CHALLENGING BEHAVIOUR TOOLKIT

TOOL 1

Quick guide to policy and legal information relating to challenging behaviour

Government of South Australia

SA Health

FOR FURTHER INFORMATION

The information presented here is of a general nature and is not intended to be legal advice.

Further information and advice should be sought, in the first instance, from senior management at each health service.

Readers who require additional information are referred to the Acts, Regulations and Rules on the South Australian Legislation website.

If a health practitioner or manager requires further information or advice in relation to this area they are encouraged to contact Corporate Affairs, Department for Health and Wellbeing via email to: HealthLegalRequests@sa.gov.au

For all SA Health policies and guidelines, refer to the SA Health website.

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Introduction

A number of Acts, policies, regulations and codes of practice define and prescribe how health services manage the safe provision of health services while also ensuring the health, safety and welfare of all those involved in the provision of care, including patients. Where gaps exist in legislation Australia's common law and the general duty of care obligations prevail.

This section summarises information about the obligations of health care providers, carers and patients in the context of the prevention, recognition and response to challenging behaviours during service provision. The information has been grouped by:

- worker health and safety, reduction of risk to workers and the public
- maintaining public order and operation of health services
- the conduct, powers and authority of health professionals and other workers in health services in providing care in situations where there is challenging behaviour.
- patient's health care and human rights to safe and least restrictive care.

1.1 Work Health and Safety

The purpose of the *Work Health and Safety Act 2012* (SA) and its regulations is to establish workplace health and safety duties, including the primary duty of care to protect any person from exposure to hazards and risks that arise from work (section 19(1)), to ensure that the health and safety of members of the public is not placed at risk, and to provide for the involvement of all parties in the development and implementation of health and safety standards.

The Act further defines the duties of WHS defined Officers, workers and other persons, and also serious incidents that require Notification.

In health services, challenging behaviour, aggression or violence can be categorised as:

- **service-related** – that arises when providing service to patients . It can be intentional/deliberate or unintentional, for example when associated with delirium, dementia or psychosis
- **external** – where the perpetrator is from outside the workplace and the violence is associated with robbery and other crimes.

Work-related aggression and violence can fall within the scope of various state and federal laws. Physical assault, theft, sexual assault and threats to harm someone can be referred to the police. Employees who wish to do this will require support and advice.

Under the *Criminal Law Consolidation Act 1935*, there is an aggravated offence against a person in a prescribed occupation or employment (Section 5AA (1)(k)(i)), including emergency work; employment as a medical practitioner, a nurse or midwife in a hospital; an occupation consisting of the provision of assistance or services, in a hospital, to a medical practitioner, nurse or midwife acting in the course of his or her employment in the hospital. Mental incapacity and intoxication can be a defence.

The *Work Health and Safety Regulations 2012* (SA) identify the control measures that must be applied to specific work activities and hazards, and can be applied in the prevention and management of challenging behaviour.

The *Return to Work Act 2014* provides for return to work of injured workers.

SafeWork SA publishes approved Codes of Practice and guidance material. Of relevance is the guide entitled Work-Related Violence: Preventing and responding to work-related violence which may help persons conducting a business or undertaking (PCBUs) and workers to identify work-related violence hazards and find ways to eliminate or minimise them.

SA Health entities are committed to reducing the harm caused by tobacco smoking by providing safe and health promoting smoke-free services and has a Smoke-free Policy Directive that prohibits smoking at all SA Health buildings, structures, outdoor areas and in government vehicles. This applies to all people, and is consistent with *Tobacco and E- Cigarette Products Act 1997*.

The policy directive Preventing and Responding to Challenging Behaviour has an accompanying tool for Self-assessment (Tool 2) which LHN Challenging Behaviour Prevention and Response Committees must complete annually to identify Challenging Behaviour risks with in the Health Service. The tool may also be used by local workplaces, as required, with governance defined for escalating identified Challenging behaviour risks.

The Work Health Safety and Injury Management policy directive directs SA Health's legislative responsibility and duty of care to ensure the safety of all persons in the workplace, ensuring that all work environments and practices are safe. The policy also supports early and safe return to work in the event of work related injury.

The Employee Assistance Program policy directive supports the provision of professional counselling services to SA Health workers and their immediate families.

The Remote or Isolated Work Safety (WHS) policy directive provides direction for a risk management approach to the identification of hazards and risks associated with remote and/or isolated work.

The Work Health and Safety Reporting and Investigation policy directive aims to standardise SA Health's processes for work health and safety reporting and investigation to comply with legal requirements. The Hazard and reporting guide assists workers to report into Safety Learning system and provides guidance for SafeWork SA regulatory workplace incident notifications of a serious injury or illness, dangerous incident or death of a person.

(Refer to SECTION 7 – The consequences for patients and members of the public of challenging behaviour, violence and aggression).

1.2 Maintaining public order and operation of health services

The purpose of the *Health Care Act 2008* is to enable the provision of an integrated health system that provides optimal health outcomes for South Australians.

The *Health Care Act 2008* enables incorporated hospitals to make by-laws (Division 7) and to appoint authorised officers to enforce them.

Incorporated Hospital By-laws prohibit disorderly or offensive behaviours within the hospital or its grounds, littering, smoking, possession and/or use of alcoholic liquor or unlawful substances, property damage or trespass .

