

South Australia

# COVID-19 Emergency Response Act 2020

An Act to make various temporary modifications of the law of the State in response to the COVID-19 pandemic, to make related amendments to the *Emergency Management Act 2004*, the *Payroll Tax Act 2009* and the *South Australian Public Health Act 2011* and for other purposes.

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## Contents

### Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Interpretation
- 4 Application of Act
- 5 Interaction with other Acts
- 6 Expiry of Act

### Part 2—General modifications

- 7 Provisions applying to commercial leases
- 8 Provisions applying to residential tenancies
- 9 Provisions applying to residential parks
- 10 Provisions applying to supported residential facilities
- 11 Provisions applying in relation to certain water and sewerage charges for sporting clubs
- 12 Treasurer's instructions relating to financial and audit requirements
- 13 Audits by Auditor-General
- 14 Extension of time limits, terms of appointment etc
- 15 Modification of requirements relating to laying of reports before Parliament
- 16 Requirements relating to documents
- 17 Meetings in person etc may occur by audiovisual or other means
- 18 Service
- 19 Regulations
- 20 Transitional regulations on expiry of measure
- 21 Disallowance of regulations made under Act
- 22 Immunity from liability etc
- 23 Further provisions in Schedules

### Schedule 1—Special provisions relating to detention of certain protected persons during COVID-19 pandemic

- 1 Interpretation
- 2 Detention under Schedule
- 3 Interaction with other treatment requirements etc
- 4 Guidelines
- 5 Appointment of Authorising Officer

- 6 Authorising Officer may give directions
- 7 Delegation
- 8 Authorised officers
- 9 Powers of authorised officers to detain protected person etc
- 10 Additional powers of guardians during COVID-19 pandemic
- 11 Certain persons at prescribed premises may detain protected persons during COVID-19 pandemic
- 12 Detention of protected persons where no guardian
- 13 Duration of detention period
- 14 Extension of detention period and other orders by Tribunal
- 15 Periodic review of detention by Authorising Officer
- 16 Review by Authorising Officer on application of aggrieved person
- 17 Review of decisions by Tribunal
- 18 Tribunal may give advice, direction or approval
- 19 Offence to remove protected person from place of detention etc

## Schedule 2—Temporary modification of particular State laws

### Part 1—*Emergency Management Act 2004*

- 1 Modification of *Emergency Management Act 2004*

### Part 2—*Environment Protection Act 1993*

- 2 Modification of *Environment Protection Act 1993*

### Part 3—*Parliamentary Committees Act 1991*

- 3 Modification of *Parliamentary Committees Act 1991*

### Part 4—*Public Finance and Audit Act 1987*

- 4 Modification of *Public Finance and Audit Act 1987*

### Part 5—*South Australian Public Health Act 2011*

- 5 Modification of *South Australian Public Health Act 2011*

## Schedule 3—Related amendments

### Part 1—Related amendments to *Emergency Management Act 2004*

- 1 Amendment of section 32—Protection from liability
- 2 Insertion of section 32A
  - 32A COVID-19—Crown immunity

### Part 2—Related amendments to *Payroll Tax Act 2009*

- 3 Amendment of Schedule 2—South Australia specific provisions
  - 17A JobKeeper Payment

### Part 3—Amendment of *South Australian Public Health Act 2011*

- 4 Insertion of section 103A
  - 103A COVID-19—Crown immunity

## Legislative history

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**The Parliament of South Australia enacts as follows:**

## **Part 1—Preliminary**

### **1—Short title**

This Act may be cited as the *COVID-19 Emergency Response Act 2020*.

### **2—Commencement**

- (1) Subject to this section, this Act comes into operation on the day on which it is assented to by the Governor.
- (2) Sections 7 to 9 (inclusive) will be taken to have come into operation on 30 March 2020.

### **3—Interpretation**

In this Act, unless the contrary intention appears—

*instrument* includes any document that affects legal rights or obligations;

*relevant declaration* means a declaration under Part 4 Division 3 of the *Emergency Management Act 2004*.

### **4—Application of Act**

It is the intention of the Parliament that this Act apply within the State and outside the State to the full extent of the extraterritorial legislative capacity of the Parliament.

### **5—Interaction with other Acts**

Except as is provided in this Act, this Act is in addition to and does not limit, or derogate from, the provisions of any other Act or law.

### **6—Expiry of Act**

- (1) The Minister—
  - (a) may, by notice in the Gazette, fix a day, or days, on which particular provisions of—
    - (i) Part 2; or
    - (ii) Schedule 1; or
    - (iii) Schedule 2,will expire; and
  - (b) must, by notice in the Gazette, fix a day on which—
    - (i) all provisions of Part 2 (other than section 20); and
    - (ii) all provisions of Schedule 1; and
    - (iii) all provisions of Schedule 2,will expire (if they have not previously expired in accordance with paragraph (a)); and
  - (c) may, by notice in the Gazette, fix a day on which this Act will finally expire.

- (2) The day fixed by the Minister for the purposes of subsection (1)(b) must be—
- (a) the day on which all relevant declarations relating to the outbreak of the human disease named COVID-19 within South Australia have ceased (provided that the Minister is satisfied that there is no present intention to make a further such declaration); or
  - (b) the day falling 6 months after the commencement of this section,
- whichever is the earlier.
- (3) For the avoidance of doubt (and without derogating from section 16 of the *Acts Interpretation Act 1915*), the expiry of a provision of this Act under this section does not affect the validity or operation of anything done in accordance with the provision before that expiry.

**Note—**

This means, for example, that a contract executed in accordance with any modified requirements under section 16 would remain validly executed even after the expiry of that section.

## Part 2—General modifications

### 7—Provisions applying to commercial leases

- (1) Despite any provision of a relevant Act, or any other Act or law, the provisions of this section apply during the prescribed period in relation to a commercial lease.
- (2) The provisions of a commercial lease will be taken to be modified to the extent necessary to give effect to the operation of this section.
- (3) If a lessee is suffering financial hardship as a result of the COVID-19 pandemic, a lessor cannot take any prescribed action against the lessee on grounds of a breach of the lease during the prescribed period consisting of—
- (a) a failure to pay rent; or
  - (b) a failure to pay outgoings; or
  - (c) the business operating under the lease not being open for business during the hours specified in the lease; or
  - (d) any other act or omission of a kind prescribed by the regulations for the purposes of this subsection.
- (4) An act or omission of a lessee required under the laws of the State in response to the COVID-19 pandemic—
- (a) will be taken not to amount to a breach of a commercial lease; and
  - (b) will not constitute grounds for termination of the lease or the taking of any prescribed action by the lessor against the lessee.
- (5) Unless otherwise agreed between the lessee and the lessor, rent payable under a commercial lease (other than rent or a component of rent determined by reference to turnover) must not, if during the prescribed period the lessee is suffering financial hardship as a result of the COVID-19 pandemic, be increased.

