pandemic);
- (b) to assist, at the request of the Tribunal and where appropriate, the Tribunal in relation to the performance of the Tribunal's functions under that Schedule;
- (c) to seek information necessary to enable the Authorising Officer to carry out their functions under the Act.

6—Prescribed persons

For the purposes of paragraph (b) of the definition of ***prescribed person*** in Schedule 1 clause 11(5) of the Act, a person who is, from time to time—

- (a) physically present at the relevant premises; and
- (b) in charge of the operation of the relevant premises while so present,

is prescribed.

7—Applications for authorisation

An application under Schedule 1 clause 12(2) of the Act may only be made by a prescribed person in relation to the premises at which the protected person the subject of the application usually resides.

8—Review of decisions by Tribunal

- (1) For the purposes of Schedule 1 clause 17(1)(c) of the Act, the following decisions are prescribed:
 - (a) a decision of the Authorising Officer under clause 11(1) of that Schedule authorising the detention of a protected person;
 - (b) a decision of the Authorising Officer under clause 15 of that Schedule ordering the period for which a protected person is detained to cease.
- (2) For the purposes of Schedule 1 clause 17(3) of the Act, the following persons are prescribed:
 - (a) in the case of a reviewable decision consisting of a decision of the Authorising Officer under clause 11(1) or 12 of that Schedule—a prescribed person in respect of the premises at which a protected person is to be detained pursuant to the authorisation;
 - (b) in the case of a reviewable decision consisting of a decision of the Authorising Officer under clause 15 of that Schedule ordering the period for which a protected person is detained to cease—a prescribed person in respect of the premises at which the protected person is detained;
 - (c) in any case—
 - (i) the protected person; or
 - (ii) except where the reviewable decision consists of a decision of a guardian to grant approval to detain a protected person—a guardian of the protected person; or
 - (iii) if the protected person is incapable of making an application under that clause—a person who, in the opinion of the Tribunal, has a sufficient interest in the matter and is acting on behalf of the protected person.

9—Authorising Officer may require information

- (1) The Authorising Officer may, in relation to the performance of a function under Schedule 1 of the Act, by notice in writing, require a specified person or body (whether an administrative unit, an agency or instrumentality of the Crown, an officer or employee of such a body or otherwise) to provide to the Authorising Officer such information or documents, or to answer such questions, as may be specified in the notice.
- (2) A person or body of whom a requirement is made under this regulation must provide the specified information, documents or answers in the manner and form, and within the period, specified in the notice.
- (3) A person or body who, without reasonable excuse, refuses or fails to comply with a requirement under subregulation (1) is guilty of an offence.
Maximum penalty: \$5 000.

10—Community visitors

- (1) There is to be a Principal Community Visitor.

- (2) There is to be such number of community visitors as the Minister considers necessary for the proper performance of the community visitors' functions under these regulations.
- (3) A person will be appointed to the position of Principal Community Visitor, or to a position of community visitor, on terms and conditions determined by the Minister.
- (4) The Minister may remove a person from the position of Principal Community Visitor or community visitor for any reason the Minister thinks fit.
- (5) The position of Principal Community Visitor, or a position of community visitor, becomes vacant if the person appointed to the position—
 - (a) dies; or
 - (b) resigns by written notice given to the Minister; or
 - (c) completes a term of appointment and is not reappointed; or
 - (d) is removed from the position by the Minister under subregulation (4); or
 - (e) becomes bankrupt or applies as a debtor to take the benefit of the laws relating to bankruptcy; or
 - (f) is convicted of an indictable offence or sentenced to imprisonment for an offence; or
 - (g) becomes a member of the Parliament of this State or any other State of the Commonwealth or of the Commonwealth or becomes a member of a Legislative Assembly of a Territory of the Commonwealth; or
 - (h) becomes, in the opinion of the Minister, mentally or physically incapable of performing satisfactorily the functions of the position.