The Chief Executive Governing Boards and CEOs of the incorporated hospitals may appoint a person or class of persons as Authorised Officers for the purpose of enforcing Hospital by-laws .Authorised officers must comply with policies relating to Authorised Powers pursuant to Part 5 Division 7 of the *Health Care Act 2008* and may consist of:

- selected SA Health employees appointed at discretion of the CE or CEO;
- members of the South Australian police force including Protective Security Officers currently appointed under the *Protective Security Act 2007*; and
- Contract Security Officers working at the incorporated hospitals that hold a current Security Agents Licence under the Security and Investigation Agents Act 1995.

For SA Health Local Health Network Hospital by laws refer to the South Australian Government Gazette dated 13 June 2019.

For further protective security and surveillance information refer to the SA Health Protective Security and the SA Health Workplace Surveillance Policy Directives.

Under the *Health Care Act 2008*, people who are within health services who are trespassing, behaving in a disorderly or offensive manner, damaging property and other offences can be removed and reasonable force used to do that by authorised officers, unless the person requires medical attention. Here the intent is to maintain public order, not to provide health care.

People who are intoxicated or under the influence of unlawful substances, in possession of weapons or unlawful substances may be required to leave, unless there is a need for medical treatment. Under the *Health Care Act 2008*, authorised officers can search and/or seize possessions and remove people from the premises.

In addition people may be restrained using reasonable force, by authorised officers to prevent harm to others or themselves (under section 43 of the *Health Care Act 2008*).

The *Criminal Law Consolidation Act 1935* defines and sets punishment for all forms of criminal behaviour. Examples of relevant offences include unlawful threats, assault, assault with intent, causing physical or mental harm and offences with respect to property.

Deliberate or intentional aggressive, violent or threatening behaviour towards health care workers by patients, family members, carers and other people such as bystanders may constitute assault under the *Criminal Law Consolidation Act 1935*. (Reference may be made to the *Criminal Law Consolidation Act section* 5AA).

SA Health has a Smoke-free policy directive, and smoking is prohibited at all SA Health buildings, structures, outdoor areas and in government vehicles. This is consistent with *Tobacco and E-Cigarettes Products Act 1997* and applies to all people. Any patient, family, carers or visitors who breach smoking restrictions are to be informed of the policy and asked to comply. If the breach continues, the person may be asked to leave the premises and subsequent breaches are to be reported to a supervisor or manager, or to security officers/authorised officers. Discretion is required when enforcing the policy for patients, family, carers and visitors in distress.

The *Summary Offences Act 1953* sets out offenses against certain behaviour in public places, including but not limited to violence, disorderly or offensive conduct or language, and may be relevant in this context. The *Summary Offences Act 1953* also provides a legislative framework to govern control of weapons and firearms.

Under the Firearms Act 2015 and *Firearms Regulations 2017* (Regulation 97, also see Regulation 96 – reporting unsafe situations) and the *Summary Offences Act 1953* (Section 21G), medical practitioners and nurses, are required to report wounds consistent with gunshot, and/or knives, respectively.

1.3 Health care and treatment

1.3.1 Working in a health care team

The Clinical Communication and Patient Identification Clinical Directive defines a consistent process for handover (systematic exchange of information and responsibility between health care professionals) across SA Health and sets accountabilities for health services to ensure handover practices are improved. This supports patient safety and ensures patient's health care rights are considered.

The Respectful Behaviour policy fosters positive, professional working environments, and a culture of respect to ensure workers and patients are valued and supported. SA Health is committed to providing workplaces that are safe and supportive of its workers and in which the culture of the organisation reflects the underpinning principles of the ethical framework of the South Australian public sector.

In situations of challenging behaviour where there is a threat to safety, health professionals may be required to work as a team alongside SA Police officers and security officers who have different powers and authority because of the legislation under which they operate. Teamwork benefits from an understanding of each members role. For further information refer to the Mental Health and Emergency services Memorandum of Understanding, National Standards for the Mental Health, SA Ambulance Service, Royal Flying Doctor Service, South Australia Police.

1.3.2 Professional standards and codes

1.3.2.1 Registrations and Credentialing

The practice of most health professionals is guided by their discipline specific standards and demonstrated through registration, credentialing, defining scope of practice, and other systems. For further information refer to the policy Credentialing and Defining the Scope of Clinical Practice for Medical and Dental Practitioners and *Health Practitioners Regulation National Law* (South Australia) *Act 2010*. Practice outside these may result in disciplinary action.

The document Good Medical Practice: A code of conduct for doctors in Australia was released by the Medical Board of Australia as part of the National Registration and Accreditation Scheme. It reflects the Health Practitioners *Regulation National Law* (South Australia) *Act 2010*. Other health disciplines have similar codes.

1.3.2.2 Codes of Practice, Ethics and Conduct

SA Health employees have an obligation to act with honesty and integrity and conduct themselves in accordance with the objects under the *Public Sector Act 2009* and the Code of Ethics for the South Australian Public Sector. This Code of Ethics is the Code of Conduct for the purposes of the *Public Sector Act 2009*.