- (6) A lessor must not, during the prescribed period, require a lessee who is suffering financial hardship as a result of the COVID-19 pandemic to pay land tax or reimburse the lessor for the payment of land tax in respect of a commercial lease.
- (7) Subsection (6) does not limit the operation of the terms of a commercial lease, or a provision of an Act, that otherwise prohibits the payment of land tax or reimbursement of land tax to a lessor by a lessee.
- (8) A party to a commercial lease may apply to the Commissioner for 1 or both of the following:
  - (a) mediation of a dispute in relation to whether or not, for the purposes of this section, a lessee is suffering financial hardship as a result of the COVID-19 pandemic;
  - (b) a determination as to whether or not a lessee is suffering financial hardship as a result of the COVID-19 pandemic.
- (9) A right of appeal lies to the Magistrates Court against a determination of the Commissioner under subsection (8)(b).
- (10) In addition to the provisions of subsection (8), a party to a commercial lease may apply to the Commissioner for mediation of any other dispute in relation to issues that have arisen in relation to the COVID-19 pandemic—
  - (a) arising from, or related to, the operation of this section; or
  - (b) arising from, or related to, the commercial lease; or
  - (c) related to any other matter relevant to the occupation of the premises or to a business conducted at the premises the subject of the commercial lease.
- (11) The Commissioner may, in exercising any functions or powers under this section in relation to a matter, exercise any of the powers or functions the Commissioner is able to exercise under Part 7 of the *Fair Trading Act 1987* in relation to that matter.
- (12) If a lessee is suffering financial hardship as a result of the COVID-19 pandemic and during the relevant period—
  - (a) a lessor has taken or commenced, but not yet completed or finalised, a prescribed action (including a prescribed action that has a periodic or ongoing effect); or
  - (b) a lessor has taken or commenced, but not yet completed or finalised, the performance of any other measure (including a measure that has a periodic or ongoing effect) that the lessor would not have been able to undertake or commence during the prescribed period by virtue of the operation of this section; or
  - (c) the operation of the terms of a commercial lease has had effect, or has a periodic or ongoing effect, contrary to the operation of this section,the action, operation or effect will, insofar as it remains incomplete or ongoing, or has a periodic or ongoing effect, be taken to be stayed or suspended until the end of the prescribed period.

- (13) The Magistrates Court may, on application by a party to a commercial lease—
- (a) make such orders as it thinks appropriate in the circumstances to mitigate the effect of an action or effect of a matter referred to in subsection (12), insofar as it has been completed or implemented in whole or in part during the relevant period, on grounds that the lessee has suffered financial hardship as a result of the COVID-19 pandemic; and
  - (b) may make such other orders as it thinks fit.
- (14) In subsections (12) and (13)—
- relevant period** means the period—
- (a) beginning on the day on which this section commences; and
  - (b) ending on the day on which this Act is assented to by the Governor.
- (15) A person must not divulge or communicate personal information, information relating to business processes or financial information (including information about the turnover of a business) obtained in connection with the operation of this section except—
- (a) with the consent of the person to whom the information relates; or
  - (b) in connection with the administration of this section; or
  - (c) as authorised by the Commissioner; or
  - (d) for the purposes of legal proceedings; or
  - (e) to a police officer or a law enforcement officer of another State, a Territory of the Commonwealth or of the Commonwealth.
- (16) In this section—
- business** means an undertaking (whether or not carried on with a view to profit) involving the manufacture, sale or supply of goods or services;
- commercial lease** means—
- (a) a retail shop lease within the meaning of the *Retail and Commercial Leases Act 1995*; or
  - (b) a lease under the *Landlord and Tenant Act 1936*, including a retail shop lease to which Part 4 of that Act applies; or
  - (c) any other agreement under which a person grants or agrees to grant another person for value a right to occupy premises for carrying on a business—
    - (i) whether or not the right is a right of exclusive occupation; and
    - (ii) whether the agreement is expressed or implied; and
    - (iii) whether the agreement is oral or in writing, or partly oral and partly in writing,
- but does not include—
- (d) a lease under the *Pastoral Land Management and Conservation Act 1989*; or
  - (e) a lease under the *Crown Land Management Act 2009*;

**Commissioner** means the person holding or acting in the office of Small Business Commissioner;

**lessee** means the person who has the right to occupy premises under a commercial lease;

**lessor** means the person who grants the right to occupy premises under a commercial lease;

**outgoings** has the same meaning as in the *Retail and Commercial Leases Act 1995*;

**party** to a commercial lease means the lessor or the lessee under a commercial lease;

**prescribed action** means taking action under the provisions of a commercial lease or seeking orders or issuing proceedings in a court for any of the following:

- (a) eviction of the lessee from premises the subject of the commercial lease;
- (b) exercising a right of re-entry to premises the subject of the commercial lease;
- (c) recovery of land;
- (d) distraint of goods;
- (e) forfeiture;
- (f) damages;
- (g) requiring a payment of interest on unpaid rent otherwise payable by a lessee;
- (h) recovery of the whole or part of a security bond under the commercial lease;
- (i) performance of obligations by the lessee or any other person pursuant to a guarantee under the commercial lease;
- (j) possession;
- (k) termination of the commercial lease;
- (l) any other remedy otherwise available to a lessor against a lessee at common law or under the law of this State;

**prescribed period** means the period—

- (a) beginning on the day on which this section comes into operation; and
- (b) ending on the day on which this section expires under section 6;

**relevant Act** means—

- (a) the *Real Property Act 1886*; and
- (b) the *Retail and Commercial Leases Act 1995*; and
- (c) the *Landlord and Tenant Act 1936*.

## **8—Provisions applying to residential tenancies**

- (1) Subject to this section, the operation of the *Residential Tenancies Act 1995* is modified as follows:
  - (a) the terms of any residential tenancy agreement will be taken to be modified to such extent necessary to give effect to the modifications made by this section;

- (b) the landlord must not increase the rent payable under a residential tenancy agreement (whether under section 55 of that Act or otherwise);
- (c) except where exceptional circumstances exist, an inspection of premises under that Act may only occur by means of audiovisual or other electronic means that do not involve the landlord or an agent of the landlord physically entering the premises (and the tenant must take such steps as are reasonably necessary to enable such an inspection to occur);
- (d) despite any other provision of that Act, or any other Act or law, an act or omission of the tenant required under the laws of the State in response to the COVID-19 pandemic will be taken not to amount to a breach of a residential tenancy agreement or otherwise amount to grounds for termination of the agreement;
- (e) a tenant may have repairs carried out on the premises (in accordance with any agreement with the landlord relating to such repairs) without seeking prior approval (and section 68(3)(e) and (5) of that Act will be taken to apply to costs or compensation incurred by or owing to the tenant accordingly);
- (f) section 78A of that Act will be taken not to apply in respect of—
  - (i) a breach of a residential tenancy agreement consisting of a failure to pay rent where the tenant is suffering financial hardship as a result of the COVID-19 pandemic; or
  - (ii) any act or omission of the tenant required under the laws of the State in response to the COVID-19 pandemic;
- (g) a residential tenancy cannot be terminated under that Act solely on the grounds of a breach of a residential tenancy agreement consisting of a failure to pay rent where the tenant is suffering financial hardship as a result of the COVID-19 pandemic;
- (h) the Tribunal cannot terminate a residential tenancy or make an order for possession of the premises in respect of a breach of a residential tenancy agreement consisting of a failure to pay rent where the tenant is suffering financial hardship as a result of the COVID-19 pandemic;
- (i) on an application under section 89 of that Act relating to financial hardship suffered as a result of the COVID-19 pandemic, the Tribunal may, instead of or in addition to an order terminating the agreement, make such orders as the Tribunal thinks fit;
- (j) on an application under section 89 of that Act, as modified by paragraph (i), the Tribunal must have particular regard to the circumstances of the COVID-19 pandemic (including the need to ameliorate the effects of the pandemic in the State and the need to avoid homelessness during such a public health emergency);
- (k) despite any other Act or law, the Tribunal may, on application or otherwise in proceedings under that Act, make any order it considers appropriate in the circumstances of the COVID-19 pandemic (including an order that specified costs associated with the termination of a residential tenancy agreement be reduced or waived);



