



South Australian Government

SA Health's
Response to the Gayle's
Law Review

September 2021

SA Health response to the review of the
*Health Practitioner Regulation National Law (South Australia)
Remote Area Attendance) Act 2017* and the *Health Practitioner
Regulation National Law (South Australia) (Remote Area
Attendance) (no 2) Variation Regulations 2019*



Government
of South Australia

SA Health

Introduction

The Parliament of South Australia passed Gayle's Law in response to the tragic death of Gayle Woodford, a dedicated nurse who was murdered while working in a remote community in South Australia.

Gayle's Law (the *Health Practitioner Regulation National Law (South Australia) (Remote Area Attendance) Amendment Act 2017*) (the Act) came into operation on 1 July 2019. Much of the detail on how Gayle's Law operates is provided in the *Health Practitioner Regulation National Law (South Australia) (Remote Area Attendance) (No 2) Variation Regulations 2019*. These regulations came into operation on 7 November 2019. They replace regulations which commenced on 1 July 2019 but were disallowed on 16 October 2019.

Gayle's Law provides greater protection for health practitioners and persons providing health services in remote areas of South Australia, by requiring a second responder to accompany the health practitioner on out of hours and unscheduled callouts.

Gayle's Law applies to any out of hours or unscheduled callout within the part of South Australia that covers:

- an area not covered by a local council under the *Local Government Act 1999*;
- the lands within the meaning of the *Anangu Pitjantjatjara Yankunytjatjara Land Rights Act 1981*;
- the lands within the meaning of the *Maralinga Tjarutja Land Rights Act 1984*;
- the area of the District Council of Coober Pedy; and
- the area of the Municipal Council of Roxby Downs.

The map below shows the parts of South Australia where Gayle's Law applies, which is over 85 percent of South Australia's land mass.



Gayle's Law was required to be reviewed, two years after operation and before the third anniversary of its commencement (that is, after 1 July 2021 and before 1 July 2022). A review of the Health Practitioner National Law (South Australia) (Remote Area Attendance) (No 2) Variation Regulations 2019 was required to be completed by no later than six months after the one year anniversary of their commencement (that is, after 7 November 2020 and before 7 May 2021).

The timeframes required the second review to commence two months after the first one had been completed. Undertaking two consecutive reviews would have placed an unnecessary burden on the health services that are subject to Gayle's Law.

In September 2020, the Minister for Health and Wellbeing determined that the two reviews would be undertaken concurrently, aligned with the earlier mandated date of no later than 7 May 2021. This approach minimised the burden on regional health services and importantly, was consistent with an earlier commitment to the Woodford family to bring forward the timing of the review.

The independent review was undertaken by Professor Robyn Aitken, Deputy Dean Rural and Remote Health, Flinders University, over a period of six months from November 7 2020 until May 7 2021.

The Review considered a number of aspects of the implementation of Gayle's Law including:

- whether health service providers have implemented the Act and Regulations as intended;
- the impact that the Act and the Regulations have had on the safety of health practitioners and persons providing health services in the remote areas of South Australia;
- the impact that the Act and Regulations have had on members of communities, and the provision of health services in remote areas of South Australia;
- whether health service providers have suitable mechanisms in place for the recruitment of appropriate second responders to allow services to be provided to the community;
- the usage of prescribed circumstances in Regulation 11E(2) under which unaccompanied remote area attendance may occur, and
- where the prescribed circumstances in Regulation 11E, which outline certain circumstances where a second responder will already be in attendance, operate effectively and whether any amendments to the Act or Regulations would improve their operation.

The Review made 18 recommendations to increase the safety of health practitioners providing health services in remote South Australia and broaden the operation of Gayle's Law. The Minister for Health and Wellbeing tabled the report of the Review in the South Australian Parliament on 27 May 2021.

The key findings of the review included that there has been a genuine commitment from health service providers to implement the provisions of Gayle's Law and associated regulations as intended. It found that Gayle's Law has significantly improved the safety of health practitioners providing health services in remote areas of South Australia. The report identified areas that could be improved through review of health service policies and procedures, and proposed amendments to the legislation.

