Directive: compliance is mandatory

Appointment and Administration of Authorised Officers under legislation committed to the Minister for Health; Minister for Ageing and the Minister for Mental Health and Substance Abuse Policy Directive

Policy developed by: Legal and Governance Unit, Policy and Commissioning Division
Approved at Portfolio Executive on: 20 August 2014
Next review due: 31 August 2016

Summary
Resulting from recommendations of the South Australian Auditor-General in December 2013, the Appointment and Administration of Authorised Officers under legislation committed to the Minister for Health; Minister for Ageing and the Minister for Mental Health and Substance Abuse Policy Directive has been developed to inform relevant SA Health staff of their legal responsibilities regarding the appointment of authorised officers and administration of appointments under legislation administered by SA Health.

Keywords
Authorised Officer, appointment, Controlled Substances Act, Food Act, Health Care Act, Health Practitioner Regulation National Law (South Australia) Act, Public Intoxication Act, Retirement Villages Act, Safe Water Drinking Act, South Australian Public Health Act, Tobacco Product Regulation Act, Appointment and Administration of Authorised Officers under legislation committed to the Minister for Health; Minister for Ageing and the Minister for Mental Health and Substance Abuse Policy Directive

Policy history
Is this a new policy? Y
Does this policy amend or update an existing policy? N
Does this policy replace an existing policy? N
If so, which policies?

Applies to
All SA Health Portfolio

Staff impact
All staff

PDS reference
D0348

Version control and change history

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## Document control information

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## Approvals

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Appointment and administration of Authorised Officers under legislation committed to the Minister for Health; Minister for Ageing and the Minister for Mental Health and Substance Abuse

Policy Directive

1. Objective

In 2012, the Auditor-General’s Department undertook a review of SA Health’s practices and processes for the appointment of authorised officers and administration of appointments under various pieces of legislation committed to the Minister for Health; Minister for Ageing and Minister for Mental Health and Substance Abuse (“the Minister”). The Auditor-General recommended that the Department for Health and Ageing (“the DHA”) implement sound and consistent policy, procedures and practices for the appointment and administration of authorised officer appointments. This Directive has been prepared in response to that recommendation.

2. Scope

2.1 Matters within Scope of this Directive

2.1.1 This Directive applies to:

- All SA Health staff including, but not limited to, employees, contractors, sub-contractors, and labour hire staff.

2.1.2 The following matters are within scope of this Directive:

- The appointment of authorised officers (including state authorised officers) by the Minister (or delegate) under legislation committed to the Minister.
- The appointment of authorised officers under the Health Care Act 2008 by the Chief Executive of the DHA (or delegate); or a Chief Executive Officer of a Local Health Network (“LHN”) (or delegate).
- Mandatory legal and administrative processes for managing the appointment of authorised officers under legislation committed to the Minister.
2.2 Matters not within scope of this Directive

2.2.1 The following matters are not within scope of this Directive:

- The appointment of authorised officers by an entity external to SA Health, for example a Local Council.
- Authorised officers under an Act, where that Act does not require them to be appointed. For example, an Act may contain provisions to the effect that a particular profession, position, occupation, or class of persons is automatically defined as, prescribed as, or considered to be, an authorised officer for the purposes of the Act (e.g. authorised officers under the Mental Health Act 2009 fit within this category).
- Appointment of persons into statutory positions or roles that are not entitled "authorised officer" or "state authorised officer".
- The actual exercise of powers, functions and responsibilities of authorised officers by persons appointed as such under the various pieces of legislation committed to the Minister.

3. Principles

3.1 This Directive is underpinned by the following core principles:

3.1.1 Authorised officer appointments made by the Minister (or delegate), the Chief Executive of the DHA (or delegate), or a Chief Executive Officer of an LHN (or delegate) will be made and administered in compliance with the relevant legislative provisions.

3.1.2 There will be appropriate and accountable management practices across SA Health in the appointment of authorised officers and administration of authorised officer appointments.

3.1.3 SA Health staff exercising the powers, functions and responsibilities of authorised officers under legislation committed to the Minister will be lawfully appointed to do so.

3.1.4 The South Australian public will have confidence in SA Health’s administration of legislation committed to the Minister.
4.1 Relevant legislation under which Authorised Officers may be appointed

4.1.1 There are currently nine Acts committed to the Minister which expressly provide for the appointment of authorised officers by the Minister, the Chief Executive of the DHA or a Chief Executive Officer of a LHN. See below the links to each of the Acts subject to the Directive:

Controlled Substances Act 1984
Food Act 2001
Health Care Act 2008
Health Practitioner Regulation National Law (South Australia) Act 2010
Public Intoxication Act 1984
Retirement Villages Act 1987
Safe Drinking Water Act 2011
South Australian Public Health Act 2011
Tobacco Product Regulation Act 1997

4.2 Role of an authorised officer under the relevant legislation

4.2.1 While each of the Acts listed above at 4.1 provide for the appointment of “authorised officers”, the purpose and role of an authorised officer varies widely between the Acts.