- (l) the Tribunal, on an application under section 93 of that Act (whether the application was made before or after the commencement of this section)—
    - (i) must have regard to the circumstances of the COVID-19 pandemic (including the need to ameliorate the effects of the pandemic in the State and the need to avoid homelessness during such a public health emergency); and
    - (ii) may, in a case where a tenant is suffering financial hardship as a result of the COVID-19 pandemic, despite section 93(4)(a), suspend the operation of an order under that section for such period, and on such conditions, as the Tribunal thinks fit; and
    - (iii) may, in a case where a tenant is suffering financial hardship as a result of the COVID-19 pandemic, despite section 93(4a), modify a residential tenancy agreement during such a period of suspended operation so as to reduce the tenant's immediate financial obligations under the agreement;
  - (m) the Tribunal may, in relation to an order made under section 93(4)(a) of that Act before the commencement of this section, on an application by a tenant or landlord, further suspend the operation of the order for possession if the tenant is suffering financial hardship as a result of the COVID-19 pandemic;
  - (n) the preceding paragraphs will be taken to apply in relation to a rooming house agreement under that Act (where a reference in a preceding paragraph to a provision of that Act will be taken to be a reference to a provision of a corresponding kind under Part 7 of that Act);
  - (o) despite any other Act or law, the Tribunal must not make an order requiring interest to be paid on an amount payable by a tenant under a residential tenancy agreement;
  - (p) despite a provision of any other Act or law, an order of the Tribunal contemplated by a preceding paragraph may have retrospective effect;
  - (q) section 99(4) of that Act does not apply in circumstances where the tenant, or another person lawfully residing in the premises, is self-isolating because they have, or may have, COVID-19;
  - (r) section 115 of that Act will be taken not to apply to an agreement or arrangement required by this section or otherwise required to give effect to this section;
  - (s) the following matters must not be recorded on a residential tenancies database:
    - (i) a matter consisting of, or relating to, a failure to pay rent due where the tenant is suffering financial hardship as a result of the COVID-19 pandemic;
    - (ii) any other matter that the Tribunal orders not to be so recorded;
    - (iii) any other matter prescribed by the regulations.
- (2) A purported termination or other action in contravention of the *Residential Tenancies Act 1995* (as modified by this section) will be taken to be void and of no effect.

- (3) A provision of the *Residential Tenancies Act 1995* not referred to in a preceding subsection will be taken to be modified to the extent necessary to give effect to the modifications set out in this section.
- (4) The Tribunal may, on application by a landlord or tenant under a residential tenancy agreement (whether or not the agreement is still in force), make such of the following orders as the Tribunal thinks fit:
  - (a) an order modifying or suspending any prescribed order of the Tribunal made during the prescribed period in relation to a residential tenancy period;
  - (b) an order confirming, varying or quashing any prescribed action done, or purportedly done, by a landlord under the *Residential Tenancies Act 1995* in respect of a residential tenancy agreement during the prescribed period;
  - (c) any other order the Tribunal thinks appropriate to address the consequences of the retrospective commencement of this section.
- (5) An application under subsection (4) must be made within 28 days after the commencement of this section (or such longer period as the Tribunal may allow).
- (6) In making orders under this section, the Tribunal must have regard to the intended effect of the operation of this section as it relates to matters of the relevant kind.
- (7) Section 111 of the *Residential Tenancies Act 1995* applies in relation to orders under this section.
- (8) To avoid doubt, the jurisdiction conferred by this section comes within the original jurisdiction of the Tribunal.
- (9) Subject to any regulations under section 20, an order of the Tribunal under this section will be taken to be revoked on the day on which this section expires.
- (10) In this section, a reference to the payment of rent will be taken to include a reference to the payment of an amount relating to water supply and usage.
- (11) A term or phrase used in this section will, unless the contrary intention appears, have the same meaning as in the *Residential Tenancies Act 1995*.
- (12) In this section—

***prescribed order*** means an order of the Tribunal made, or having effect, during the prescribed period;

***prescribed action***, by a landlord, means an action taken by the landlord that would, if it occurred after the commencement of this section, contravene the *Residential Tenancies Act 1995* (as modified by this section);

***prescribed period*** means the period commencing on 30 March 2020 and ending on the day on which this Act comes into operation.

## 9—Provisions applying to residential parks

- (1) The operation of the *Residential Parks Act 2007* is modified such that the modifications made by section 8 to the *Residential Tenancies Act 1995* (including, to avoid doubt, the provisions of section 8 relating to the Tribunal) apply in relation to the *Residential Parks Act 2007* as if a reference in that section to a residential tenancy agreement were a reference to a residential park tenancy agreement, residential park site agreement or residential park agreement (as the case requires).

- (2) A purported termination or other action in contravention of the *Residential Parks Act 2007* (as modified by this section) will be taken to be void and of no effect.
- (3) A term or phrase used in this section will, unless the contrary intention appears, have the same meaning as in the *Residential Parks Act 2007*.

## 10—Provisions applying to supported residential facilities

- (1) Subject to this section, the operation of the *Supported Residential Facilities Act 1992* is modified as follows:
  - (a) a proprietor cannot take any other action under that Act for the purpose of terminating a resident contract, where—
    - (i) the grounds for termination are a failure of the resident to pay fees and charges under the resident contract; and
    - (ii) the resident is suffering financial hardship as a result of the COVID-19 pandemic;
  - (b) a proprietor cannot increase fees and charges payable in relation to a resident contract;
  - (c) a resident will be taken not to have breached a term of a resident contract or other agreement by complying with a direction or law relating to the COVID-19 pandemic that applies to or regulates residents of supported residential facilities;
  - (d) a proprietor must not give a notice to a resident under section 39 of that Act that purports to be notice of a proposed termination on grounds of failure to pay fees or charges if the resident is suffering financial hardship as a result of the COVID-19 pandemic;
  - (e) a proprietor cannot make an application under section 43 of that Act in relation to a dispute consisting of a failure to pay fees and charges if the resident is suffering financial hardship as a result of the COVID-19 pandemic (and, to avoid doubt, a licensing authority cannot make orders under that section on an application relating to any other kind of dispute that purports to terminate a resident contract or otherwise require payment of fees and charges in relation to such a resident);
  - (f) the Tribunal must not, on a review under section 44 of that Act, make an order that purports to terminate a resident contract or otherwise require a resident to pay fees and charges to the proprietor if the resident is suffering financial hardship as a result of the COVID-19 pandemic;
  - (g) the operation of section 47 of that Act is modified such that—
    - (i) a visit or attendance by a person will only fall within the ambit of that section if it complies with any direction or law applying to or regulating such visits or attendances; and
    - (ii) a person does not commit an offence under section 47(2) if the person is acting in accordance with a direction or law referred to in subparagraph (i);

- (h) section 50 of that Act will be taken not to apply to an agreement or arrangement required by this section or otherwise required to give effect to this section;
  - (i) except where exceptional circumstances exist, an inspection of a supported residential facility under that Act may only occur by means of audiovisual or other electronic means that do not involve an authorised officer physically entering the premises (and the proprietor and residents must take such steps as are reasonably necessary to enable such an inspection to occur);
  - (j) a proprietor will be taken not to commit an offence against that Act, or breach a term of a licence or resident contract or other agreement, to the extent that an act or omission of the proprietor is reasonably required to give effect to the modification made by this section, or by any direction or law relating to the COVID-19 pandemic that applies to or regulates supported residential facilities;
  - (k) the Tribunal or a licensing authority, in performing a function or exercising a power under that Act, must have regard to the circumstances of the COVID-19 pandemic (including the need to ameliorate the effects of the pandemic in the State and the need to avoid homelessness during such a public health emergency).
- (2) For the purposes of this section, a reference to fees and charges payable in relation to a resident contract will be taken to include a reference to any costs (however described) payable by a resident under the resident contract (whether for accommodation, personal care services or otherwise).
- (3) A term or phrase used in this section will, unless the contrary intention appears, have the same meaning as in the *Supported Residential Facilities Act 1992*.

## **11—Provisions applying in relation to certain water and sewerage charges for sporting clubs**

- (1) The operation of the *Water Industry Act 2012*, the *Local Government Act 1999* and any other Act or law prescribed by the regulations (being an Act or law relating to the supply of water, sewerage services or storm water management) is modified as follows:
- (a) the Minister under the relevant Act may, by notice in the Gazette—
    - (i) waive an amount of prescribed costs payable by a specified sporting club, or a sporting club of a specified class (whether incurred before or after the commencement of this section); or
    - (ii) exempt (conditionally or unconditionally) a specified sporting club, or a sporting club of a specified class, from a specified provision of those Acts;
  - (b) the regulations under this Act may modify or suspend the operation of any Act or law relating to the supply of water to, the use of sewerage services by, or the management of storm water by, a specified sporting club or sporting clubs of a specified class;

- (c) a term of any contract, agreement or other instrument that is inconsistent with the modifications made by this section will, to the extent of that inconsistency, be of no effect.
- (2) In this section—
- prescribed costs* means—
- (a) an amount payable for the supply of water (whether potable or otherwise); or
  - (b) an amount payable for the use of sewerage services; or
  - (c) an amount payable in relation to storm water management; or
  - (d) any other amount of a kind prescribed by the regulations.

