

Legislative Council—No 37A

As reported with amendments, report adopted, Standing Orders suspended and passed remaining stages, 22 July 2020

South Australia

**Disability Inclusion (Community Visitor Scheme)
Amendment Bill 2020**

A BILL FOR

An Act to amend the *Disability Inclusion Act 2018*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

- 5 This Act may be cited as the *Disability Inclusion (Community Visitor Scheme) Amendment Act 2020*.

2—Commencement

This Act comes into operation 3 months after it is assented to by the Governor.

3—Amendment provisions

- 10 In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Disability Inclusion Act 2018*

4—Amendment of section 3—Interpretation

Section 3(1), definition of *community visitor*—delete the definition and substitute:

community visitor means—

- 15 (a) the person appointed to the position of Principal Community Visitor under section 24A; or
- (b) a person appointed to a position of Community Visitor under section 24A;

5—Substitution of section 24

Section 24—delete the section and substitute:

24—Interpretation

(1) In this Part—

5 *day options program* means a program provided by a disability services provider to a person with disability at premises other than the person's usual place of residence for the purpose of developing life-skills, further learning or recreation;

10 *day options program premises* means any premises at which a day options program is provided;

disability accommodation premises means any premises at which a disability services provider provides accommodation services to people with disability (including short term accommodation, for example for respite care);

15 *disability services provider* means a person who provides supports and services for people with disability (whether those supports and services are NDIS-funded supports and services or mainstream supports and services);

20 *related body corporate* has the same meaning as in section 9 of the *Corporations Act 2001* of the Commonwealth;

resident means a person with disability who resides at disability accommodation premises or supported independent living premises;

supported independent living assistance means any of the following supports and services provided to a person at the person's residence:

25 (a) supports funded under the *National Disability Insurance Scheme Act 2013* of the Commonwealth;

 (b) mainstream supports and services provided to the person to—

30 (i) assist the person with daily living; or

 (ii) assist the person to learn and develop knowledge, skills and abilities necessary for, or related to, independent living;

35 *supported independent living premises* means premises (other than disability accommodation premises), or part of such premises (as the case may be), at which a disability services provider provides supported independent living assistance to a person with disability, being, or being part of (as the case may be), the person's place of residence.

40 (2) For the purposes of the definition of *disability accommodation premises* in subsection (1), a disability services provider that is a body corporate is taken to provide an accommodation service to a person if the accommodation service is provided to the person by a related body corporate of the disability services provider.

24A—Community visitors

- 5
- (1) There will be a position of Principal Community Visitor.
- (2) There will be such number of positions of Community Visitor as the Governor considers necessary for the proper performance of the community visitors' functions under this Part.
- 10
- (3) A person will be appointed to the position of Principal Community Visitor, or a position of Community Visitor, on conditions determined by the Governor and for a term, not exceeding 3 years, specified in the instrument of appointment and, at the expiration of a term of appointment, will be eligible for reappointment.
- (4) The Governor may remove a person from the position of Principal Community Visitor, or a position of Community Visitor, on the presentation of an address from both Houses of Parliament seeking the person's removal.
- 15
- (5) The Governor may suspend a person from the position of Principal Community Visitor, or a position of Community Visitor, on the ground of incompetence or misbehaviour and, in that event—
- 20
- (a) a full statement of the reason for the suspension must be laid before both Houses of Parliament within 3 sitting days of the suspension; and
- (b) if, at the expiration of 1 month from the date on which the statement was laid before Parliament, an address from both Houses of Parliament seeking the person's removal has not been presented to the Governor, the person must be restored to the position.
- 25
- (6) The position of Principal Community Visitor, or a position of Community Visitor, becomes vacant if the person appointed to the position—
- 30
- (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 Governor under subsection (4); or
- 35
- (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
- 40
- (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 Governor, mentally or physically incapable of performing satisfactorily the functions of the position.

5 (7) The Minister may appoint a person to act in the position of Principal Community Visitor—

(a) during a vacancy in the position; or

(b) when the Principal Community Visitor is absent or unable to perform the functions of the position; or

10 (c) if the Principal Community Visitor is suspended from the position under subsection (5).

24B—Functions of community visitors

(1) Community visitors have the following functions:

15 (a) to visit disability accommodation premises and supported independent living premises to inquire into the following matters:

(i) the appropriateness and standard of the premises for the accommodation of and provision of supports and services to people with disability;

20 (ii) the adequacy of opportunities for inclusion and participation by residents in the community;

(iii) whether the accommodation services or the supported independent living assistance services (as the case requires) are being provided in accordance with the principles in section 9;

25 (iv) whether residents are provided with adequate information to enable them to make informed decisions about their accommodation, care and activities;

30 (v) any case of abuse or neglect, or suspected abuse or neglect, of a resident;

(vi) the use of restrictive interventions and compulsory treatment;

(vii) any failure to comply with the provisions of this Act;

35 (viii) any complaint made to a community visitor by a resident, guardian, medical agent, relative, carer or friend of a resident, or any other person providing support to a resident;

40 (b) to visit day options program premises to inquire into the following matters:

(i) the appropriateness and standard of the premises for the provision of supports and services for people with disability;

5 (ii) whether the day options programs are being provided in accordance with the principles in section 9;

(iii) any case of abuse or neglect, or suspected abuse or neglect, of a person attending a day options program at the premises;

10 (iv) the use of restrictive interventions and compulsory treatment;

(v) any failure to comply with the provisions of this Act;

15 (vi) any complaint made to a community visitor by a person attending a day options program or a guardian, medical agent, relative, carer or friend of such a person, or any other person providing support to such a person;

20 (c) to refer matters of concern relating to the organisation or delivery of supports and services for people with disability to the Minister;

25 (d) to act as advocates for residents and for persons attending day options programs to promote the proper resolution of issues relating to the care, treatment or control of such persons, including issues raised by a guardian, medical agent, relative, carer or friend of such a person or any person who is providing support to such a person.