A proven breach of the Code constitutes misconduct and renders an employee liable to disciplinary action/sanction. In the case of any disciplinary proceedings, health practitioners are entitled to seek their own legal and/or industrial representation.

Where a health practitioner is subject to criminal proceedings, for example a patient claims he or she has been unlawfully imprisoned or assaulted the Crown will not represent an employee charged with an offence arising out of the performance of his or her duty, due to a potential conflict of interest. It is the responsibility of the employee to arrange his or her own legal representation.

Health workers can be also charged for criminal offences committed during the course of their work, for example physical or sexual assault. There are offences related to the care provided, for example for improper treatment, malpractice or neglect. Disciplinary action and investigation of complaints against a health practitioner are made by SA Health and the bodies that are responsible for health professional registration and standards, codes of conduct. (Section 8 – The consequences for workers for inappropriate response to challenging behaviour, violence and aggression).

For further information refer to the:

- SA Health Challenging Behaviour Post Incident Support Guide (Tool 8)
- SA Health policy directive Providing medical assessment and/or treatment where patient consent cannot be obtained.

All employees have an obligation under the Code of Ethics to report to an appropriate authority, workplace behaviour that a reasonable person would suspect violates any law or represents corrupt conduct, mismanagement of public resources, is a danger to public health or safety or to the environment or amounts to misconduct. The website of the Independent Commissioner Against Corruption has information about reporting under the *Independent Commissioner Against Corruption Act 2012*. For further information refer to the *Public Interest Disclosure Act 2018*. Further information about the PID Act can be found on the Independent Commissioner Against Corruption / Office for Public Integrity website or on the Commissioner for Public Sector Employment's website.

The Attorney-General's Department has developed an online training course which is available at publicsector.sa.gov.au.

The PID Act can be accessed online and guidelines prepared in accordance with the PID Act can be found at icac.sa.gov.au/pid-guidelines.

1.3.3 Duty of care and negligence

In accordance with the Code of Ethics for the South Australian Public Sector and common law, a healthcare provider must reasonably ensure that no harm comes to a patient under the provider's care. A health care provider's duty of care for that patient depends on the provider's role, and what is reasonable in light of their professional skills and the context in which they are applied. Reasonable practice for health care professionals and medical practitioners are outlined in the relevant codes of practice and standards.

The *Civil Liability Act 1936* enables the determination of liability and the assessment of damages (physical and mental) for harm arising from an accident occurring. Sections of this Act cover negligence, duty of care and standards of care for professionals.

The *Public Sector Act 2009*, section 74 provides for immunity (no civil liability) for a public official and a public sector employee for an act or omission in the exercise or purported exercise of official powers or functions. This action lies against the Crown.

1.3.4 Consent, capacity to consent, and treatment without consent

Consent must be obtained before medical assessment and/or treatment is undertaken (*Consent to Medical Treatment and Palliative Care Act 1995*). The patient must be capable of giving consent, which means that they understand the information given to them, and can use it to make a decision. Section 12 of the Act enables people under 16 to consent if certain criteria are met, otherwise a child's parent or guardian can consent.

Patients who have decision-making capacity have the right to:

- give, withhold or withdraw consent
- decline or refuse a type of health care or medical treatment, even if doing so may result in their death, or may have negative consequences for them
- discharge themselves from care (a person with decision-making capacity is presumed to understand the consequences of doing so)
- be free from restraint or seclusion, unless it is deemed there is a serious and imminent risk of harm to themselves or others.

Continuing to provide health care, where a patient with decision-making capacity has refused to consent, can amount to either a criminal offence (for example assault under the *Criminal Law Consolidation Act 1935*) or civil tort of trespass to the person (for example assault, battery or false imprisonment under the *Civil Liability Act 1936*). Failure to disclose information to a person about risks of procedures or treatment may be considered negligent.

The key SA Health policy guideline is Consent to Medical Treatment and Health Care. For further information refer to the accompanying Fact Sheet Assessing decision-making capacity.

1.3.4.1 Emergency treatment

Consent is required to be able to deliver care and treatment, unless it is an emergency when medical treatment is deemed necessary 'to meet an imminent risk to life or health', (s13 Consent to Medical and Palliative Care Act 1995). In this situation, treatment can be provided even if the person is incapable of consenting, and may be resisting.

However, the Act describes the effort that the medical practitioner should make to check if an Advance Care Directive exists and if a substitute decision-maker(s) or person responsible is available in a reasonable timeframe (s13 *Consent to Medical Treatment and Palliative Care Act 1995*). The Act also provides protection for medical practitioners responsible for the treatment or care of a patient, or a person participating in the treatment or care of the patient under the medical practitioner's supervision, incurs no civil or criminal liability for an act or omission done or made:

- with the consent of the patient or the patient's representative or without consent but in accordance with an authority conferred by this Act or any other Act; and
- in good faith and without negligence; and
- in accordance with proper professional standards of medical practice; and
- in order to preserve or improve the quality of life.

1.3.4.2 If the patient does not have decision-making capacity and it is not an emergency

The key SA health policy directive Providing medical assessment and/or treatment where patient consent cannot be obtained assists health practitioners in meeting their legal obligations with respect to providing medical assessment and/or treatment where consent cannot be obtained from a patient.