*sewerage services* has the same meaning as in the *Water Industry Act 2012*.

## **12—Treasurer's instructions relating to financial and audit requirements**

- (1) Subject to subsection (2), the Treasurer may, after consultation with the Auditor-General, issue instructions under section 41 of the *Public Finance and Audit Act 1987* that suspend or modify—
- (a) any provisions of that Act, regulations under that Act or any other instructions issued under section 41; or
  - (b) any requirements under another Act or law relating to financial reporting or auditing,
- if satisfied that the suspension or modification is necessary as a result of circumstances brought about by the COVID-19 pandemic (or as a result of any measures taken to address the COVID-19 pandemic) or to provide economic stimulus during and after the COVID-19 pandemic.
- (2) An instruction that modifies or suspends any provision of Part 3 of the *Public Finance and Audit Act 1987* may not be issued pursuant to subsection (1) unless the Auditor-General has certified that the Auditor-General is also satisfied that the suspension or modification is necessary as a result of circumstances brought about by the COVID-19 pandemic (or as a result of any measures taken to address the COVID-19 pandemic) or to provide economic stimulus during and after the COVID-19 pandemic.
- (3) Instructions issued pursuant to this section—
- (a) may not diminish the powers or protections of the Auditor-General under any Act or law; but
  - (b) may, for example (and without limitation), modify or suspend—
    - (i) requirements under another Act or law relating to annual or other reports where such reports include any financial reporting or are subject to auditing requirements; or
    - (ii) requirements relating to a financial reporting framework or the time at which any auditing is to occur or the time at which or manner in which any financial information or reports are to be provided to any person or body or are to be published or otherwise made available.

- (4) Section 41(6) and (7) of the *Public Finance and Audit Act 1987* do not apply to an instruction issued by the Treasurer pursuant to this section.
- (5) The Auditor-General must prepare a report on instructions issued pursuant to this section and either—
  - (a) annex the report to the Auditor-General's annual report under section 36(1a) of the *Public Finance and Audit Act 1987*; or
  - (b) deliver the report to the President of the Legislative Council and the Speaker of the House of Assembly.
- (6) If the President of the Legislative Council or the Speaker of the House of Assembly is absent at the time the Auditor-General delivers to the Parliament a report under this section, the Clerk of the relevant House will receive the report on behalf of the President or the Speaker (as the case may be) and the report will then be taken to have been delivered to the President or the Speaker.
- (7) The President of the Legislative Council and the Speaker of the House of Assembly must, not later than the first sitting day after a report and other documents have been delivered (or are taken to have been delivered) to the President or the Speaker by the Auditor-General under this Part, lay them before their respective Houses.
- (8) Subject to subsection (9), the Auditor-General must, as soon as is reasonably practicable after a report has been delivered (or is taken to have been delivered) to the President of the Legislative Council and the Speaker of the House of Assembly under this section, publish the report on a website determined by the Auditor-General or in such other manner as the Auditor-General thinks fit.
- (9) If the day immediately following the day on which the report is delivered (or is taken to have been delivered) is a sitting day for either House of the Parliament, the Auditor-General must not publish the report and other documents in accordance with subsection (8) until the report has been laid before a House of the Parliament.
- (10) On the expiry of this section under section 6 all instructions issued by the Treasurer pursuant to this section are taken to be revoked.

### **13—Audits by Auditor-General**

- (1) Subject to any instructions pursuant to section 12, but despite any other Act or law, the Auditor-General may determine to conduct a review, in such manner as the Auditor-General thinks fit, instead of any audit that would (apart from this section) be required to be undertaken by the Auditor-General.
- (2) For the avoidance of doubt—
  - (a) the Auditor-General has, when conducting a review under this section, the same powers as the Auditor-General would have had if an audit were being conducted; and
  - (b) any obligation or duty of a person in connection with the conduct of an audit will be taken to apply equally to the person in connection with the conduct of a review (as if it were an audit) unless the Auditor-General determines otherwise.

## **14—Extension of time limits, terms of appointment etc**

- (1) If, in accordance with an Act or law, or an instrument—
  - (a) anything needs to be done at a particular time or within a particular period; or
  - (b) any appointment or circumstance ceases at a particular time or exists for a particular period; or
  - (c) anything would expire or cease at a particular time or at the end of a particular period,(however expressed), the Governor may, by regulation, postpone that time or extend that period.
- (2) However, the regulations may only—
  - (a) postpone a time at which a particular appointment would cease; or
  - (b) extend a particular appointment; or
  - (c) extend a period, at the end of which a particular appointment would cease,by a maximum period of 6 months.
- (3) Without limiting subsection (1), a postponement or an extension of a period under this section—
  - (a) may be subject to conditions or other limitations; and
  - (b) may be expressed as applying to a particular requirement under an Act or law or to a class of requirements or otherwise in circumstances described in the regulation; and
  - (c) may have the effect of modifying any Act or law or any instrument.

## **15—Modification of requirements relating to laying of reports before Parliament**

- (1) Despite a provision of this or any other Act, a requirement under an Act that a report or other document (however described) be laid before either or both Houses of Parliament within a specified period will, by force of this section, be modified so that the report or other document is required to be laid before either or both Houses of Parliament (as the case requires) within 7 calendar days after the occurrence of the event that requires the report to be so laid before Parliament.
- (2) A requirement under subsection (1) will, if the Parliament, or the relevant House of Parliament, is not sitting during the 7 day period, be taken to be satisfied by the report or other document being delivered to the President of the Legislative Council or the Speaker of the House of Assembly.
- (3) If the President of the Legislative Council or the Speaker of the House of Assembly is absent at the time a report or other document is to be delivered under subsection (2), the Clerk of the relevant House will receive the report on behalf of the President or the Speaker (as the case may be) and the report will then be taken to have been delivered to the President or the Speaker.

- (4) The Clerk of the relevant House or Houses must, as soon as is reasonably practicable after a report or other document is received under subsection (3), cause the report or other document—
  - (a) to be published on a website determined by the Clerk; and
  - (b) to be distributed (whether electronically or by some other means determined by the Clerk) to each member of the relevant House or to each member of Parliament (as the case requires).
- (5) The President of the Legislative Council and the Speaker of the House of Assembly must, not later than the first sitting day after a report or other document has been delivered (or is taken to have been delivered) to the President or the Speaker under this section, lay them before their respective Houses.

## **16—Requirements relating to documents**

- (1) The Governor may, by regulation, suspend or modify any requirements under an Act or law, or an instrument, relating to the preparation, signing, witnessing, attestation, certification, stamping or other treatment of any document.
- (2) Without limiting subsection (1), a regulation under this section—
  - (a) may be subject to conditions or other limitations; and
  - (b) may be expressed as applying to a particular requirement under an Act or law or to a class of requirements or otherwise in circumstances described in the regulation; and
  - (c) may have the effect of modifying any Act or law or any instrument.

## **17—Meetings in person etc may occur by audiovisual or other means**

- (1) Despite a provision of any other Act or law, a requirement that a meeting occur or that some other transaction take place that requires 2 or more persons to be physically present will be taken to be satisfied if the persons meet, or the transaction takes place, remotely using 1 or more of (including a combination of) the following means of communication:
  - (a) audio visual;
  - (b) audio;
  - (c) any other means of communication prescribed by the regulations for the purposes of this paragraph.
- (2) This section does not apply in circumstances prescribed by the regulations.

