

Guidelines under clause 4 of Schedule 1 to the COVID-19 Emergency Response Act 2020
Special provisions relating to detention of certain protected persons during COVID-19 pandemic

I, VICKIE CHAPMAN, Attorney-General, hereby give notice of the following guidelines under clause 4 of Schedule 1 to the *COVID-19 Emergency Response Act 2020*, “Special provisions relating to detention of certain protected persons during COVID-19 pandemic”.

Introduction

1. Pursuant to the *COVID-19 Emergency Response Act 2020* (“**the Act**”) various temporary modifications have been made to the law of South Australia in response to the COVID-19 pandemic. The modifications include the granting, in Schedule 1 of the Act (“**Schedule 1**”), of certain powers in relation to the detention of protected persons.
2. Those powers must only be exercised in accordance with these guidelines.

Interpretation

3. Unless the contrary intention appears, terms defined in the *COVID-19 Emergency Response Act 2020* have the same meanings in these guidelines.
4. **Chief Public Health Officer** has the same meaning as in the *South Australian Public Health Act 2011*.
5. **State Co-ordinator** has the same meaning as in the *Emergency Management Act 2004*.

Detention of protected persons

6. The nature and means of any detention of a protected person pursuant to Schedule 1 must be the least restrictive of the protected person’s rights and personal autonomy as is consistent with his or her proper care and protection so as:
 - 6.1. to facilitate compliance with any directions or guidance given by the State Co-ordinator or Chief Public Health Officer in relation to the COVID-19 pandemic; and/or
 - 6.2. to address any identified risks to the protected person and/or others arising from the COVID-19 pandemic.
7. Detention pursuant to Schedule 1 must not comprise seclusion except as an option of last resort.

Example-

A protected person must not be confined to his or her room unless there are no other options to facilitate compliance with any direction or guidance of the State Co-ordinator or Chief Public Health Officer, or to manage the risks to the protected person and/or others arising from the COVID-19 pandemic.

8. The nature and means of any detention pursuant to Schedule 1 must not be determined based upon the convenience of others (including the person exercising the power of detention).

Example –

The nature and means of detention must not be based upon the operational convenience of those operating premises at which a protected person resides.

9. The nature and means of detention of any individual protected person under Schedule 1 must be determined on a case by case basis.
10. If any person is detained under Schedule 1 by a prescribed person in respect of premises at which a person usually resides, the prescribed person must maintain a register, which must be made available to community visitors (including the Principal Community Visitor) or the Authorising Officer forthwith upon request, which records:
 - 10.1. the reasons for the detention;
 - 10.2. the date and time at which the protected person was first detained;
 - 10.3. if approval for the detention has been granted by the protected person's guardian, the Authorising Officer or the Tribunal:
 - 10.3.1. a copy of any document provided by the prescribed person to the protected person's guardian, the Authorising Officer or the Tribunal in which the approval was sought;
 - 10.3.2. the date and time that the approval was granted and the means by which it was communicated to the prescribed person;
 - 10.3.3. if the approval has been granted by the protected person's guardian, the name of the guardian;
 - 10.3.4. a copy of any written approval, decision or order provided by the protected person's guardian, the Authorising Officer or the Tribunal;
 - 10.4. details of any withdrawal (including a copy of any written withdrawal) by the protected person's guardian of an approval to detain the protected person;
 - 10.5. details (including a copy of any written direction, decision or order) of any authorisation or direction given by the Authorising Officer or the Tribunal in respect of other action that might be taken by the prescribed person in respect of the protected person;
 - 10.6. details (including a copy of any written decision or order) of any extension of the detention period of the protected person granted by the Tribunal; and
 - 10.7. details (including a copy of any written decision or order) of the results of any review relating to the protected person undertaken by the Tribunal or Authorising Officer.
11. If an authorised officer or guardian detains under Schedule 1 a protected person who is unlawfully at large:
 - 11.1. the authorised officer or guardian who has detained the protected person must report to the Authorising Officer, in a manner and form and within a period to be determined by the Authorising Officer, the details of the detention, including:

- 11.1.1. the circumstances of, and reasons for, the detention;
 - 11.1.2. the date and time of the detention; and
 - 11.1.3. to where the protected person has been transported; and
- 11.2. if the protected person is under the guardianship of a guardian, the prescribed person in respect of the premises at which the protected person usually resides (if not the protected person's guardian) must ensure, as soon as practicable, that the guardian is informed of the details of the detention.

Possible conflict of interest relating to Authorising Officer's functions

12. The Authorising Officer is not subject to the direction or control of the Public Advocate or any other statutory office holder or member of the public service in the exercise of his or her functions or powers.



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Attorney-General