

South Australia

Controlled Substances (Youth Treatment Orders) Regulations 2021

under the *Controlled Substances Act 1984*

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1—Short title

These regulations may be cited as the *Controlled Substances (Youth Treatment Orders) Regulations 2021*.

2—Commencement

These regulations will come into operation on the day on which Part 7A of the Act (as enacted by the *Controlled Substances (Youth Treatment Orders) Amendment Act 2019*) comes into operation.

3—Interpretation

In these regulations, unless the contrary intention appears—

accredited drug assessment service means a person or body currently accredited as a drug assessment service under section 56A of the Act;

accredited drug treatment service means a person or body currently accredited as a drug treatment service under section 56A of the Act;

Act means the *Controlled Substances Act 1984*;

Court means the Youth Court of South Australia;

employee, of the Adelaide Youth Training Centre (Kurlana Tapa), has the same meaning as in the *Youth Justice Administration Act 2016*;

Training Centre Visitor means the Training Centre Visitor under the *Youth Justice Administration Act 2016*;

treatment and care plan, for a child, means a treatment and care plan for the child contemplated by section 54D(2)(b)(iv) of the Act;

Visitor means a person appointed by the Minister as the Visitor for the purposes of the visitor scheme established under section 54L(2) of the Act.

4—Visitor scheme

- (1) For the purposes of section 54L(2) of the Act, the Minister must, in establishing a visitor scheme, confer the following functions on the Visitor:
 - (a) to visit and inspect facilities at which children are detained under detention orders;
 - (b) to monitor the health, safety and wellbeing of children who are detained pursuant to detention orders;
 - (c) to inquire into and investigate any matter referred to the Visitor by the Minister.
- (2) The Visitor must act independently, impartially and in the public interest.
- (3) The Minister cannot control how the Visitor is to exercise the Visitor's statutory functions and powers and cannot give any direction with respect to the content of any report prepared by the Visitor.
- (4) In performing a function under the visitor scheme, the Visitor must pay particular attention to the needs and circumstances of children who—
 - (a) are under the guardianship, or in the custody, of the Chief Executive under the *Children and Young People (Safety) Act 2017*; or
 - (b) are Aboriginal or Torres Strait Islander children; or
 - (c) have a physical, psychological or intellectual disability.
- (5) A government or non-government organisation that is involved in the provision of services under Part 7A of the Act must, at the Visitor's request, provide the Visitor with information relevant to the exercise of the Visitor's functions under the visitor scheme.
- (6) To avoid doubt, subregulation (5) does not apply to the Court.
- (7) If the Visitor has reason to believe that a person is capable of providing information or producing a document that may be relevant to the exercise of the Visitor's functions under the visitor scheme, the Visitor may, by notice in writing, require the person to do 1 or more of the following:
 - (a) to provide that information to the Visitor in writing signed by that person or, in the case of a body corporate, by an officer of the body corporate;
 - (b) to produce that document to the Visitor;
 - (c) to attend before a person specified in the notice and answer relevant questions or produce relevant documents.
- (8) A notice under subsection (7) is to specify the period within which, or the time, day and place at which, the person is required to provide the information or document, or to attend.
- (9) A person must not, without reasonable excuse, refuse or fail to comply with a requirement under subsection (7).

Maximum penalty: \$5 000.

- (10) If a document is produced in accordance with a requirement under this section, the Visitor may take possession of, make copies of, or take extracts from, the document.
- (11) In performing a function under the visitor scheme, the Visitor has, to the extent that the power is relevant to the operation of Part 7A of the Act, the same power to visit and inspect a training centre as the Training Centre Visitor has under section 16 of the *Youth Justice Administration Act 2016*.
- (12) Pursuant to section 54L(3) of the Act, the functions under the visitor scheme are conferred on the Training Centre Visitor.

Note—

This conferral of the functions of the visitor scheme on the Training Centre Visitor is due to the operation of section 54B(3) of the Act, which limits the scope of youth treatment orders to children who are already detained in a training centre until a day declared by the Governor by proclamation.

5—Requests to contact Visitor

- (1) For the purposes of section 54L(2) of the Act, a child who is detained pursuant to a detention order, a guardian, relative or carer of such a child, or any person who is providing support to such a child may make a request to contact the Visitor.
- (2) If such a request is made to the Chief Executive of the Department (within the meaning of the *Youth Justice Administration Act 2016*), that Chief Executive must advise the Visitor of the request within 2 days after receipt of the request.

6—Reporting obligations of Visitor

- (1) For the purposes of section 54L(2) of the Act, the Visitor must, on or before 30 September in every year, forward a report to the Minister on the work of the Visitor during the financial year ending on the preceding 30 June.
- (2) The Minister must, within 6 sitting days after receiving a report under subsection (1), have copies of the report laid before both Houses of Parliament.
- (3) The Visitor may, at any time, prepare a special report to the Minister on any matter arising out of the performance of the Visitor's functions under the visitor scheme.
- (4) The Minister must, within 2 weeks after receiving a special report, have copies of the report laid before both Houses of Parliament.