4.2.2 Each of the above Acts confers statutory powers, functions and responsibilities on authorised officers that are only exercisable in accordance with provisions of the particular Act under which they are appointed. That is, an authorised officer appointed under one Act, may not exercise the powers of an authorised officer under another Act unless they have also been appointed as an authorised officer under that Act.

4.2.3 Authorised officers are encouraged to follow the links to the Act(s) in which they are authorised and familiarise themselves not only with the powers, functions and responsibilities under the Act(s) but with the Objects and/or Principles of the Act. If authorised officers are unclear on their powers, functions and responsibilities they are to contact to the Legal and Governance Unit on 8226 6047 for assistance.
4.3 Appointment and administration of authorised officer appointments under the relevant legislation

4.3.1 The legal requirements in each Act with respect to authorised officer appointments varies between the Acts. For example, an Act may (amongst other things):

- outline how an authorised officer may be appointed;
- outline who may appoint an authorised officer;
- prescribe that only persons with certain qualifications may be appointed as authorised officers;
- require that a list of authorised officers be prepared and maintained;
- require that an authorised officer be issued with a certificate of authority or identity card;
- require that an authorised officer be appointed via instrument in writing.

4.4 Compliance with legislation

4.4.1 Where a DHA Division, a LHN or SAAS is responsible for administering the authorised officer appointment process on behalf of the Minister, Chief Executive, or a Chief Executive Officer of a LHN, they will have regard to, and ensure compliance with, the relevant legislative provisions.

4.4.2 Where a DHA Division, a LHN or SAAS considers it requires assistance in interpreting the relevant legislative provisions, and in ensuring their processes for appointing, revoking and administering authorised officer appointments comply with those provisions, they will contact the DHA’s Legal and Governance Unit (“LGU”) for advice. Advice will be sought in accordance with the SA Health Guideline entitled Accessing Legal Services for the Health Portfolio.

4.5 Instruments of Appointment and Revocation to be in writing

4.5.1 All appointments of authorised officers within scope of this Directive will be made in writing via an instrument of appointment which has been signed by the relevant appointer (or delegate), as outlined in the relevant Act.

4.5.2 All instruments of appointment will contain wording to the effect that an authorised officer’s appointment is revoked when they are no longer an employee of the DHA, LHN or SAAS (as relevant).

4.5.3 Where a person is no longer required to be appointed as an authorised officer (because for example, they have moved positions within SA Health; or are absent from their positions for more than three months), and their authorised officer appointment is not automatically revoked in circumstances described in clause
4.5.2 above, their appointment will be revoked in writing via an instrument of revocation. The instrument of revocation will be signed by the relevant appointer (or delegate), as outlined in the relevant Act.

4.5.4 The form and wording of a proposed instrument of appointment or instrument of revocation will be, or will have been, approved by the DHA’s LGU.

4.5.5 Where the LGU has provided the relevant DHA Division, LHN or SAAS with an appropriate template instrument of appointment / revocation under the legislation they are responsible for administering, these templates may be used on an ongoing basis to appoint authorised officers without seeking further approval from the LGU. Only where the DHA Division, LHN or SAAS proposes wording changes to the template, or where there has been an amendment to the legislative provision(s) relating to the appointment of authorised officers, will further legal approval be required.

4.6 Records and registers of authorised officer appointments to be kept

4.6.1 The relevant DHA Division, LHN or SAAS will keep official records of authorised officer appointments made under legislation they are responsible for administering. This includes maintenance of a list or register of current appointments, and keeping of copies of signed instruments of appointment and revocation. The list or register will, as a minimum, include the following details:

- authorised officer’s full name
- authorised officer’s job title
- the unique number on each authorised officer’s identity card or certificate of authority
- date of appointment as authorised officer
- location of original instruments of appointment of authorised officer (e.g. in LGU’s safe; in file number xxx, etc.)

4.6.2 However, for the appointment of a class of authorised officers, for example, police officers or security guards, the register need only record the type of class appointed, the date of appointment, and the location of the original instrument of appointment as a class of authorised officers.

4.6.3 For appointments made within the DHA, the original signed instruments of appointment and revocation will be provided to the DHA’s LGU for safe storage. For appointments made within LHNs, LHNs will provide copies of signed instruments of appointment and revocation to the DHA’s LGU for safe storage. Scanned and emailed copies will suffice.
4.7 Identification Cards / Certificates of Authority

4.7.1 With the exception of Police Officers, Protective Security Officers and Security Officers appointed as authorised officers under the Health Care Act 2008 within LHNs, all authorised officers within scope of this Directive will be issued with an identity card or a certificate of authority by the responsible DHA Division, LHN or SAAS. This will ensure that a person appointed as an authorised officer is able to provide evidence of their authority under an Act, should this be requested.

4.7.2 All Protective Security Officers (Grade 2) under the Protective Security Act 2007 and Security Officers holding a licence under the Security and Investigation Agents Act 1995 who are employed to work at an incorporated hospital (that is, an LHN), have been appointed as authorised officers under the Health Care Act 2008. As these officers wear uniforms that identify them as security staff, and hold identification and/or security licences, it is not considered necessary to issue these officers with identity cards.