## **18—Service**

Except where this Act requires otherwise, a notice or other document required or authorised to be given to or served on a person under this Act may—

- (a) be given to the person personally; or
- (b) be left for the person at the person's place of residence or business with someone apparently over the age of 16 years; or
- (c) be posted to the person at the person's last known place of residence or business; or



- (d) be transmitted by fax or email to a fax number or email address provided by the person (in which case the notice or other document will be taken to have been given or served at the time of transmission); or
- (e) if the person is a company or registered body within the meaning of the *Corporations Act 2001* of the Commonwealth, be served in accordance with that Act.

## 19—Regulations

- (1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.
- (2) Without limiting the generality of subsection (1), the regulations may provide for—
  - (a) the circumstances in which a person will be taken to be suffering financial hardship as a result of the COVID-19 pandemic for the purposes of a tenancy provision of this Act; and
  - (b) matters to which the Commissioner must have regard in making a determination under section 7; and
  - (c) mitigation of adverse impacts on a party to a lease resulting from the COVID-19 pandemic, including by making provision for any measures to regulate the parties to a lease or the provisions of a lease; and
  - (d) modification of the operation of any provisions of this Act or a relevant Act for a purpose related to any circumstances brought about by the COVID-19 pandemic (or measures taken to address the COVID-19 pandemic) or to economic stimulus during and after the COVID-19 pandemic; and
  - (e) provisions making related modifications to any Act or law consequent on the tenancy provisions of this Act; and
  - (f) modification or suspension of the operation of Schedule 1 or any Act or law relating to the matters dealt with in that Schedule; and
  - (g) a scheme for a community visitor or visitors for the purposes of Schedule 1; and
  - (h) the keeping of records, or the making of any reports to the Minister or another specified person or body, in relation to any matter dealt with by this Act; and
  - (i) provisions of a saving or transitional nature consequent on the enactment of this Act or the making of any regulation under this Act; and
  - (j) fines, not exceeding \$10 000, for offences against the regulations; and
  - (k) expiation fees, not exceeding \$5 000, for offences against the regulations; and
  - (l) facilitation of proof of the commission of offences and other evidentiary matters.
- (3) The regulations may—
  - (a) be of general or limited application; and
  - (b) make different provision according to the circumstances or entities to which they are expressed to apply; and

- (c) apply or incorporate, wholly or partially and with or without modification, a code, standard, policy or other document prepared or published by the Minister or another specified person or body; and
  - (d) provide that any matter or thing is to be determined, dispensed with, regulated or prohibited according to the discretion of the Minister, the State Co-ordinator, the Chief Public Health Officer or any other specified body or person.
- (4) If a code, standard or other document is referred to or incorporated in the regulations—
- (a) a copy of the code, standard or other document must be kept available for public inspection, without charge and during ordinary office hours, at an office or offices specified in the regulations; and
  - (b) evidence of the contents of the code, standard or other document may be given in any legal proceedings by production of a document apparently certified by the Minister to be a true copy of the code, standard or other document.
- (5) On the expiry of a provision of this Act under section 6, all regulations made for the purposes of the provision are taken to be revoked.
- (6) In this section—

*relevant Act* means the *Landlord and Tenant Act 1936*, the *Real Property Act 1886*, the *Residential Parks Act 2007*, the *Residential Tenancies Act 1995*, the *Retail and Commercial Leases Act 1995*, the *Supported Residential Facilities Act 1992* or any other Act in so far as it relates to or affects landlords and tenants in the State or other residential leases, licences or agreements;

*tenancy provision* of this Act means sections 7 to 10 (inclusive).

## 20—Transitional regulations on expiry of measure

- (1) The Governor may make regulations of a savings or transitional nature consequent on the expiry of any provision of this Act under section 6 (or on the revocation of any regulation in accordance with section 19(5)).
- (2) The regulations may—
  - (a) be of general or limited application; and
  - (b) make different provision according to the circumstances or entities to which they are expressed to apply; and
  - (c) apply or incorporate, wholly or partially and with or without modification, a code, standard, policy or other document prepared or published by the Minister or another specified person or body; and
  - (d) provide that any matter or thing is to be determined, dispensed with, regulated or prohibited according to the discretion of the Minister, the State Co-ordinator, the Chief Public Health Officer or any other specified body or person.

- (3) If a code, standard or other document is referred to or incorporated in the regulations—
  - (a) a copy of the code, standard or other document must be kept available for public inspection, without charge and during ordinary office hours, at an office or offices specified in the regulations; and
  - (b) evidence of the contents of the code, standard or other document may be given in any legal proceedings by production of a document apparently certified by the Minister to be a true copy of the code, standard or other document.

## **21—Disallowance of regulations made under Act**

- (1) Despite section 10(3) of the *Subordinate Legislation Act 1978*, all regulations made under this Act must be laid before each House of Parliament on the next sitting day of that House after the regulations are made.
- (2) Except as is provided under subsection (1), nothing in this section limits the operation of the *Subordinate Legislation Act 1978*.
- (3) Where regulations made under this Act are disallowed, the Governor must not, except in accordance with a resolution of the House that disallowed the regulations, remake those regulations, or make regulations that are of the same effect, within 6 months after the day on which the regulations are disallowed.

## **22—Immunity from liability etc**

No civil or criminal liability attaches to the Crown, or to any person acting in good faith, in respect of—

- (a) any acts or omissions in connection with—
  - (i) the exercise or discharge, or purported exercise or discharge, of a power or function under this Act; or
  - (ii) the carrying out, or purported carrying out, of any direction or requirement given or imposed, or purportedly given or imposed, in accordance with this Act; or
- (b) any failure to exercise or discharge a power or function under this Act, in relation to the outbreak of the human disease named COVID-19 within South Australia.

## **23—Further provisions in Schedules**

- (1) Schedule 1 has effect according to its terms (despite any other Act or law) until that Schedule expires in accordance with section 6 .
- (2) The operation of a law of the State specified in a provision of Schedule 2 is modified as set out in that provision until that provision expires in accordance with section 6.
- (3) In Schedule 3, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

## Schedule 1—Special provisions relating to detention of certain protected persons during COVID-19 pandemic

### 1—Interpretation

- (1) In this Schedule—

**Authorising Officer** means the Authorising Officer appointed under clause 5;

**guidelines** means the guidelines published under clause 4, as in force from time to time;

**mentally incapacitated person** means a mentally incapacitated person within the meaning of the *Guardianship and Administration Act 1993*;

**protected person** means—

- (a) a protected person within the meaning of the *Guardianship and Administration Act 1993*; or
- (b) a mentally incapacitated person who is a resident of a supported residential facility; or
- (c) a mentally incapacitated person who is a resident in other supported accommodation of a kind prescribed by the regulations;

**supported residential facility** means a supported residential facility under the *Supported Residential Facilities Act 1992*;

**Tribunal** means the South Australian Civil and Administrative Tribunal established under the *South Australian Civil and Administrative Tribunal Act 2013*.

- (2) For the purposes of this Schedule, a reference to the **guardian** of a person will be taken to include a reference to a person who, under the *Guardianship and Administration Act 1993*, has limited guardianship of the person, provided the accommodation arrangements for the protected persons fall within the responsibility of the guardian.
- (3) For the purposes of this Schedule, a reference to the **usual place of residence** of a protected person—
- (a) will, in the case of a protected person who is the subject of an order under section 32 of the *Guardianship and Administration Act 1993* that directs that the protected reside at a specified place, be taken to be a reference to that specified place; and
  - (b) will be taken to include a reference to a place at which the protected person is residing on a temporary basis.

**Note—**

For example, a person may temporarily reside in a hospital or rehabilitation facility.

## 2—Detention under Schedule

- (1) Subject to this Schedule, and to any direction of the Authorising Officer or the Tribunal, the detention of a protected person—
  - (a) must comply with the guidelines (including provisions setting out the nature of detention, and any limits on such detention); and
  - (b) may be conditional or unconditional.
- (2) Despite clause 13, or any order of the Tribunal or direction of the Authorising Officer to the contrary, the period during which a protected person can be detained under this clause ceases on the day on which this Schedule expires (and, to avoid doubt, any detention or other restrictions imposed on the protected person under this Schedule must cease no later than that day).
- (3) Any order of the Tribunal, or direction of the Authorising Officer, under this Schedule will be taken to be revoked on the day on which this Schedule expires.

