

OFFICIAL

*Automated
External
Defibrillators
(Public Access)
Act 2022 –
Proposed
Amendments*

Explanatory Guide



Government
of South Australia

SA Health

Introduction

This Explanatory Guide provides information on proposed amendments to the *Automated External Defibrillators (Public Access) Act 2022* ('the Act').

Background

The Automated External Defibrillators (Public Access) Bill 2022 was introduced by the Hon Frank Pangallo MLC into the Legislative Council on 7 September 2022 and passed both Houses of Parliament on 30 November 2022.

The Act requires owners to install and register Automated External Defibrillators ('AEDs') in certain buildings, facilities, and vehicles in South Australia.

Obligations to comply in accordance with sections 3 to 17 of the Act come into operation for Crown-owned buildings, facilities, and vehicles on 1 January 2025, and for non-Crown owned buildings, facilities, and vehicles on 1 January 2026 (in accordance with Schedule 1 of the Act).

An Across Government AED Steering Committee, consisting of government and external representation, has been established to oversee the key deliverables of the Act implementation.

Following advice from the Steering Committee, an Amendment Bill has been developed to allow for changes to the Act to ensure it can be operationalised to achieve the intent in the most effective manner. The proposed Amendment Bill resolves ambiguity associated with the Act's requirements, to ensure consistent application and to enable effective operationalisation through regulations.

Applicability and scope of the Act

Owners of a designated or prescribed building or facility will need to comply with the requirements of the Act from the applicable operational date (1 January 2025 for Crown or 1 January 2026 for non-Crown).

Relevant authorities for prescribed and emergency services vehicles will need to comply with the requirements of the Act from the applicable operational date (1 January 2025 for Crown or 1 January 2026 for non-Crown).

Provide your feedback

You can submit a survey response on the SA Government YourSAy page at yoursay.sa.gov.au/automated-external-defibrillators-public-access-act-draft-amendment-bill or provide your feedback by email to Health.AutomatedExternalDefibrillators@sa.gov.au

Consultation closes 5pm ACST on 30 June 2024.

Proposed Amendments

Section 3 – Interpretation

It is proposed that relevant definitions of key terms be included to ensure clarity for owners of buildings and facilities, and relevant authorities for prescribed and emergency service vehicles in relation to the application of the Act.

Definition of Building

No express definition is provided in the Act for the meaning of building. It is proposed to include a definition to enable clarity and consistent application of the Act.

Proposed Amendment

Amend Section 3 of the Act to include a definition of 'building' to mean:

- *a structure with a roof and walls which has a floor area of 600m² or more*

This will ensure clarity in relation to the applicability of the Act and is consistent with the parameters already set within the meaning of prescribed building.

Definition of Correctional Facility

A proposed amendment at Section 6A of the Act will exclude certain buildings and facilities, including correctional facilities, from the application of the Act. Therefore, a definition of 'correctional facility' should be included in Section 3 to make clear which buildings this will apply to.

Proposed Amendment

Amend Section 3 of the Act to include a definition of 'correctional facility' to mean:

- (a) a correctional institution within the meaning of the Correctional Services Act 1982; or*
- (b) a custodial police station within the meaning of section 78 of the Summary Offences Act 1953; or*
- (c) a facility for the reception, detention, correction and training of youths who offend against the criminal law established under the Family and Community Services Act 1972 or the Youth Justice Administration Act 2016;*

The inclusion of this definition will provide clarity as to which buildings are exempt from the Act, as per the proposed amendment of Section 6A.

Definition of Facility

No express definition is provided in the Act for the meaning of facility. A definition should be included to ensure clarity in relation to the application of the Act.

Proposed Amendment

Amend Section 3 of the Act to include a definition of 'facility' (other than in relation to a correctional facility or licensed children's residential facility) to mean:

- (a) 2 or more buildings that are in close proximity to one another and are owned by the same person and used for related purposes; or*
- (b) enclosed (whether fully or partially) structures with a floor area of 600 m² or more used for sporting or recreational activities attended by the public;*

Amend Section 3 of the Act to insert subsection (5):

- (5) For the purposes of this Act, if 2 or more buildings constitute a facility for the purposes of the definition of facility in subsection (1), they will be treated as a facility rather than as buildings.*

This will provide clarity in relation to the applicability of the term 'facility'.

