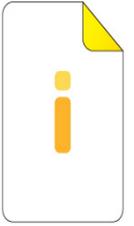


# New powers of SACAT to Review detention decisions for persons with a mental incapacity during the COVID-19 Pandemic



In response to COVID-19, new laws affecting the lawful detention of ‘protected persons’ have been introduced in South Australia in the *COVID-19 Emergency Response Act 2020* (the Act).

‘Protected persons’ are persons already the subject of a guardianship order under the *Guardianship and Administration Act 1993* (the G&A Act), or other persons with a ‘mental incapacity’ (as defined by the Act).

## **New Laws - COVID-19 Emergency Response Act 2020**

Persons with a mental incapacity may not be able to understand the Government directives about COVID-19, or the need to comply with them, and may leave their home or residential facilities unattended.

The new laws expand the powers of Guardians, the person in charge of prescribed premises where a protected person usually resides (a *prescribed person*), the *Authorising Officer*, or the Tribunal to detain, approve, or authorise the detention of a protected person, as necessary, to follow the Government’s directives, and to keep them safe during the pandemic.

The *Authorising Officer* has been appointed by the Minister to perform this and other functions during the course of the pandemic.

The laws will stop operating when all relevant declarations relating to the outbreak of the COVID-19 within South Australia have ceased, or on 8 October 2020 – whichever occurs first.

## **Reviews of detention decisions made under the Act**

- ▶ SACAT can review the **decision of a prescribed person** to detain a protected person
- ▶ SACAT can review the **approval granted by a Guardian** to the prescribed person to detain a protected person

However, the above decisions must first be reviewed by the *Authorising Officer*.

An application for review to SACAT may be made within 7 days after you receive the results of the review from the Authorising Officer.

- ▶ SACAT can also review the **decisions of the Authorising Officer**:
  - to authorise detention by the prescribed person

- to authorise the detention of a person without a guardian, or
- to order the cessation of the period of detention.

An application for review of a decision of an Authorising Officer to SACAT may be made after you receive the decision of the Authorising Officer.

## Who can apply?

The following persons can apply for a review:

- the protected person (or, if the person is incapable of making the application – a person with a sufficient interest acting on their behalf)
- the guardian (except where it is a decision to review the guardian's approval)
- the prescribed person of the relevant premises

## How to apply

You should apply for a review by the SACAT online application form on the SACAT website.

There is no fee involved for lodging a review of a detention decision under the Act.

In the field entitled 'Type keyword here' contained within Step 2 type the word 'COVID-19' and then scroll down to select the correct application type.

If you have any further questions or you would like a staff member from SACAT to assist you to complete the application over the telephone please **call SACAT on 1800 723 767** (and press menu option 4, and then 6).

For further information, please refer to:

- **The Office of the Public Advocate** on 08 83428200 or toll free on 1800 066 969 (Country SA) or go to [http://www.opa.sa.gov.au/contact\\_us](http://www.opa.sa.gov.au/contact_us)
- **The GUIDELINES** published under the *COVID-19 Emergency Response Act 2020* at [https://www.covid-19.sa.gov.au/\\_data/assets/pdf\\_file/0009/182664/Detention-of-protected-persons-schedule-1.pdf](https://www.covid-19.sa.gov.au/_data/assets/pdf_file/0009/182664/Detention-of-protected-persons-schedule-1.pdf)
- **Legal Services Commission** - [www.lsc.sa.gov.au](http://www.lsc.sa.gov.au) The Legal Services Commission offer a free telephone legal advice line and other methods of advice for members of the public. Phone: 1300 366 424 (workdays between 9am and 4.30pm)

*This fact sheet is general in nature. It does not constitute legal advice and does not relate to the circumstances of any individual matter. Legal advice should be sought independently.*