The review also identified some variability in the operationalising of the second responders' role and responsibilities that have the potential to produce some unintended consequences. This includes an expectation in some settings that second responders have entry level health care skills and may play a role in the provision of health services. This expectation has the potential to distract the second responder from their primary role of upholding the safety of the health practitioner. The review recommended amending the legislation to replace the term 'Second Responder' with one that better reflects the safety aspect of the role.

SA Health Response

The review made 18 recommendations: eight to the Minister for Health and Wellbeing; two to SA Health (policy area); six to health service providers (which includes SA Health Local Health Networks subject to Gayle's Law), and two to State and Commonwealth Government Health Departments.

The review identified a number of areas for possible improvement including within health service policies, procedures and guidelines and proposed a number of possible amendments to the Act and Regulations to increase the safety of health practitioners and broaden the operation of Gayle's Law.

Consistent with views expressed during consultation undertaken in 2019 on the drafting of the Regulations, the Review Report notes the financial cost to health service providers of implementing Gayle's Law.

The Commonwealth is responsible for funding a significant proportion of the health services delivered in remote South Australia, including most Aboriginal community-controlled health services. The review recommends that the South Australian Department for Health and Wellbeing and the Commonwealth Department of Health consider working with health service providers and community members on the development of "a business plan to invest funding" to support the creation of "a sustainable second responder workforce and well equipped and maintained equipment in health clinics, health worker accommodation and vehicles" (Recommendation 2.3).

The review also recommends the establishment of an advisory group to strengthen the implementation and operation of Gayle's Law (Recommendation 2.9) and that consideration be given to establishing prescribed reporting requirements to support ongoing evaluation of its operation (Recommendation 8.1).

Of the 18 recommendations contained in the report SA Health supports 13 of the recommendations (in full or in principle), two are supported in relation to health services provided by SA Health and noted relating to other health services, one is noted, one noted - needing further consideration, and two are not supported.

The Review was nearing completion when the finding of the of the Coronial Inquest into the death of Mrs Gayle Woodford was handed down. The Inquest's finding included the following recommendation:

"That in any review of the operation of the relevant provisions of the Health Practitioner Regulation National Law (South Australia) Act 2010 and the regulations made thereunder as they apply to health practitioners providing services in remote areas of South Australia, that consideration be given to clarifying whether the requirements in respect of a second responder should apply to presentations by a patient to the home of the health practitioner. The other matter that should be considered in any such review is whether health practitioners should be accompanied by the second responder during any journey to the location where the health service is to be provided".

Professor Aitken considered the Deputy Coroner's finding and recommendations in the short time available to her and made some overlapping observations and recommendations.

Response to Recommendations

RECOMMENDATION	SA HEALTH RESPONSE
<p>1.1 The Minister gives consideration to amending Gayle’s Law and Regulations by replacing the term ‘second responder’ with a named role reflective of the safety function of the (second) person designated to accompany the health practitioner who has the primary function for providing a health service.</p>	<p>Supported. The Government will consult with relevant stakeholders and service providers on the option of replacing “second responder” with “safety officer” or an equivalent term.</p>
<p>1.2 The Department for Health and Wellbeing, given the variability of the current content of policies, procedures and guidelines, develop and distribute a template document(s) to assist health service providers to include all relevant elements of the Act and Regulations in revised procedural document(s).</p> <p>The template document needs to ensure that policies/procedures/guidelines clearly articulate:</p> <ul style="list-style-type: none"> • the distinction between assessment of risk of health practitioner safety and clinical risk; • that risk assessment is undertaken to determine attendance by anyone, not the need for a second responder (safety worker); • that the trigger for a second responder (safety worker) to accompany the health practitioner during a callout is the health practitioner’s decision to attend the callout, (i.e. a second responder should attend all callouts, there is no threshold at which a second responder is not required); • the explicit prohibition of health practitioners being directed to attend callouts without a second responder; • limitations to liability for not attending a callout if a second responder is not available; • mechanisms to ensure safe return home (or to another destination) of both health practitioner and second responder; and • the safety provisions included in Recommendations 2.2 and 2.4. 	<p>Supported.</p> <p>SA Health is currently developing a template document which will be provided to health services subject to Gayle’s Law.</p>