Definition of Hospital

A proposed amendment at Section 6A of the Act will exclude certain buildings and facilities, including hospitals, from the application of the Act. Therefore, a definition should be included in Section 3 to make clear which buildings this will apply to.

Proposed Amendment

Amend Section 3 of the Act to include a definition of 'hospital' to have the same meaning as in the Health Care Act 2008.

The inclusion of this definition will provide clarity as to which buildings are exempt from the Act, as per the proposed amendment of Section 6A.

Definition of Licensed Children's Residential Facility

A proposed amendment at Section 6A of the Act will exclude certain buildings and facilities, including licensed children's residential facilities, from the application of the Act. Therefore, a definition should be included in Section 3 to make clear which buildings this will apply to.

Proposed Amendment

Amend Section 3 of the Act to include a definition of 'licensed children's residential facility' to have the same meaning as in the Children and Young People's (Safety) Act 2017.

The inclusion of this definition will provide clarity as to which buildings are exempt from the Act, as per the proposed amendment of Section 6A.

Definition of Major Works

Currently the Act defines major works to mean 'improvements, repairs or other physical changes to a building the cost of which exceeds \$100 000'. To ensure clarity, an amendment is proposed to reflect that the relevant floor area for determining whether a building is a 'prescribed building' for the purpose of the Act, is the total floor area following the conclusion of any 'major works' not the floor area of the building prior to the 'major works'.

Proposed Amendment

Amendment to the definition of 'major works' in Section 3 of the Act, to add '(regardless of the floor area of the building)' after the word building.

Definition of Owner

It is the responsibility of the owner of a building or facility to comply with the Act requirements. Inclusion of a definition of 'owner' in relation to a building or facility provides clarity in relation to who is responsible for ensuring compliance with the obligations of the Act.

Proposed Amendment

Amend Section 3 of the Act to include definitions of:

- *'owner' in relation to a building or facility means the owner of the land on which the building is situated, being –*
 - (a) if the land is unalienated from the Crown—the Crown; or*
 - (b) if the land is alienated from the Crown by grant in fee simple—the owner of the estate in fee simple; or*
 - (c) if the land is held from the Crown by lease or licence—the lessee or licensee; or*
 - (d) if the land is held from the Crown under an agreement to purchase—the person who has the right to purchase;*

This will provide clarity as to whom the obligations of the Act apply. Applicability of the definition can be determined by referring to the title of ownership for land on which the relevant building/facility is situated.

Definition of Public Building or Facility

The current definition of 'public building or facility' in the Act refers to 'a place to which the public has access'. To ensure consistency with the remainder of the Act, and avoid any uncertainty as to the scope of the Act's obligations, the word 'place' should be replaced with 'building or facility'.

Proposed Amendment

Amendment to the definition of 'public building or facility' in Section 3 of the Act, to delete the word 'place' and substitute with 'building' or 'facility' (as defined above).

This will remove the broader, uncertain terminology to ensure both clarity of the Act's applicability and consistency with the rest of Act.

Definition of Relevant Authority

Amendment to define a 'relevant authority' for prescribed vehicles will enable the regulations to provide clarity for who is responsible for ensuring compliance with the obligations of the Act.

Proposed Amendment

Amend Section 3 of the Act to insert a definition of relevant authority, for a prescribed vehicle, to mean the entity prescribed by the regulations as the relevant authority for the vehicle.

This will enable the regulations to provide clarity as to the 'relevant authority' for ensuring prescribed vehicles comply with the Act.

Definition of Commercial Purpose

Section 7 of the Act imposes obligations on owners of designated buildings or facilities and prescribed buildings to install AEDs. Certain obligations apply to certain types of facilities or buildings that are 'on land used for commercial purposes'. The term 'commercial purpose' is not specifically defined within the Act, and a definition is proposed to enable clarity of the Act's application for owners.