There are four pieces of legislation that provide lawful authority for providing health care to a patient when the patient is not able to provide consent. The relevant provisions are found in the following Acts:

- *Consent to Medical Treatment and Palliative Care Act 1995*
- *Advance Care Directives Act 2013*
- *Guardianship and Administration Act 1993*
- *Mental Health Act 2009.*

The Fact Sheet Advance Care Directives and Mental Health Treatment Orders provide further detail.

If the patient does not have decision making capacity then consent must be obtained from a third party. The person responsible is determined in the following legal order of hierarchy:

- Substitute decision-maker(s) (as defined in the Advanced Care Directive, Note: SDMs are not included as "responsible persons" under the *Consent to Medical Treatment and Palliative Care Act 1995*)
- Guardian
- Prescribed relative – the following persons are prescribed relatives:
  - A person who is legally married to the patient
  - An adult domestic partner
  - An adult related by blood, marriage or by adoption
  - An adult of Aboriginal or Torres Strait Islander descent who is related to the patient according to Aboriginal kinship rules or Torres Strait kinship rules, kinship/marriage
- Adult friend (close and continuing relationship with the patient)
- An adult charged with overseeing the ongoing day-to-day supervision, care and well-being of the patient
- As a last resort, if none of the above apply, the South Australian Civil and Administrative Tribunal

The Consent to Medical Treatment and Healthcare – Adults Flowchart describes this process.

If the person then resists treatment, and if force or restraint are used as part of providing the treatment, or containing or detaining a person within a facility, it must be lawful.

Note:

(i) A Substitute Decision Maker appointed through a persons Advanced Care Directive does not have the legal authority to consent to the application of a restrictive practice, as restrictive practices are not deemed as being therapeutic or medical treatment. The Substitute Decision Maker may apply to the South Australian Civil and Administrative Tribunal for "Special Powers "under Section 32 of the Guardianship and Administrative Act. Reference may also be made to the Office of the Chief Psychiatrist Factsheet – Advanced Care Directives and Mental Health Treatment Orders

(ii) Substitute Decision Maker(s) are not included as a "persons responsible" under Part 2A of the *Consent to Medical Treatment and Palliative Care Act 1995*.

1.3.5 The use of force or restrictive practices during treatment

The decision to use restrictive practices, or force in situations of challenging behaviour presents ethical and legal dilemmas for health care providers and must only be used as a last resort.

The SA Health policy directive Minimising Restrictive Practices in Health Care outlines the requirements for SA Health services to minimise the use of restrictive practices during health care through modifying treatment and care delivery, and to comply with relevant legislation. It aligns with the Restraint and Seclusion in Mental Health Services policy guideline and the Chief Psychiatrists Standards for Restraint and Seclusion.

Reference to these practices and who can authorise their use, is made in the following Acts:

- under the *Guardianship and Administration Act 1993* (section 32) a guardian can seek special powers to authorise the use of restrictive practices. This is usually where there is an ongoing need. S32c- 'may, by order, authorise the persons from time to time involved in the care of the person to use such force as may be reasonably necessary for the purpose of ensuring the proper medical or dental treatment, day-to-day care and well-being of the person'. Section 32 authorization is required if a person without decision-making capacity is cared for in a secure (locked) area.
- under the *Mental Health Act 2009* restraint and / or seclusion can be authorised in certain circumstances
- under the *Health Care Act 2008*, for example, Authorised Officers appointed under the Incorporated Hospital By-Laws, are able to use reasonable force in relation to the removal of a person, but not for the forced provision of medical treatment.

The *Consent to Medical Treatment and Palliative Care Act 1995* makes no reference to the use of restrictive practices.

People, who are under a legal order can be prevented from leaving a treatment centre or health facility, using reasonable force if required (*Guardianship and Administration Act 1993*, and *Mental Health Act 2009*). If they do leave, this is referred to as absconding and reported as a patient safety incident in Safety Learning System. Refer also to 1.4.1 and 1.4.2.

The Office of the Public Advocate, South Australia has published information relevant to the *Guardianship and Administration Act 1993*, *Consent to Medical Treatment and Palliative Care Act*, *Advanced Care Directives Act* and the *Mental Health Act 2009*, in order to assist guardians, administrators and substitute decision-maker(s).

There are other Acts that provide for legal orders for assessment and treatment or prescribed treatment, for example the *South Australian Public Health Act 2011* for communicable diseases, and the use of reasonable force is described in situations where there is physical resistance to these medical procedures (for further information refer also to the Chief Public Health Officer Protocol, Code for the Case Management of Behaviours that present a risk for HIV transmission).

Sections in the *Criminal Law Consolidation Act 1935* are relevant to the use of restraint, care and treatment of prisoners and detained refugees.

Health workers who use force and/or restrain someone without their consent or legal authority may be charged with assault if the patient makes a complaint to police. Defence to these charges may be based on the 'doctrine of necessity' duty of care to prevent harm or self defence.

1.3.6 Care for an intoxicated person

The Clinical Guideline Management of patients at risk of alcohol withdrawal in acute hospitals provides guidance regarding the correct procedure to be adopted by health care workers when a patient who presents to a hospital or health service is intoxicated from alcohol, and consent cannot be obtained.