RECOMMENDATION	SA HEALTH RESPONSE
<p>1.3 Notwithstanding the suggested role of the Department for Health and Wellbeing, health service providers review their existing policies, procedures and guidelines to include all relevant elements of the Act and Regulations and Recommendations 1.2, 2.2 and 2.4.</p>	<p>Supported in relation to health services provided by SA Health and noted it in relation to other health service providers.</p> <p>On 26 July 2021, the Minister for Health and Wellbeing wrote to health service providers about the findings and recommendations of the Review.</p>
<p>2.1 The Minister consider amending the Act and Regulations to improve the safety of the health practitioner and accompanying second responder by:</p> <ul style="list-style-type: none"> • extending the requirement for a second responder (safety worker) attendance beyond the current scope of unscheduled and out of hours callouts to also apply to the following: <ul style="list-style-type: none"> o scheduled callouts at any time of the day or night; o during the journey to all callout locations; o in the untoward event that health services are delivered at the health practitioner's home/accommodation; and o all other occasions of health services delivery in a remote area where there is an identified risk to personal safety, irrespective of location and inclusive of the health services facilities. 	<p>Noted.</p> <p>The extension of second responder attendance as recommended could have a significant impact on health services, Broad consultation will be required to determine the practical and economic impacts of implementing this recommendation.</p> <p>A consideration of this recommendation (in consultation with health service providers) may be to extend the requirement for a second responder in identified remote areas.</p>
<p>2.2 Notwithstanding the requirements contained within the current Act and Regulations, health service providers amend health service policies and procedures/guidelines to ensure that health practitioners are always accompanied by a second responder (safety worker):</p> <ul style="list-style-type: none"> • when attending both unscheduled and scheduled callouts at any time of the day or night; • during the journey to all callout locations; • in the untoward event that health services are delivered at the health practitioner's home/accommodation; and • on all other occasions of health services delivery in a remote area where there is an identified risk to personal safety, irrespective of location and inclusive of the health services facility. 	<p>Noted - subject to further consideration.</p> <p><i>Please refer to the response to 2.1</i></p>

RECOMMENDATION	SA HEALTH RESPONSE
<p>2.3 State and Australian Government Departments of Health give consideration to working with health service providers and community members to develop a business plan to invest funding to support both current business and any future extensions to the Act and Regulations to create a sustainable second responder workforce and well equipped and maintained equipment in health clinics, health worker accommodation and vehicles.</p>	<p>Supported in principle.</p> <p>On 26 July 2021, the Minister for Health and Wellbeing wrote to Minister Hunt, and the Australian State and Territory Health Ministers, and the Federal Minister for Regional Health about the findings and recommendations. This included drawing the Ministers' attention to Recommendation 2.3.</p>
<p>2.4 Health service providers, in order to decrease the risks posed by presentations for health care at the health practitioner's (or second responder's) home/accommodation:</p> <ul style="list-style-type: none"> • review and amend the policies, procedures/guidelines to preclude delivery of health care at the health practitioner's or second responder's home at any time of the day or night; • implement communications systems that replace the need for in-person callout requests; • co-design a communication strategy with community members to change the practice of attending the health practitioner's home to request care at any time of the day or night. 	<p>Supported in principle in relation to health services provided by SA Health and noted it in relation to other health service providers.</p>

RECOMMENDATION	SA HEALTH RESPONSE
<p>2.5 Health service providers, in order to improve health practitioner safety should:</p> <ul style="list-style-type: none"> • improve orientation procedures; • encourage health service managers and staff to become familiar with the Act and Regulations rather than rely solely on information that interprets the application of the Act/Regulations; • require that orientation of all health clinic managers, health practitioners, ancillary staff, visiting staff, and second responders, include a face-to-face component conducted by a relevant supervisor; • implement the following orientation requirements for policies/procedures/guidelines relevant to Gayle’s law: <ul style="list-style-type: none"> ○ include the requirement for orientation as mandatory on commencement of employment, and as part of annual competency requirements; ○ include policies and procedures relevant to Gayle’s Law in pre-employment documentation, first day induction checklists and require evidence of completion within the first month: and ○ document compliance with requirements in employment records and confirm prior to commencing callout duties. 	<p>Supported in relation to health services provided by SA Health, and noted it in relation to other health service providers.</p>
<p>2.6 The Minister consider broadening the Act and Regulations to apply beyond the remote setting to all callout activities (scheduled and unscheduled) undertaken by health practitioners delivering care in any location at any time of day and night in South Australia.</p>	<p>Not supported.</p> <p><i>Please refer to the response to 2.1.</i></p>
<p>2.7 South Australian health service providers in areas other than remote locations notwithstanding the requirements contained within the current Act and Regulations, consider adopting the safety recommendations of this review.</p>	<p>Not supported in relation to health services provided by SA Health and noted in relation to other health service providers.</p> <p><i>Please refer to the response to 2.1.</i></p>