4.7.3 Subject to specific requirements under each Act, the form and content of identity cards or certificates of authority will be consistent across DHA, LHNs and SAAS. Identity Cards or certificates of authority will, as a minimum, include the following details:

**Front of card**
- authorised officer’s full name (note: no shortened names or nicknames permitted)
- authorised officer’s photo
- name and office of the card issuing officer (this should be the person/position that appointed the authorised officer)
- both the issuing officer and the authorised officer’s signature
- a statement that the person “is an authorised officer pursuant to the Act(s) listed on the reverse side of this card”
- card number
- date on which the card is issued
- SA Health / Government of South Australia logo

**Back of Card**
- a statement that the person “Is an authorised officer pursuant to: [list relevant Acts(s) underneath]”
- any conditions or limitations of appointment if relevant

4.7.4 All persons appointed as authorised officers will be required to surrender their identity card / certificate of authority upon ceasing to be an authorised officer.
4.8 Appointment of persons who do not work for, or within the DHA, a LHN or SAAS

4.8.1 From time to time, it may be proposed that the Minister (or delegate) appoint persons who do not work for, or within the DHA, an LHN or SAAS as authorised officers under legislation committed to the Minister. Where it is proposed to appoint such persons as authorised officers, advice will be sought from the DHA’s LGU prior to making such appointments.

5 Roles and Responsibilities

The Chief Executive, DHA; Executive Directors of relevant DHA Divisions; and Chief Executive Officers of LHNs and SAAS are responsible for implementing this Directive, where relevant, and ensuring compliance with the principles and requirements detailed in this Directive.

6 Reporting (if applicable)

The DHA’s LGU is responsible for annual reviews of SA Health’s lists or registers of authorised officers, including provision of reports to the Chief Executive, DHA regarding the results of compliance with this Policy Directive, as detailed in clause 13 of this Policy Directive.

7 EPAS Considerations

N/A

8 Exemptions (if applicable)

N/A

9 Associated Policy Directives / Policy Guidelines (if applicable)

N/A

10 References, Resources and Related Documents

There are currently nine Acts committed to the Minister which expressly provide for the appointment of authorised officers by the Minister, the Chief Executive of the DHA or a Chief Executive Officer of a LHN as follows:

- Controlled Substances Act 1984
Current versions of each of these Acts, and any associated Regulations may be accessed by the links provided in 4.1 of the Directive.

11 Other

N/A

12 National Safety and Quality Health Service Standards (if applicable)

N/A

13 Evaluation of Performance and Compliance

Consistent practice and procedures across DHA, LHNs and SAAS in the appointment of authorised officers, and the administration of authorised officer appointments within SA Health will ensure compliance with this Policy Directive.

13.1 Annual review of list or registers of authorised officers

13.1.1 The LGU will, on an annual basis, seek a copy of the current list or register of authorised officer appointments from each relevant DHA Division, LHN or SAAS. The Executive Director of the relevant DHA Division, CEO of a LHN, or CEO of SAAS, as relevant, will confirm whether the list or register is up-to-date and accurately reflects the current authorised officer appointments within their DHA Division, LHN or SAAS. Further, they will confirm whether each authorised officer’s appointment remains appropriate given their current roles and responsibilities within SA Health.

13.1.2 Annual reviews as described above will provide the Minister and Chief Executive, DHA with confidence that authorised officers within SA Health entities have been appointed and managed appropriately and in accordance with the relevant legislation. Further, annual review will provide relevant DHA Divisions, LHNs or
SAAS with a reminder to appoint or revoke authorised officer appointments as necessary.

13.2 Transition period

13.2.1 Recognising that DHA, LHNs and SAAS will require time to ensure compliance with this Directive, except where required by legislation, DHA, LHNs and SAAS will have six months from the date of approval of this Directive by Portfolio Executive to put the relevant systems and processes in place to ensure compliance.

13.3 Key Performance Indicators:

13.3.1 All LHNs, SAAS, and the DHA have systems and processes in place to ensure compliance within six months of approval of this Directive.

13.3.2 All LHNs, SAAS, and the DHA keep up-to-date registers of authorised officer appointments.

13.3.3 All LHNs, SAAS, and the DHA issue authorised officers with identity cards within six months of approval of this Directive.

13.3.4 LGU completes annual reviews of authorised officer registers across SA Health.

14 Attachments (if applicable)

N/A

15 Definitions

In the context of this document:

- **Appointer** means: the position (or delegate) conferred with power under an Act to appoint a person as an authorised officer.

- **Appointee** means: a person appointed as an authorised officer under an Act.

- **Authorised officer** means: a person appointed as an authorised officer under an Act, and has the same meaning of “authorised officer” as defined in each Act (as relevant).

- **DHA** means: the South Australian Department for Health and Ageing.
• **LGU** means: the Legal and Governance Unit, DHA.

• **LHN** means: the Local Health Networks, being incorporated hospitals under the *Health Care Act 2008*.

• **SAAS** means: the South Australian Ambulance Service.

• **SA Health** means: the collective branding name for the DHA; Minister; LHNs; and SAAS.

• **SA Health workers** means: staff of DHA, LHNs or SAAS including, but not limited to, employees, contractors, sub-contractors, and labour hire staff.