Proposed Amendment

Amend Section 3 of the Act to insert subsection (3) to state:

For the purposes of this Act, land will be taken to be used for commercial purposes if—

(a) an occupier of the land solely or primarily sells goods, or provides services, for money or other consideration on the land; or

(b) the land is used for purposes of a kind prescribed by the regulations.

This will provide owners with clarity as to the type of building/facility captured by the Act's requirements.

Metric for Floor Area

The Act does not provide a specific metric for calculating the floor area of a building or facility, which may lead to different interpretations of floor area and result in inconsistent application of the Act. A definition should be included which enables regulations to prescribe suitable methodology for measuring the applicable floor area for the purpose of the Act.

Proposed Amendment

Amend Section 3 of the Act to insert subsection (4) allowing for the development of regulations to provide for 1 or more methods of calculating the floor area of a building or facility.

This will ensure consistent application of the requirements and provide clarity in relation to accumulated floor space.

Section 4 – Meaning of a Designated Building or Facility

It is proposed to remove correctional and custodial facilities from the mandatory obligations of the Act, to mitigate any safety risk with having AEDs accessible in these locations.

Proposed Amendment

Amend Section 4 to delete paragraph (d).

Amend Section 4 to insert, after paragraph (k), the following:

‘but does not include a building or facility, or class of buildings or facilities, excluded from the ambit of this definition by the regulations.’

This will exclude custodial facilities from the Act and enable regulations to make any further exclusions if required for the operationalisation of the Act.

Section 5 – Meaning of Prescribed Building

Amendment to the meaning of ‘prescribed building’ is proposed to avoid duplication or inconsistency with the meaning which is proposed for ‘building’.

Proposed Amendment

Amend Section 5(a) to insert ‘(regardless of the floor area of the building) after the word ‘building’.

Amend Section 5(b) to delete ‘with a floor area of more than 600 m²’.

Amend Section 5 to insert, after paragraph c, the following:

‘but does not include a building, or class of buildings, excluded from the ambit of this definition by the regulations,’

As the proposed definition of ‘building’ in Section 3 includes reference to ‘a floor area of 600 m² or more’, the reference in this section is no longer required. The ability to exclude the regulations if required for the operationalisation of the Act.

Section 6 – Application of Act

Amendment is proposed to include a new section for the exclusion of certain buildings and facilities from the requirements of the Act for reasons including:

- Buildings or facilities in which there is a superior response mechanism in place and the presence of trained medical staff, in an event of cardiac arrest (e.g. hospitals);
- Buildings or facilities in which the presence of an AED present safety concerns;
- Buildings or facilities that are not accessible to the public, and therefore the mandated presence of AEDs would not align with the intent of the Act.

Proposed Amendment

Insert Section 6A - Application of Act—certain buildings and facilities:

Despite any other provision of this Act, this Act does not apply to the following buildings or facilities:

- (a) a hospital or other medical facility that complies with the requirements prescribed by the regulations;*
- (b) a correctional facility;*
- (c) a licensed children's residential facility or a residential facility (not being a training centre) established or licensed under the Family and Community Services Act 1972;*
- (d) a building or facility that is not accessible to the public;*
- (e) any other building or facility, or class of buildings or facilities, prescribed by the regulations for the purposes of this section.*

This will ensure the exclusion of buildings where installation of AEDs would not be appropriate and allows for development of regulations to capture any potential future exclusions as required.

Section 7 – Installation of Automated External Defibrillators – buildings and facilities

Publicly Accessible Floor Space

Section 7 of the Act provides that the owner of a relevant designated building or facility or a prescribed building must ensure that 1 AED is installed in the building or facility for every 1 200m² of floor area of the building or facility.

A 'relevant designated building or facility or prescribed building' must be on land used for a commercial purpose.

In any other case, a designated building or facility or prescribed building which does not meet the 'relevant' definition at section 7(3) must have 1 AED installed.