RECOMMENDATION	SA HEALTH RESPONSE
<p>2.8 The Minister consider sharing the findings of this review with other Australian Ministers for Health to consider adopting Gayle’s Law and Regulations (with recommended revisions) to apply to remote areas in all Australian States and Territories.</p>	<p>Supported.</p> <p>On 26 July 2021, the Minister for Health and Wellbeing wrote to Australian State and Territory Health Ministers, the Federal Minister for Health and the Federal Minister for Regional Health about the findings and recommendations. This included drawing the Ministers’ attention to Recommendation 2.8.</p>
<p>2.9 South Australia (SA) Health in its role in development of best health care practices consider bringing together a steering/advisory group that spans government, non-government and Aboriginal Community Controlled Health Organisations (ACCHOs) and includes health practitioners, second responders, professional and industrial organisations, and community members to inform and develop ongoing quality improvement processes for implementing Gayle’s Law and Regulations.</p>	<p>Supported.</p> <p>On 26 July 2021, the Minister for Health and Wellbeing invited CRANAPlus to consider taking on the role of being coordinating agency for the proposed advisory group.</p>
<p>2.10 The Minister consider amending Gayle’s Law and Regulations to ensure that the current provisions of Clause 77D(3)(b) apply to both second responders (safety workers) and health practitioners in respect to safe arrival at their place of residence or other destination after leaving the callout location.</p>	<p>Supported.</p>
<p>4.1 Health service providers give consideration to the balance between risks and the benefits when employing second responders with entry level health care skills and continue to develop health workforce models that are responsive to local need and the unique conditions of remote health service delivery.</p> <p>Health services consider working collaboratively with State and Australian Government Departments of Health and communities to develop a business model to expand funding to health service providers for sustainable employment of second responders in part time health service roles.</p>	<p>Supported in relation to health services provided by SA Health and noted it in relation to other health service providers.</p> <p>Supported in principle in relation to health services provided by SA Health, and noted in relation to other health service providers.</p>

RECOMMENDATION	SA HEALTH RESPONSE
<p>5.1 The Minister consider amending Gayle’s Law and Regulations to remove prescribed locations to ensure that health practitioners are accompanied by a responsible person en-route on any callout regardless of the time of day or night.</p>	<p>Supported in principle.</p> <p>Consultation with service providers will be required to confirm there would be no negative unintended consequences of amending the Act as proposed.</p> <p><i>Please also refer to the response to 2.1.</i></p>
<p>6.1 The Minister considers amending Clause 77E (2) to ensure that health practitioners are always accompanied by a second responder (safety worker) during the journey to all callout locations.</p> <p><i>(See also Recommendation 2.1)</i></p>	<p>Supported in principle.</p> <p><i>As above (5.1).</i></p>
<p>7.1 State and Australian Government Departments of Health give consideration to working collaboratively with health services and communities to develop a business model to expand funding to health service providers for sustainable employment of non-clinical second responders.</p>	<p>Supported in principle.</p> <p>On 26 July 2021, the Minister for Health and Wellbeing wrote to Minister Hunt drawing the Ministers’ attention to Recommendations 7.1.</p>
<p>8.1 The Minister consider the mechanism for ongoing evaluation of the implementation of Gayle’s Law including:</p> <p>8.1.1 a minimum period of 12-months allocated for the process of conducting any further legislated review, and</p> <p>8.1.2 inclusion of prescribed reporting requirements in the Gayle’s Law Regulations as a mechanism for ongoing evaluation of implementation of the Law and Regulations.</p>	<p>8.1.1 – Supported. The Government recognises the challenge of undertaking research and consultation in remote parts of South Australia, including the need to consult with Aboriginal communities whose first language is not English.</p> <p>8.1.2 - Noted - <i>subject to further consideration and consultation with health services.</i></p>

For more information

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www.ausgoal.gov.au/creative-commons

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