## 3—Interaction with other treatment requirements etc

- (1) Nothing in this Schedule prevents a protected person detained under this Schedule from receiving medical treatment at a place other than the place at which they are so detained.
- (2) The exercise of a function or power under this Schedule will be taken not, of itself, to contravene a treatment plan (however described) relating to a protected person.

## 4—Guidelines

- (1) The Minister may, by notice in the Gazette, publish guidelines for the purposes of this Schedule.
- (2) The Minister may, by subsequent notice in the Gazette, vary, substitute or revoke guidelines published under this clause.
- (3) The Minister must publish any guidelines under this clause on a website determined by the Minister.

## 5—Appointment of Authorising Officer

- (1) The Minister may appoint a person as the *Authorising Officer* for the purposes of this Schedule, being a person (who may be a public servant) who, in the opinion of the Minister, has the appropriate qualifications or experience to perform the functions and exercise the powers conferred on the Authorising Officer under this Schedule.
- (2) The Authorising Officer will be appointed on terms and conditions determined by the Minister.
- (3) The Authorising Officer is subject to the direction and control of the Minister.
- (4) The Authorising Officer must, in performing a function or exercising a power under this Schedule, comply with the guidelines (including guidelines relating to the resolution of an actual or perceived conflict of interest in respect of the Authorising Officer's functions and duties under any other Act or law).
- (5) The functions of the Authorising Officer are—
  - (a) to monitor the operation of this Schedule and ensure that the rights of protected persons who are detained under the Schedule are protected; and

- (b) such other functions as may be conferred on the Authorising Officer by this Schedule or the regulations, or by the Minister.
- (6) The office of the Authorising Officer becomes vacant if the holder—
  - (a) dies; or
  - (b) completes a term of office and is not reappointed; or
  - (c) resigns by written notice to the Minister; or
  - (d) is convicted of—
    - (i) an indictable offence against the law of this State; or
    - (ii) an offence against the law of this State that is punishable by imprisonment for a term of at least 12 months; or
    - (iii) an offence against the law of another jurisdiction that, if committed in this State, would be an offence of a kind referred to in a preceding paragraph; or
  - (e) is sentenced to imprisonment for an offence (whether against a law of this State or another jurisdiction); or
  - (f) is removed from office by the Minister under subclause (7).
- (7) The appointment of the Authorising Officer may be terminated by the Minister on any grounds the Minister thinks fit.

## **6—Authorising Officer may give directions**

- (1) The Authorising Officer may, by notice in writing, direct that the detention of a protected person under this Schedule cease forthwith, or on a day specified in the notice.
- (2) The Authorising Officer may, by notice in writing, give such other directions as the Authorising Officer considers appropriate for the purposes of this Schedule (including, to avoid doubt, a direction requiring a specified person or body to take specified steps to give effect to a direction under subclause (1)).
- (3) Before giving a direction under this clause, the Authorising Officer must have regard to the circumstances of the COVID-19 pandemic as they exist at the time (including the need to limit the spread of the COVID-19 virus and to ameliorate the effects of the pandemic in the State).
- (4) A person must not, without reasonable excuse, refuse or fail to comply with a direction of the Authorising Officer.

Maximum penalty:

- (a) in the case of a body corporate—\$75 000;
- (b) in the case of a natural person—\$20 000.

Expiation fee:

- (a) in the case of a body corporate—\$5 000;
- (b) in the case of a natural person—\$2 000.

- (5) If a body corporate is guilty of an offence against this clause, each director and the manager of the body corporate are guilty of an offence and liable to the same penalty as is prescribed for the principal offence when committed by a natural person unless the director or the manager (as the case may be) proves that they could not by the exercise of due diligence have prevented the commission of the offence.
- (6) A person may be prosecuted and convicted of an offence under subclause (5) whether or not the body corporate has been prosecuted or convicted of the offence committed by the body corporate.

## **7—Delegation**

- (1) The Authorising Officer may delegate functions or powers under this Schedule—
  - (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 Authorising Officer to act in any matter; and
  - (d) is revocable at will by the Authorising Officer.

## **8—Authorised officers**

- (1) The following persons are authorised officers for the purposes of this Schedule:
  - (a) police officers;
  - (b) authorised officers under the *Emergency Management Act 2004*;
  - (c) a person, or class of persons, authorised by the Minister for the purposes of this Schedule.
- (2) An appointment under subclause (1)(c) may be subject to conditions specified by the Minister.
- (3) An appointment under subclause (1)(c) is, by force of this subclause, revoked on the expiry or repeal of this Schedule.

## **9—Powers of authorised officers to detain protected person etc**

- (1) Subject to this Schedule and the regulations, if an authorised officer reasonably believes that a protected person who is detained under this Schedule is unlawfully at large and that taking action under this clause is appropriate for a purpose related to the COVID-19 pandemic, the authorised officer may take 1 or more of the following actions:
  - (a) detain and transport the protected person to—
    - (i) the protected person's usual place of residence; or
    - (ii) a place determined by the authorised officer;

- (b) direct a person to take specified action to prevent the protected person from being unlawfully at large;
  - (c) remove to a place the authorised officer thinks fit any person who obstructs or threatens to obstruct the exercise of a power under this Schedule;
  - (d) direct, insofar as may be reasonably necessary in the circumstances, any person to assist in the exercise of any power under this clause.
- (2) In exercising a power under this clause, an authorised officer must comply with the guidelines (including, to avoid doubt, in relation to the means by which a protected person may be detained).
- (3) An authorised officer may be assisted by other persons in exercising a power under this clause (and that person must comply with the guidelines).
- (4) Nothing in this clause empowers the placement or detention of a person in—
- (a) a correctional institution or any other place in which persons charged with or convicted of offences may be detained; or
  - (b) any part of an approved treatment centre under the *Mental Health Act 2009* that is set aside for the treatment of persons with a mental illness.

#### **10—Additional powers of guardians during COVID-19 pandemic**

- (1) Subject to this Schedule, a guardian of a protected person may, if the guardian reasonably believes that the protected person is unlawfully at large and to do so is reasonably necessary for a purpose related to the COVID-19 pandemic, do 1 or more of the following:
- (a) detain, using only such force as is reasonably necessary for the purpose, the protected person if the protected person is in a place other than the protected person's usual place of residence;
  - (b) take the protected person, or cause the protected person to be taken, using only such force as is reasonably necessary for the purpose, to the protected person's usual place of residence;
  - (c) take such other action as may be authorised by the Tribunal (whether on application under this Schedule, the *Guardianship and Administration Act 1993* or another Act).
- (2) In exercising a power under this clause, a guardian must comply with the guidelines (including, to avoid doubt, in relation to the means by which a protected person may be detained).
- (3) A guardian may be assisted by other persons in exercising a power under this clause (and that person must comply with the guidelines).



## 11—Certain persons at prescribed premises may detain protected persons during COVID-19 pandemic

- (1) Subject to this Schedule, a prescribed person in respect of premises at which a protected person usually resides may—
  - (a) with the approval of the guardian of the protected person, or on the authorisation of the Authorising Officer or the Tribunal, take such steps as may be reasonably necessary to detain the protected person at those premises; and
  - (b) take such other action as may be authorised by the Authorising Officer or Tribunal under this Schedule.
- (2) Despite subclause (1), a prescribed person in respect of premises at which a protected person usually resides may detain the protected person at those premises for such period (not exceeding 48 hours) as may be necessary—
  - (a) to contact the guardian of the protected person to obtain approval to detain the protected person; or
  - (b) to apply to the Authorising Officer or Tribunal for authorisation to detain the protected person; or
  - (c) to apply to the Tribunal for advice, direction or approval under clause 18, and the period for which a protected person can be detained under this subclause ceases on such action occurring.
- (3) In exercising a power under this clause, a prescribed person must comply with the guidelines (including, to avoid doubt, in relation to the means by which a protected person may be detained).
- (4) A prescribed person may be assisted by other persons in exercising a power under this clause (and that person must comply with the guidelines).
- (5) In this clause—

**prescribed person**, in relation to premises at which a protected person usually resides, means—

  - (a) the person in charge of the operation of the premises; or
  - (b) any other person prescribed by the regulations for the purposes of this paragraph.