7—Provisions relating to assessment and treatment pursuant to order

- (1) Pursuant to section 54N(a) of the Act, the following principles are to be observed in relation to assessments undertaken, or treatment provided, pursuant to an order under Part 7A of the Act:
 - (a) assessments will be conducted, and treatment provided, in accordance with evidence-informed methods and clinical tools to determine the best interests and needs of the child;
 - (b) assessments will be conducted, and treatment provided, in accordance with best practice evidence and frameworks;
 - (c) assessments and treatment will be child-focused;
 - (d) the mental, physical and social development of the child must be given priority;

- (e) assessments will have regard to whether there are any other appropriate or less restrictive means available to ensure the child receives treatment in relation to their use of a controlled drug or drugs;
 - (f) assessments and treatment will be culturally safe and appropriate, and support the needs of Aboriginal and Torres Strait Islander children, children from other culturally and linguistically diverse backgrounds and children with disability;
 - (g) assessments and treatment will take into account the child's relevant history (including their biological, physiological, psychological, social history and any history of dependency on controlled drugs);
 - (h) assessments and treatment will take into account the capacity of the child to participate in treatment, including their cognitive capacity where appropriate;
 - (i) assessments and treatment will take into account any trauma experienced by the child;
 - (j) assessments and treatment will be age and developmentally appropriate to the child, and adaptable based on the cognitive ability of the child;
 - (k) assessments and treatment will take into account gender identity and sexuality.
- (2) Pursuant to section 54N(a) of the Act—
- (a) an assessment or treatment pursuant to an order under Part 7A of the Act must take place within the Adelaide Youth Training Centre (Kurlana Tapa); and
- Note—**
- This limitation is due to the operation of section 54B(3) of the Act, which limits the scope of youth treatment orders to children who are already detained in a training centre until a day declared by the Governor by proclamation.
- (b) an assessment pursuant to an assessment order must be conducted by a medical practitioner who is, or is acting on behalf of, an accredited drug assessment service; and
 - (c) treatment provided pursuant to a treatment order must be provided by a registered health practitioner of the relevant kind who is, or is acting on behalf of, an accredited drug assessment service or drug treatment service (as the case requires); and
 - (d) treatment provided pursuant to a treatment order must be provided in accordance with the treatment and care plan for the child.

8—Use of force to keep child subject to detention order at place where assessment conducted or treatment provided

- (1) Pursuant to section 54N(b) of the Act, an employee of the Adelaide Youth Training Centre (Kurlana Tapa) may do 1 or both of the following to prevent a child who is subject to a detention order from leaving the Adelaide Youth Training Centre (Kurlana Tapa) during any period in which an assessment of the child is being undertaken, or treatment is being provided to the child pursuant to an order under Part 7A of the Act:
 - (a) lock a door or window of the Adelaide Youth Training Centre (Kurlana Tapa), or a room within the Adelaide Youth Training Centre (Kurlana Tapa), to prevent entry to, or exit from, the room;
 - (b) physically restrain the child for the purpose of conveying the child to a place within, or preventing the child from leaving, or returning the child to, the Adelaide Youth Training Centre (Kurlana Tapa).
- (2) However, an employee of the Adelaide Youth Training Centre (Kurlana Tapa) may only do the things referred to in subregulation (1)—
 - (a) during a period in which an assessment or treatment session (as the case requires) is being conducted pursuant to an order under Part 7A of the Act; and
 - (b) in limited circumstances, as a last resort, in the least restrictive way and for the shortest period possible in the circumstances.
- (3) In doing a thing referred to in subregulation (1), an employee of the Adelaide Youth Training Centre (Kurlana Tapa) must comply with any code of practice prepared or specified by the Minister for the purposes of this subregulation.
- (4) Nothing in this regulation limits any powers or obligations an employee of the Adelaide Youth Training Centre (Kurlana Tapa) has under the *Youth Justice Administration Act 2016* or any other Act or law in relation to a child who is subject to a detention order.
- (5) Any action taken under subregulation (1)(b) by an employee of the Adelaide Youth Training Centre (Kurlana Tapa) must be reported as soon as practicable to—
 - (a) the Chief Executive of the Department responsible for assisting the Minister in the administration of the *Criminal Law Consolidation Act 1935*; and
 - (b) the Visitor.
- (6) Section 33(2), (3) and (4) of the *Youth Justice Administration Act 2016* will be taken to apply in relation to any action taken by an employee of the Adelaide Youth Training Centre (Kurlana Tapa) under this regulation.

Note—

This regulation is due to the operation of section 54B(3) of the Act, which limits the scope of assessment and treatment orders to children who are already detained in a training centre until a day declared by the Governor by proclamation.

Note—

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

Made by the Governor

after consultation by the Minister with the Advisory Council and with the advice and consent
of the Executive Council

on 18 November 2021

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