The consumption of drugs or alcohol does not, in and of itself, indicate that a person is suffering from a mental illness. A person may be taken into care and control or placed on an Inpatient Treatment Order and treated in accordance with the *Mental Health Act 2009* only where there are co-existing symptoms of a mental illness.

Where a patient does not appear to be suffering from a mental illness and the clinician believes the high level of intoxication poses an imminent threat to life or health, a patient may be provided emergency medical treatment in accordance with section 13 of the *Consent to Medical Treatment and Palliative Care Act 1995*.

Intoxicated people can be placed in a sobering-up centre until they are able to resume care of themselves, under the *Public Intoxication Act 1984*.

The SA Health Medical management of patients at risk of opioid withdrawal Clinical Guideline describes care that aims to minimize symptoms associated with withdrawal, and therefore minimize challenging behavior.

Further guidance can be accessed from Drug and Alcohol Services South Australia (DASSA).

1.3.7 Indemnity for health practitioners

The policy directive Providing medical assessment and or treatment where patient consent cannot be obtained, includes minimum requirements for documentation in the patients' medical record (paper and Sunrise EMR) when treatment is provided without consent.

In accordance with section 16 of the *Consent to Medical Treatment and Palliative Care Act 1995*, a medical practitioner (or other person participating in delivering care under the medical practitioner's supervision), incurs no civil or criminal liability for an act or omission done or made:

- with the consent of the patient or the patient's Person Responsible or Substitute Decision-Maker or without consent but in accordance with an authority conferred by this Act or any other Act; and
- in good faith and without negligence; and
- in accordance with proper professional standards of medical practice; and
- in order to preserve or improve the quality of life.

In accordance with section 41 of the *Advance Care Directives Act 2013* a health practitioner, substitute decision maker or other person incurs no criminal or civil liability for an act or omission done or made in good faith, without negligence and in accordance with, or purportedly in accordance with, an Advance Care Directive.

In accordance with section 74 *Public Sector Act 2009*, no civil liability attaches to a public sector employee for an act or omission in the exercise or purported exercise of official powers or functions. An action that would lie against a public sector employee lays instead against the Crown, that is, the relevant Government agency.

1.4 Mental Health

The objectives of the *Mental Health Act 2009* are to ensure that people with serious mental illness receive a comprehensive range of services for their treatment, care and rehabilitation with the goal of bringing about their recovery as far as is possible, and retain their freedom, rights, dignity and self-respect as far as is consistent with their protection, the protection of the public and the proper delivery of the services.

Further information on the care and treatment of persons with a mental illness can be found in the Mental Health Services Pathways to Care policy and guideline.

The Clinician's Guide and Code of Practice and the Office of the Chief Psychiatrists Plain Language Guide can assist clinicians and other workers to practice in accord with the *Mental Health Act 2009*.

Further information can be obtained through the Office of the Chief Psychiatrist on 8226 1091 or email ocp@health.sa.gov.au.

1.4.1 Treatment orders

Section 7 of the *Mental Health Act 2009* requires that services are provided on a voluntary basis as far as possible and otherwise in the least restrictive way and in the least restrictive environment, consistent with their efficacy and public safety.

The Act provides limited powers for medical practitioners or health professionals to make orders for community treatment, or involuntary admission and treatment of persons with serious mental illness where required, and further powers to enforce these.

Under Part 5, Section 34A, for a person under an Inpatient Treatment Order (ITO), health workers of an approved or mental health treatment centre may take measures for the confinement of the person, and exercise powers (including the power to use reasonable force), as reasonably required:

- to prevent the person from leaving, unless they are granted leave of absence by the treatment centre director
- to put the person's ITO into effect, and ensuring compliance with this Act
- for the maintenance of order and security at the centre, or the prevention of harm or nuisance to others.

1.4.2 Care and control

Under Section 56 of the *Mental Health Act 2009* Authorised Officers are persons authorised by the Act to have certain responsibilities and take certain action regarding people who appear to have a mental illness. This includes designated employees of public mental health services, mental health clinicians (under the Act), ambulance officers, Royal Flying Doctor Service flight nurses, specifically designated emergency department workers, and Aboriginal health workers.

Where an Authorised Officer believes on reasonable grounds that:

- a patient assistance request has been issued under s54A (1); or
- a patient transport request has been issued under s55 (1); or

Where an Authorised Officer believes on reasonable grounds that:

- the person is a patient who is absent without leave; or

Where it appears to an Authorised Officer that:

- the person has a mental illness and
- the person has caused, or there is significant risk of the person causing, harm to himself or herself or others or property of the person otherwise requires medical examination,

Then an Authorised Officer may exercise the following powers:

- take the person into his or her care and control
- transport the person from place to place
- restrain the person and otherwise use force in relation to the person as reasonably required in the circumstances
- restrain the person by means of the administration of a drug when that is reasonably required in the circumstances
- enter and remain in a place where the Authorised Officer reasonably suspects the person may be found
- search the person's clothing or possessions and take possession of anything in the person's possession that the person may use to cause harm to himself or herself or others or property.

After a person has been taken into care and control, transport (if required), medical assessment and treatment should be facilitated as soon as possible. An authorised health professional, medical practitioner, psychiatric registrar or psychiatrist can further assess and make a treatment order if required.