## 12—Detention of protected persons where no guardian

- (1) This clause applies in relation to a protected person who is not under the guardianship of a guardian.
- (2) The Authorising Officer may, on an application under this clause, if satisfied that to do so is appropriate for a purpose related to the COVID-19 pandemic, authorise 1 or more of the following:
  - (a) the detention of a protected person;
  - (b) such other action as the Authorising Officer considers appropriate in the circumstances.

- (3) An authorisation under this clause—
  - (a) must be by written instrument; and
  - (b) may be conditional or unconditional; and
  - (c) may be varied or revoked by the Authorising Officer.
- (4) An authorisation under this clause must not be inconsistent with the guidelines (including, to avoid doubt, in relation to the means by which a protected person may be detained).

### **13—Duration of detention period**

- (1) Subject to an order of the Tribunal or a direction of the Authorising Officer to the contrary, the maximum period for which a protected person can be detained under this Schedule is 28 days.
- (2) The period for which a protected person can be detained under this Schedule will be taken to cease—
  - (a) in the case where the Authorising Officer gives a direction under clause 6(1)—forthwith or on the day specified in the notice (as the case requires); or
  - (b) if the guardian of the protected person withdraws their approval in relation to a detention under clause 11(1)(a)—on the day approval is withdrawn; or
  - (c) in the case where the Authorising Officer gives a direction under clause 12—28 days after the protected person is detained or such earlier day as may be specified by the Authorising Officer under that clause; or
  - (d) in the case where the Authorising Officer orders the period to cease under clause 15 or 16—on the day so ordered; or
  - (e) in the case where the Tribunal orders the period to cease—on the day so ordered; or
  - (f) in any other case—28 days after the protected person is detained.
- (3) Nothing in this Schedule authorises the detention of a protected person after the day on which the period for which a protected person is detained ceases in accordance with this clause.

### **14—Extension of detention period and other orders by Tribunal**

- (1) The Tribunal may, on an application under this clause, by order, authorise the period for which a protected person is detained under this Schedule to be extended by a specified period.
- (2) The Tribunal may, in relation to an order under subclause (1), by order, authorise the persons from time to time involved in the care of the protected person during the extended period to use such force as may be reasonably necessary for the purpose of ensuring the proper medical or dental treatment, day-to-day care and wellbeing of the protected person.

### **15—Periodic review of detention by Authorising Officer**

- (1) The Authorising Officer must review the detention of a protected person under this Schedule if the period for which the protected person may be so detained is extended under clause 14 for a period exceeding 28 days.
- (2) On completion of a review, the Authorising Officer must order the period for which a protected person is detained to cease if the Authorising Officer is not satisfied that there are proper grounds for the detention of the protected person to continue.

### **16—Review by Authorising Officer on application of aggrieved person**

- (1) A person who is aggrieved by a decision to detain a protected person under this Schedule (not being a decision of the Authorising Officer or the Tribunal) is entitled to a review of the circumstances involved in the detention of the protected person.
- (2) An application for review—
  - (a) must be made in a manner and form determined by the Authorising Officer; and
  - (b) must be made within the period determined by the Authorising Officer.
- (3) The Authorising Officer may conduct a review under this clause in any manner that the Authorising Officer considers appropriate.
- (4) On completion of a review under this clause, the Authorising Officer may confirm, vary or reverse the decision under review (including by ordering the period for which a protected person is detained to cease).
- (5) The regulations may make further provision in respect of a review under this clause (including, to avoid doubt, by limiting the kinds of decisions that may be the subject of an application for review).

### **17—Review of decisions by Tribunal**

- (1) Subject to this clause, the Tribunal is, by force of this clause, conferred with jurisdiction to deal with matters consisting of the review of the following decisions (*reviewable decisions*):
  - (a) a decision of a prescribed person to detain a protected person under clause 11, or a decision of a guardian under that clause to grant approval to detain a protected person;
  - (b) a decision of the Authorising Officer under clause 12;
  - (c) any other decision of a kind prescribed by the regulations.
- (2) However, a decision referred to in subclause (1)(a) will only be taken to be a reviewable decision if a review under clause 16 has been conducted in respect of the decision.
- (3) An application for review of a reviewable decision may be made to the Tribunal by a person or persons prescribed by the regulations for the purposes of this subclause.
- (4) An application must be made within 7 days after the applicant receives notice of the results of the relevant review under clause 16 (or such longer period as the Tribunal may allow).

## 18—Tribunal may give advice, direction or approval

- (1) The Authorising Officer, a guardian or a prescribed person in relation to prescribed premises may apply to the Tribunal for advice or direction—
  - (a) on the exercise of powers under this Schedule; or
  - (b) as to the scope of those powers; or
  - (c) for approval to the taking of any action for which the approval of the Tribunal is required.
- (2) An application under this clause—
  - (a) need not be served on any person; and
  - (b) may be determined by the Tribunal in the absence of any person who may be affected by the Tribunal's decision,unless the Tribunal directs otherwise.
- (3) A direction given by the Tribunal under this clause is binding on the applicant.

## 19—Offence to remove protected person from place of detention etc

A person who, without reasonable excuse, removes a protected person who is being detained in any place under this Schedule from that place, or aids or abets the protected person to leave that place, is guilty of an offence.

Maximum penalty: \$10 000.

Expiation fee: \$1 000.

## Schedule 2—Temporary modification of particular State laws

### Part 1—*Emergency Management Act 2004*

#### 1—Modification of *Emergency Management Act 2004*

The *Emergency Management Act 2004* applies with the following modifications:

- (a) section 17(2)—after "must" insert:  
    , as soon as practicable,
- (b) section 17(3)(b)—after "identity card" insert:  
    , if one has been issued in accordance with subsection (2) or, if such an identity card has not yet been issued, with such other proof of the person's appointment as an authorised officer as the State Co-ordinator may determine
- (c) section 25(2)—after "but subject to" insert:  
    this section and
- (d) section 25(2)(a)—delete "(using such force as is necessary)"
- (e) section 25(3)—delete subsection (3) and substitute:

- (3) The State Co-ordinator (or a delegate of the State Co-ordinator) may give a direction or make a requirement under this section that applies to persons generally throughout the State.
- (4) A direction or requirement of a kind referred to in subsection (3) must be published on a website determined by the State Co-ordinator within 24 hours after it is given or made.
- (5) For the avoidance of doubt—
  - (a) the State Co-ordinator or an authorised officer may exercise or discharge a power or function under this section even if to do so would contravene another law of the State; and
  - (b) the State Co-ordinator or an authorised officer may use such force as is reasonably necessary in the exercise or discharge of a power or function under this section or in ensuring compliance with a direction or requirement under this section; and
  - (c) a direction or requirement given or imposed by the State Co-ordinator or an authorised officer under this section may do any of the following:
    - (i) it may apply to a person, or a class of persons, or in respect of any place or during any period;
    - (ii) it may require or allow a person or a class of persons to act in contravention of another law of the State;
    - (iii) it may affect the lawful rights or obligations of any person or class of persons;
  - (d) a direction or requirement may be issued in the form of a written instrument or in any other form (including, without limitation, orally, by SMS or email).
- (6) If a direction applies to a class of persons or applies in respect of any place or during any period, the State Co-ordinator, or an authorised officer, may exempt (conditionally or unconditionally) any person or class of persons from the direction.