However, the Act does not specify how floor area is to be calculated. If applying an interpretation aligning with the ordinary meaning of the words, the floor area of a building or facility would be the entire area within the confines of the boundaries of the building or the facility. This will result in the installation of AEDs being mandated in areas of buildings that are not accessible by the public (and which would not be available for public use in the event of a cardiac arrest nearby).

Proposed Amendment

Amendment to Section 7 (1)(c) of the Act to insert 'publicly accessible' after the term 'floor area'.

Amendment to Section 7(3), before the definition of relevant building or facility, insert:

publicly accessible floor area, in relation to a building or facility, means—

(a) in relation to a building or facility only part of which is open to the public—the floor area of the part of the building or facility to which the public has unobstructed access while that part of the building or facility is open to the public; or

(b) in any other case—the floor area of the building or facility to which the public has unobstructed access while the building or facility is open to the public;

Amendment to Section 7(3)(b) to insert 'publicly accessible' before the word 'floor'.

This will align with the short title of the Act and supports the Act's intent in increasing the availability of AEDs for public use.

Section 8 – Installation of Automated External Defibrillators – vehicles

Section 8 of the Act requires that the relevant authority for an emergency services organisation to ensure that an AED is installed in each vehicle used in the provision of emergency services by the organisation.

The intent of the Act is to increase the availability of AEDs for public use, however emergency services vehicles are not, and should not be, accessible to the public. An amendment is proposed to stipulate that AEDs installed in emergency services vehicles are for use by emergency service organisations only.

Proposed Amendment

Amendment to Section 8 (1), after 'the organisation', to insert 'for use by, or on behalf of, the organisation'.

This will ensure AEDs are still installed in emergency services vehicles and can be used where staff attend an incident where an AED is required but removes safety concerns regarding mandating public accessibility to the vehicles.

Section 9 – Maintenance and Testing

Section 9 requires AEDs installed under the Act to be tested at least once every 12 months, with a penalty applying for non-compliance.

AEDs should be maintained in accordance with manufacturer instructions to ensure optimal device performance in the event of an emergency. Mandatory testing of AEDs may result in premature failure of the device, which would add unnecessarily to the cost of ownership of the devices, potentially void AED device warranties and increase risk of a depleted battery in the event of an emergency.

Proposed Amendment

Amendment to Section 9 to delete subsection (1) and substitute:

- (1) A designated entity in respect of a building, facility or vehicle in which an Automated External Defibrillator is installed in accordance with this Act must ensure that the Automated External Defibrillator is maintained in accordance with any instructions of the manufacturer of the Automated External Defibrillator.*

The proposed amendment will reduce the risk of premature failure of the AED and align the maintenance of AEDs to the manufacturer instructions.

Section 12 – Register

Section 12 of the Act requires the Minister to establish and maintain a register of AEDs installed in accordance with the Act, which records the location and times of public accessibility of each AED.

The proposed amendments in relation to the AED register and software application (under Section 13) will enable the exclusion of vehicles from the Act's requirements. The register is not able to capture live (or non-static) locations, which could cause delays in assistance in the event of a cardiac arrest if an AED in a vehicle registered to a parked address was shown as the nearest AED, but the vehicle was not present at the time.

The amendment also enables a copy of the information on the register to be made available on a website as determined by the Minister, rather than the register itself.

Proposed Amendment

Amendment to Section 12(1) to insert 'in buildings and facilities' after 'installed'.

Amendment to Section 12 to delete subsection (3) and substitute:

- (3) The information in the register must be made available on a website determined by the Minister and accessible by the public without charge in a format determined by the Minister.*

Amendment to Section 12(4) to delete 'a designated entity in respect of a building, facility or vehicle' and substitute 'the owner of a building or facility', and to insert 'in accordance with the act; after 'is installed'.

Amendment to Section 12 to delete subsection (6).

This amendment will remove the requirement for AEDs in vehicles to be registered. AEDs would still be required in the applicable vehicles under the Act, but there would not be a legal requirement for these to be captured on the register of publicly accessible AEDs.

Section 13 – Software Application

Section 13 requires the Minister to ensure the information contained in the register under section 12 is also available on a software application compatible with smartphones, and that it be able to provide directions from the location of the operator to AEDs.