1.5 Patient and consumers rights, complaints, participation in care, and carers role

Meeting the needs of patients, family and carers in response to challenging behaviour is critical to their resolution. Consent must be obtained before medical assessment and/or treatment is undertaken (Consent to *Medical Treatment and Palliative Care Act 1995*).

Patients' rights and responsibilities are outlined in the SA Health booklet Your Rights and Responsibilities.

Patients of mental health services also have responsibilities in relation to their own treatment and health care, including to respect the rights, freedoms and dignity of others, including mental health workers, carers and other consumers and to actively participate as far as possible in reasonable treatment and rehabilitation processes. (Mental health statement of rights and responsibilities 2012 Commonwealth of Australia).

Residents of aged care facilities under SA Health have rights and responsibilities described by Commonwealth Aged Care.

Part 3 of the *Health and Community Services Complaints Act 2004* refers to the SA Charter of Health and Community Services Rights (the HCSCC Charter) that sets out the rights of people who use most health and community services in South Australia, and the family members, carers and nominees who act on their behalf.

1.5.1 Complaints, advocacy and open disclosure

The *Health and Community Services Complaints Act 2004* serves to improve the quality and safety of health and community services in SA through the provision of a fair and independent means for the assessment, conciliation, investigation and resolution of complaints. The Health and Community Services Complaints Commissioner can investigate, mediate and advocate, and the website includes information for service providers about addressing complaints and managing a complaint.

Under the *Mental Health Act 2009*, the SA Community Visitor Scheme was established as a protection for people with a mental illness. SA Community visitors' responsibilities include:

- advocating for patients, carers and families to promote the proper resolution of issues relating to the care, treatment or control of patients , including issues raised by a guardian, carer, relative, friend or medical agent of the person
- referring matters of concern regarding the care, treatment or control of patients to the Minister, the Chief Psychiatrist or any other appropriate person (Part 8 Division 2 of the Act).

1.5.2 Consumer, Carer and Community Feedback and Complaints Management

The SA Health Consumer, Carer and Community Feedback and Complaints Management Strategic Framework has been developed to ensure there are mechanisms in place to:

- actively manage consumer, carer and community feedback and complaints
- better respond to individual feedback and concerns to ensure consumer-centred care
- dentify and rectify system issues
- develop and improve services

The Framework outlines the responsibilities for all of SA Health to strengthen and improve consumer, carer and community feedback and complaints management to drive safety and quality improvement.

The SA Health Consumer Feedback Management Policy (PDS ref no. D0255) establishes standards and principles and documents a uniform approach to review and management of consumer feedback, including complaints.

The SA Health Policy Directive Patient Incident Management and Open Disclosure provides detail to ensure a uniform approach to the reporting, documentation , review and management of incidents affecting patients , including appropriate open disclosure response. This reflects the Australian Open Disclosure Framework 2013 Australian Commission on Safety and Quality in Health Care.

Residents of aged care facilities under SA Health have complaints mechanisms described by Commonwealth Aged Care.

1.5.3 Consumer, carer and community engagement

Both the National Safety and Quality Health Service Standards(2ed), Standard 2 – Partnering with Consumers and the SA Health Consumer, Carer and Community Engagement Strategic Framework provides direction for the Department for Health and Wellbeing (DHW), Local health Network (LHN) Governing Boards and SA Ambulance (SAAS) to effectively and meaningfully partner with consumers, carers and the community to improve the quality of health care services and to better meet patient needs and preferences.

1.5.3.1 Carers

The views and needs of carers must be taken into account along with the views, needs and best interests of people receiving care when decisions are made that impact on carers and the role of carers. The *Carers Recognition Act 2005* provides for the recognition of carers and ensures that the role of carers must be recognised by requiring that services include carers in the assessment, planning, delivery and review of services that impact on them and their role as carers.

SA Health is partnering with carers, and in collaboration with Carers SA has developed the SA Health Partnering with Carers Policy Directive and SA Health Partnering with Carers Strategic Action Plan, which recognises and support carers and their roles specifically with regard to how carers interact with the South Australian public health system.

There are specific recommendations regarding involvement of carers in the Mental Health Practitioners Guide to Sharing Consumer Information Guidelines.

Additional information for carers of people with a mental illness are available as follows:

A practical guide for working with carers of people with a mental illness

Mental health carers information

Rights of carers of people receiving mental health care

Mental Health Practitioner's Guide to Sharing Consumer information

1.5.4 Advance Care Directives

The *Advance Care Directives Act 2013*:

- enables a person (a competent adult) to make decisions and give directions in relation to their future health care, residential and accommodation arrangements and personal affairs
- provides for the person to appoint of substitute decision-maker(s) to make such decisions on behalf of the person
- ensures that health care is delivered to the person in a manner consistent with their wishes and instructions.

The Advance Care Directives policy directive provides advice to health care professionals on the best practice use of advance care directives.