(2) The Principal Community Visitor has the following additional functions:

30 (a) to oversee and coordinate the performance of the community visitors' functions;

35 (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;

40 (d) to refer matters to the Commissioner of Police and any other appropriate authority in circumstances of suspected abuse, neglect or exploitation of a person with disability;

(e) any other functions assigned to the Principal Community Visitor by this Act or any other Act.

24C—Powers of community visitors

- 5 (1) A community visitor may, for the purposes of carrying out the functions of a community visitor, enter disability accommodation premises, supported independent living premises or day options program premises at any reasonable time (with or without any previous notice) and, while on the premises, may—
- 10 (a) meet with a resident or person attending a day options program; and
- (b) inspect the premises or any equipment or other thing on the premises; and
- (c) make enquiries relating to the provision of supports and services to the residents; and
- (d) request any person to produce documents or records; and
- 15 (e) examine documents or records produced and request to take extracts from, or make copies of, any of them.
- (2) The Minister may direct a community visitor to visit disability accommodation premises, supported independent living premises or day options program premises at the times that the Minister directs.
- 20 (3) Despite any other provision of this Part, a community visitor may only exercise a power under this Part in respect of supported independent living premises—
- (a) if a request to see a community visitor has been made—
- 25 (i) by a resident who is provided with supported independent living assistance at the premises; or
- (ii) with the consent of a resident who is provided with supported independent living assistance at the premises, by a person authorised to make a request under section 24E(1); or
- 30 (b) with the consent of a resident of the premises who is provided with supported independent living assistance at the premises.

24D—Obligations of service provider and staff

- 35 (1) If a community visitor wishes to perform or exercise, or is performing or exercising, any power, duty or function under this Act in relation to premises at which a disability service provider provides supports and services for a person with disability, the disability service provider and any member of the staff or management of the disability service provider must provide the community visitor with such reasonable assistance as the community visitor requires to
- 40 perform or exercise that power, duty or function effectively.

- (2) A disability service provider or member of the staff or management of a disability service provider must—
- (a) reasonably render assistance when required to do so under subsection (1); and
 - (b) give full and true answers to the best of that person's knowledge to any questions asked by a community visitor in the performance or exercise of any power, duty or function under this Act.

Maximum penalty: \$10 000.

24E—Requests to see community visitors

- (1) A request to see a community visitor may be made by any of the following persons:
- (a) a resident;
 - (b) a person attending a day options program;
 - (c) a guardian, medical agent, relative, carer, friend or neighbour of a person referred to in paragraph (a) or (b);
 - (d) any other person who—
 - (i) is providing support to a person referred to in paragraph (a) or (b); or
 - (ii) becomes aware of circumstances relating to a person referred to in paragraph (a) or (b) that the person considers warrant inquiry by a community visitor.

- (2) If a request is made under subsection (1) to—
- (a) a manager of, or a person in a position of authority at, disability accommodation premises or day options program premises; or
 - (b) a disability services provider who provides supported independent living assistance to a resident in their own home,

that person must advise the Principal Community Visitor of the request within 2 days after receipt of the request.

Maximum penalty: \$10 000.

24F—Delegation by Principal Community Visitor

- (1) The Principal Community Visitor may delegate a power or function of the Principal Community Visitor under this Act to another community visitor.
- (2) A delegation under this section—
- (a) may be absolute or conditional; and
 - (b) does not derogate from the power of the Principal Community Visitor to act in a matter; and

(c) is revocable at will by the Principal Community Visitor.

24G—Reports by community visitors

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- (1) After a visit to disability accommodation premises, supported independent living premises or day options program premises, a community visitor must report to the Principal Community Visitor about the visit in accordance with the requirements of the Principal Community Visitor.
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- (2) Subsection (1) does not apply in respect of a visit conducted by the Principal Community Visitor (whether alone or accompanied by 1 or more other community visitors).
- (3) The Principal Community Visitor must, on or before 30 September in every year, forward a report to the Minister on the work of the community visitors under this Act during the financial year ending on the preceding 30 June.
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- (4) The Principal Community Visitor may, at any time, prepare a special report to the Minister on any matter arising out of the performance of the community visitors' functions.
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- (5) The Minister must, within 6 sitting days after receiving a report under this section, have copies of the report laid before both Houses of Parliament.

24H—Report to SA Police and appropriate authority in certain circumstances

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- (1) If, arising out of the performance of the functions of community visitors under this Part, there are reasonable grounds to suspect that a person with disability is being, or has been, subjected to abuse, neglect or exploitation, the Principal Community Visitor must report that suspicion and the grounds for it to—
- 30
- (a) the Commissioner of Police; and
- (b) any other appropriate authority who, in the circumstances, the Principal Community Visitor considers may take action in respect of the suspected abuse, neglect or exploitation, such as the NDIS Quality and Safeguards Commission or the Health and Community Services Complaints Commissioner.
- 35
- (2) In this section—

NDIS Quality and Safeguards Commission means the NDIS Quality and Safeguards Commission established under section 181A of the *National Disability Insurance Scheme Act 2013* of the Commonwealth.