An existing software application is already integrated with the SA Ambulance Service (SAAS) dispatch process which enables the following users to register on the platform:

- People with first aid training
- Registered Health Practitioners who are registered with the Australian Health Practitioner Regulation Agency
- Tertiary healthcare students who are registered with the Australian Health Practitioner Regulation Agency
- SA Ambulance Service staff and volunteers with clinical or first aid training.

It is proposed to amend the Act to ensure the requirements enable use of the existing system effectively integrated into the SAAS dispatch process. In the event of a cardiac arrest, if someone calls 000 for assistance, SAAS are able to use the platform to notify nearby registered users or 'operators' (who are capable of CPR and AED use) through their smart phone that someone is in need and provide directions to their location, in parallel to the usual ambulance dispatch process.

Proposed Amendment

Amendment to Section 13 to delete the section and substitute:

(1) The Minister must ensure that a software application compatible with smartphones is able to provide a registered user of the software application with the location of the Automated External Defibrillator that is nearest to the registered user and—

(a) is installed in a building or facility in accordance with this Act; and

(b) is accessible by the public at the time the software application is being used by the registered user.

(2) The software application referred to in subsection (1) may—

(a) enable only a certain class of persons to be registered users of the application; or

(b) provide for conditions with which registered users are required to comply.

Without these amendments there would be a need to develop an additional application which may potentially undermine the existing GoodSAM first responder application and its integration with the SAAS dispatch process.

Section 16A – Exemptions

An additional section is proposed which enables the making of exemptions on a case-by-case basis to the requirements of the Act.

This is intended to operate in instances where buildings or facilities have existing effective programs or arrangements in place which enable the provision of AEDs as necessary, but which do not meet the specific requirements of the Act. There may also be exceptional circumstances where compliance with the Act would undermine existing arrangements or would not be possible for a compelling reason, however adequate alternative arrangements have been made (e.g., a building or facility contains AEDs which are available and mobile, but which are not installed on the wall of the building or facility).

Exemptions under this section would require approval by the Minister on a case-by-case basis.

Proposed Amendment

Insertion of Section 16A -Exemptions:

- (1) The Minister may, by notice in writing, exempt a specified building, facility, vehicle or person from the operation of this Act or a specified provision or provisions of this Act.*
- (2) An exemption—*
 - (a) may be conditional or unconditional; and*
 - (b) may be varied or revoked by the Minister by further notice in writing.*

This will ensure exemptions can be considered in situations where there are adequate alternative controls in place which are effective though do not meet the specific requirements of the Act.

Section 17 – Regulations and Fee notices

It is proposed to amend the Act to allow broader regulation making powers to support effective operationalisation of the Act.

Proposed Amendment

Amendment of Section 17(2)(a) to insert 'or vehicle' after the word 'persons', and to insert 'or vehicles' after 'or persons'.

This will allow for particular types of vehicles to be exempted if required.

Amendment of Section 17(2) to insert after paragraph (a):

(ab) prescribe requirements in relation to the placement and accessibility of Automated External Defibrillators installed in accordance with this Act; and

This will ensure regulations can be made which supports the intent of the Act to provide AEDs for public access in the event of a cardiac arrest (e.g., limit use of locks or pin codes which may impede access in an emergency).

Schedule 1 – Transitional provision

Amendment to align the language with the definition of relevant authority for prescribed vehicles.

Proposed Amendment

Amend Schedule 1, clause 1 to delete 'any building, facility or vehicle owned by a person that is not the Crown (or an agency or instrumentality of the Crown) until 1 January 2026' and substitute:

(a) any building or facility owned by a person that is not the Crown (or an agency or instrumentality of the Crown); or

(b) any vehicle for which the relevant authority is not the Crown (or an agency or instrumentality of the Crown),

until 1 January 2026.

Additional Changes

Throughout the Act references to 'owner of' relating to a prescribed vehicle have been deleted and substituted with 'relevant authority for', in line with the updated definition in Section 3.

For more information

AED Project Team

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