1.5.5 Protection of vulnerable people, youth and children

South Australian Strategy to Safeguard the Rights of Older South Australians 2014–2021 is the state-wide framework to ensure older people living in the community are safeguarded and their rights are protected. Key features of the strategy include the:

- South Australian Charter of the Rights and Freedoms of Older People
- Knowing your rights – A guide to the rights of Older South Australians
- Prosperity Through Longevity: South Australia's Ageing Plan 2014 – 2019: Our Action Plan
- Principles for intervention, from a rights-based approach, and a continuum model for service providers

The Children and Young People (Safety) Act 2017 enables protection of children from physical, sexual, emotional and psychological abuse and neglect. The Act provides legal protection for health professionals (among others) who have a legal obligation to report suspected abuse and neglect. The SA Health policy directive Child Safe Environments (Child Protection) (PDS ref no 0277) reflects the requirements of the Act.

The Guardianship and Administration Act 1993 describes care of people with mental incapacity, in terms of decision-making about finances and care, and the roles of the Public Advocate, South Australian Civil and Administrative Tribunal (formerly Guardianship Board) and Public Trustee.

The *Disability Inclusion Act 2018* defines principles and practices for the care and protection from abuse, neglect and exploitation of people with disabilities.

Australia is a signatory to international human rights conventions, and World Health Organisation standards. The Universal Declaration of Human Rights, United Nations, Articles 1 and 5 are relevant. The *Australian Human Rights Commission Act 1986* (Cth) includes the Declaration of the Rights of the Child; Declaration on the Rights of Mentally Retarded Persons; Declaration on the Rights of Disabled Persons.

Australian legislation includes:

- *Disability Discrimination Act 1992* that describes the elimination of discrimination against people with a disability
- *Racial Discrimination Act 1975* that prohibits racially based offensive behaviour and discrimination
- *Sex Discrimination Act 1984* prohibits discrimination on grounds of sex, sexual orientation, gender identity, intersex status, marital or relationship status, pregnancy or potential pregnancy or breastfeeding
- *Age Discrimination Act 2004* that prohibits discrimination on the grounds of age.

The World Health Organisation publishes a Quality Rights Tool Kit to assist with assessing and improving quality and human rights in mental health and social care facilities.

1.6 Residential aged care

The Australian *Aged Care Act 1997* governs all aspects of the provision of residential care, flexible care and Community Aged Care Packages to older Australians. SA Health is a provider of aged care services, particularly outside the metropolitan area. The Act sets out matters relating to planning of services, approval of service providers and care recipients, payment of subsidies, and responsibilities of service providers.

Residents of aged care facilities under SA Health have rights and responsibilities and complaints mechanisms described by Commonwealth Aged Care.

Regarding challenging behaviour, the Act sets out the User Rights Principles (Part 4.2), which state that each resident of a residential care service is required to respect the rights of workers and the proprietor to work in an environment which is free from harassment.

For the resident, section 54-1 describes that the quality of care is in compliance with the Quality of Care Principles.

These deal with matters such as:

- safe practices and the physical environment in which residential care is provided
- management systems, staffing and organisational development relating to the provision of residential care
- health and personal care of care recipients.

Organisations providing aged care in Commonwealth subsidized aged care services are required to comply with Aged Care Quality (ACQ) standards. The Australian Commission on Safety and Quality in Health Care has developed the draft NSQHS Aged Care Module describing six actions. Implementation of these six actions will enable Multi-purpose services (MPS) organisations to meet the requirements of both the NSQHS and ACQ standards. Regional LHN locations which provide a range of care that may include acute, community, primary care and aged care services may be defined as MPSs.

The Quality of Care Principles 2014 require aged care providers to satisfy a number of conditions before restraint can be used, including assessment by an approved health practitioner (physical restraint) or assessment by a medical practitioner or nurse practitioner who has prescribed the medication (chemical restraint). The aged care home must also have the informed consent of the consumer or their representative before using physical restraint, unless restraint is necessary in an emergency. In all cases of restraint, the home will also be required to document the alternative options to restraint that have been used. Any use of restraint must also be regularly monitored. This ensures that aged care is delivered to a high-quality at all times and in all places.

The new Aged Care Quality Standards contained in the Quality of Care Amendment (Single Quality Framework) Principles 2018 came into force 1 July 2019. The Standards stipulate best-practice to ensure those receiving aged care get safe and effective personal and clinical care, tailored to their needs. The standards include, Consumer dignity and Choice, Ongoing assessment and planning with consumers, Personal care and clinical care, Services and supports for daily living, Organisations service environment, Feedback and complaints, Human resources, Organisational governance .

For more information refer to the Aged Care Quality and Safety Commission Guidance and Resources for providers to support the Aged Care Quality Standards.

Reasonable surveillance within and around its aged care workplaces, including in common and public areas, requires consultation with stakeholders , and when in private areas , consent of the care recipients and/or others legally able to act on their behalf. It is recommended that written consent to surveillance is obtained from surveillance subjects in circumstances where there exists a reasonable expectation of privacy.

To facilitate installation and use of surveillance in aged care bedrooms or private areas, the Office for Ageing Well in the Department for Health and Wellbeing or LHNs may (in consultation with stakeholders):

- Develop guidelines/procedures for the installation and use of this surveillance in bedrooms or private areas of aged care recipients (if requested or consented to by aged care recipients and/or by those with the legal authority to act on their behalf).
- Provide a standard consent agreement between LHNs and an aged care recipient consistent with the above.