11—Functions and powers of community visitors

- (1) Community visitors have the following functions:
 - (a) to conduct visits to and inspections of places at which protected persons are detained under Schedule 1 of the Act;
 - (b) to refer matters of concern relating to the operation of Schedule 1 of the Act and these regulations to the Minister or any other appropriate person or body;
 - (c) to act as advocates for protected persons to promote the proper resolution of issues relating to their detention under Schedule 1 of the Act, including issues raised by a guardian, relative, carer or friend of a protected person or any person who is providing support to the protected person;
 - (d) such other functions as may be assigned to community visitors by the Minister, or under the Act or any other Act.
- (2) The Principal Community Visitor has the following additional functions:
 - (a) to oversee and coordinate the performance of the community visitors' functions;
 - (b) to advise and assist other community visitors in the performance of their functions, including the reference of matters of concern to the Minister or any other appropriate person or body;

- (c) to report to the Minister, as directed by the Minister, about the performance of the community visitors' functions;
 - (d) any other functions assigned to the Principal Community Visitor by the Minister or under the Act or any other Act.
- (3) On a visit under these regulations, a community visitor may—
 - (a) so far as is reasonably practicable, inspect any part of premises at which protected persons are detained under Schedule 1 of the Act; and
 - (b) so far as is reasonably practicable, make any necessary inquiries about the care, treatment and control of protected persons detained under Schedule 1 of the Act; and
 - (c) take any other action required to exercise the functions of the community visitor under these regulations.
- (4) A person who, without reasonable excuse, hinders or obstructs a community visitor in the performance of their official duties is guilty of an offence.
Maximum penalty: \$5 000.
- (5) A visit under these regulations—
 - (a) may be made by a community visitor on the community visitor's own initiative or on request made under regulation 13; and
 - (b) may be made at any reasonable time of the day, and may be of such length, as the community visitor thinks appropriate.
- (6) A community visitor must—
 - (a) give a prescribed person in respect of premises at which a protected person is detained under Schedule 1 of the Act reasonable notice of an impending visit under these regulations; and
 - (b) take steps to ensure that the safe administration of the premises is not compromised by the visit;
 - (c) obey the reasonable directions of a prescribed person in relation to any genuine health, safety or security concerns the prescribed person may have in connection with the safe management of the premises.
- (7) Despite subregulation (6)(a), if a community visitor intends to conduct a visit to premises for reasons that the community visitor considers to be exceptional, the community visitor is not required to give notice of the impending visit to the prescribed person in respect of the premises.
- (8) If a prescribed person in respect of premises at which a protected person is detained under Schedule 1 of the Act refuses at any time to allow a community visitor to visit the premises because of any genuine concerns the prescribed person may have in connection with the safety of the community visitor (whether related to a security risk, a health related risk or some other reason), the prescribed person must, as soon as reasonably practicable, provide the Principal Community Visitor with written advice as to why entry to the premises was refused.
- (9) The Principal Community Visitor must, on or before 30 July 2020, forward a report to the Minister on the work of the community visitors during the preceding 3 months, and must provide such a report every 3 months thereafter.

- (10) The Minister must, within 6 sitting days after receiving a report under subregulation (9), have copies of the report laid before both Houses of Parliament.
- (11) A visit by a community visitor under these regulations must be conducted in a manner consistent with any direction or law relating to the COVID-19 pandemic (including, to avoid doubt, requirements that such visits take place by audio-visual means).

12—Delegation

- (1) The Principal Community Visitor may delegate functions or powers under these regulations—
 - (a) to the person for the time being holding or acting in a particular office or position; or
 - (b) to any other specified person or body.
- (2) A delegation under this clause—
 - (a) must be by instrument in writing; and
 - (b) may be absolute or conditional; and
 - (c) does not derogate from the power of the Principal Community Visitor to act in any matter; and
 - (d) is revocable at will by the Principal Community Visitor.

13—Requests to see community visitors

- (1) A protected person detained under Schedule 1 of the Act, or a guardian, relative, carer or friend of such a protected person or any person who is providing support to such a protected person, may make a request to see a community visitor.
- (2) If a request referred to in subregulation (1) is made to a prescribed person in relation to the premises at which a protected person usually resides, the prescribed person must advise a community visitor of the request within 48 hours after receipt of the request.

Note—

As required by section 10AA(2) of the *Subordinate Legislation Act 1978*, the Minister has certified that, in the Minister's opinion, it is necessary or appropriate that these regulations come into operation as set out in these regulations.

Made by the Governor

with the advice and consent of the Executive Council
on 14 April 2020

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