- (7) The State Co-ordinator must consider the advice of the Chief Public Health Officer before exercising or discharging a power or function under this section that would (conditionally or unconditionally) authorise authorised officers, or authorised officers of a particular class, to provide, direct, require or allow the provision of health goods or services or a particular class of such goods or services.

- (f) after section 26A insert:

**26B—No obligation on persons to maintain secrecy**

No obligation to maintain secrecy or other restriction on the disclosure of information applies to a person who is required to disclose information by a direction or requirement issued under section 25, except an obligation or restriction designed to keep the identity of an informant secret.

- (g) section 28(1)—after the penalty provision insert:

Expiation fee:

- (a) in the case of a natural person—\$1 000; or  
(b) in the case of a body corporate—\$5 000.

## **Part 2—*Environment Protection Act 1993***

### **2—Modification of *Environment Protection Act 1993***

Section 71A of the *Environment Protection Act 1993* applies with the following modification:

Section 71A(b)—delete paragraph (b) and substitute:

- (b) in any other case—
- (i) in cash; or
- (ii) by way of electronic funds transfer to a bank account or credit card account; or
- (iii) in a manner prescribed by regulation.

## **Part 3—*Parliamentary Committees Act 1991***

### **3—Modification of *Parliamentary Committees Act 1991***

Part 6 Division 1 of the *Parliamentary Committees Act 1991* applies with the following modification:

After section 16A insert:

**16AA—Public works—COVID-19 pandemic**

- (1) Section 16A(2) does not apply to a public work—
- (a) if the Governor has, by proclamation, on the recommendation of a Minister, declared that section 16A(2) does not apply to the work; or

- (b) if—
  - (i) a Minister has advised the Public Works Committee that they are satisfied that the public work is a prescribed public work; and
  - (ii) not less than 5 days has elapsed since the Committee completed its inquiry in relation to the public work; and
  - (iii) no final report of the Committee relating to the public work has been presented to its appointing House or published under subsection (4).
- (2) A Minister may only make a recommendation to the Governor for the purposes of subsection (1)(a) if the Minister is satisfied that—
  - (a) the public work is a prescribed public work; and
  - (b) the Public Works Committee has not inquired, or will not be able to inquire, into the work, or has not reported, or will not be able to report, on the work, as required by section 16A(2) within an appropriate timeframe.
- (3) Despite section 16A, a contract may be awarded in relation to a public work that a Minister is satisfied is a prescribed public work without the Public Works Committee having inquired into the work (but nothing in this subsection permits commencement of construction of the public work).
- (4) Section 17(7) does not apply to the Public Works Committee and that Committee may, at any time after it adopts an interim or final report—
  - (a) present the report to the Speaker of the House of Assembly; and
  - (b) the Speaker of the House of Assembly may, after consultation with the Committee, authorise the publication of the report prior to its presentation to the House of Assembly.
- (5) In this section—

***prescribed public work*** means a public work that is necessary as a result of circumstances brought about by the COVID-19 pandemic (or as a result of any measures taken to address the COVID-19 pandemic) or to provide economic stimulus during and after the COVID-19 pandemic.

## **Part 4—*Public Finance and Audit Act 1987***

### **4—Modification of *Public Finance and Audit Act 1987***

Section 12 of the *Public Finance and Audit Act 1987* applies with the following modification:

Section 12(2)(a)—delete "three per cent" and substitute:  
ten per cent

## **Part 5—*South Australian Public Health Act 2011***

### **5—Modification of *South Australian Public Health Act 2011***

The *South Australian Public Health Act 2011* applies with the following modifications:

- (a) section 66—after subsection (2) insert:
  - (2a) A direction or requirement under subsection (1) or (2) may be issued in the form of a written instrument or in any other form (including, without limitation, orally, by SMS or email).
- (b) section 73(8a)—delete "48" and substitute:  
72
- (c) section 74(3a)—delete "48" and substitute:  
72
- (d) section 75(3a)—delete "48" and substitute:  
72
- (e) section 77(3a)—delete "48" and substitute:  
72
- (f) section 77—after subsection (5) insert:
  - (5a) For the purposes of giving effect to an order made under this section in respect of a person, the Chief Public Health Officer or an authorised person may—
    - (a) apprehend and take the person to the place at which the person is to be detained under the order; and
    - (b) restrain the person and otherwise use force in relation to the person as reasonably required in the circumstances; and
    - (c) be assisted by such persons as may be necessary or desirable in the circumstances.
- (g) section 77(6)(b)(i)—delete "48" and substitute:  
72
- (h) section 77(8a)—delete "48" and substitute:



72

- (i) section 77(8b)(a)—delete "48" and substitute:

72

- (j) section 77—after subsection (14) insert:

(15) In this section—

*authorised person* means—

- (a) a police officer; or
  - (b) a person authorised by the Chief Public Health Officer to act as an authorised person under this section.
- (k) section 99(2)—after paragraph (i) insert:
- (ia) disclosing information in accordance with an authorisation of the Chief Public Health Officer; or

## **Schedule 3—Related amendments**

### **Part 1—Related amendments to *Emergency Management Act 2004***

#### **1—Amendment of section 32—Protection from liability**

Section 32(1)(b)—delete "of any direction or requirement given or imposed" and substitute:

, or purported carrying out, of any direction or requirement given or imposed, or purportedly given or imposed,

#### **2—Insertion of section 32A**

After section 32 insert:

##### **32A—COVID-19—Crown immunity**

Despite any other provision of this Act, or any other Act or law, no liability attaches to the Crown in respect of—

- (a) any acts or omissions in connection with—
  - (i) the exercise or discharge, or purported exercise or discharge, of a power or function under this Act; or
  - (ii) the carrying out, or purported carrying out, of any direction or requirement given or imposed, or purportedly given or imposed, in accordance with this Act; or
- (b) any failure to exercise or discharge a power or function under this Act,

in relation to the outbreak of the human disease named COVID-19 within South Australia (whether the relevant acts or omissions or failure occurred before or after the commencement of this section).

## **Part 2—Related amendments to *Payroll Tax Act 2009***

### **3—Amendment of Schedule 2—South Australia specific provisions**

Schedule 2 Part 3 Division 3—after clause 17 insert:

#### **17A—JobKeeper Payment**

- (1) Subject to subclause (2), wages paid or payable by an employer to an employee that are subsidised by the JobKeeper payment are exempt wages.
- (2) The exemption under subclause (1) does not apply to any part of wages paid or payable to an employee that are not subsidised by the JobKeeper payment.
- (3) This clause expires on the day on which the JobKeeper payment ceases.
- (4) The Treasurer must, as soon as reasonably practicable after becoming aware of the cessation of the JobKeeper payment, publish a notice in the Gazette specifying the date on which the JobKeeper payment ceased (and that date will be taken to be the day on which the JobKeeper payment ceased for the purposes of subclause (3)).
- (5) In this clause—

*JobKeeper payment* means the fortnightly wage subsidy announced by the Prime Minister on 30 March 2020 due to the COVID-19 pandemic to employers for the purposes of employers continuing to pay their employees.

## **Part 3—Amendment of *South Australian Public Health Act 2011***

### **4—Insertion of section 103A**

After section 103 insert:

#### **103A—COVID-19—Crown immunity**

Despite any other provision of this Act or any other Act or law, no liability attaches to the Crown in respect of—

- (a) any acts or omissions in connection with—
  - (i) the performance, exercise or discharge, or purported performance, exercise or discharge, of a function, power or duty under this Act; or
  - (ii) the carrying out, or purported carrying out, of any order, requirement or direction given or imposed, or purportedly given or imposed, in accordance with this Act; or

- (b) any failure to exercise or discharge a function, power or duty under this Act,

in relation to the outbreak of the human disease named COVID-19 within South Australia (whether the relevant acts or omissions or failure occurred before or after the commencement of this section).

## Legislative history

### Notes

- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Principal Act

Year	No	Title	Assent	Commencement
2020	7	<i>COVID-19 Emergency Response Act 2020</i>	9.4.2020	9.4.2020: s 2(1) except ss 7 to 9—30.3.2020: s 2(2)