Section 2
SA Health policies and guidelines

This section is in alphabetical order.

Policies and guidelines are frequently reviewed. To ensure access to the current version, refer to the SA Health website.

Aboriginal Health

- The Aboriginal Health Impact Statement Policy Directive and Guideline outlines SA Health commitment to improving the health of Aboriginal and Torres Strait Islander people through early and respectful engagement, shared approach to policy development, planning and service across the health system and maintaining respect for cultural diversity.

Advance Care Directives

- Advance Care Directives policy directive. These are legal documents that enable competent adults to appoint one or more substitute decision-maker(s) to make decisions on the person's behalf and/or write directions, wishes and values (provisions) regarding future health care, accommodation, residential or personal matters. This policy directive provides advice to health care professionals on the best practice use of advance care directives.

Alcohol and Other Drugs

- South Australian Alcohol and Other Drug Strategy 2017-2021, Drug & Alcohol Services, South Australia.
  - Management of patients at risk of alcohol withdrawal in acute hospitals
  - Medical management of patients at risk of opioid withdrawal Clinical Guideline

Authorised Officers

- 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.

By-Laws

The By-laws for hospitals and health services are made under the *Health Care Act 2008* with the intent of providing for the administration of hospitals and other health services. By-laws describe the appointment, functions and powers of authorized officers including removal of persons, searching clothes and possessions and restraint associated with those activities.

By-laws relate to trespass, property damage, disorderly, threatening or offensive behaviour within the hospital or the grounds of the hospital, consumption of alcohol or unlawful substances or tobacco smoking, and the prevention of hindrance to or interference with any activities conducted within the hospital or its grounds.

Carer participation and engagement

Through the *Carers Recognition Act 2005* the South Australian Government formally recognises the roles and rights of carers.

SA Health recognises the importance of unpaid carers through a commitment to ensuring better carer engagement in shared decision-making in our health care services (SA Health Partnering with Carers Policy Directive).

Charter of Health care Rights

- The purpose of the Charter of Health and Community Services Rights policy is to implement the Charter of Health and Community Services Rights (the HCSCC Charter). The policy will increase awareness of all staff, consumers and the public about the HCSCC Charter, and ensure that health care providers understand the rights of consumers and the community. It also ensures that a consistent approach is established to assist health care providers integrate the basic elements of the HCSCC Charter in to their daily practice.
- Part 3 of the Health and Community Services *Complaints Act 2004*, includes reference to the HCSCC Charter of Rights , which itself substantially incorporates the Australian Charter of Healthcare Rights 2019 (2ndEd). The HCSCC Charter will further empower patient rights when they access health and community services in South Australia.

Chief Psychiatrist Standards

- Section 90 of the *Mental Health Act 2009* states that the Chief Psychiatrist may, with approval of the Minister, issue standards that are to be observed in the care or treatment of people with a mental illness. Any standards issued by the Chief Psychiatrist under this section will be binding on any hospital that is an incorporated hospital under the *Health Care Act 2008*.

Further information is available on the Office of the Chief Psychiatrist webpage.

Child protection

- The purpose of the Child Protection – Mandatory Notification of actual or suspected child abuse or neglect (0-18 Years) policy directive is to ensure a consistent approach to the mandatory reporting requirements relating to actual or suspected harm of a child (0-18 Years) in accordance with the *Children's Protection Act 1993*.
- The Child Safe Environments policy directive provides the overarching framework for protecting children from physical, sexual, emotional and psychological abuse and neglect, as well as promoting their health and wellbeing. It fulfils SA Health's obligations under sections 8B – 8D of the *Children's Protection Act 1993*.

Clinical Communication and Patient Identification (including Clinical Handover)

- The Clinical Communication and Patient Identification Clinical Directive is in place to achieve timely, relevant, consistent and agreed processes to support clinical communication and teamwork, clinical handover and team-based patient care processes across the whole spectrum of health care providers. This policy supports patient safety by improving clinical communication and patient identification, and providing a consistent approach across SA Health, and ensures health services meet the requirements of the National Safety and Quality Health Service Standards (Standard 6).

See also Communicating for Safety on the SA Health website.

Consent to Medical Treatment and Health Care

- The Consent to Medical Treatment and Health Care policy guideline provides guidance on the legislative responsibilities of medical and health practitioners in obtaining the consent of patients prior to commencing medical and dental treatment and health care.
- This policy guideline is to be read/administered in conjunction with the policy directive Providing Medical Assessment and or Treatment where patient consent cannot be obtained, and the Advance Care Directives policy directive. This document provides guidance in meeting the requirements of legislation dealing with consent, in particular, the *Consent to Medical Treatment and Palliative Care Act 1995, Guardianship and Administration Act 1993; Mental Health Act 2009*; and *Advance Care Directives Act 2013*.

Consumer feedback – complaints and compliments

- The purpose of the Consumer Feedback Management policy directive and guideline and toolkit is to establish a uniform approach to consumer feedback management across the public health care sector. The policy provides governance which clearly outlines the responsibilities of individuals and health service in relation to the management of consumer feedback. It also outlines the standards and principles for the management of consumer feedback.

Consumer engagement – Partnering with consumers and the community

The Consumer and Community Engagement Governance model outlines the consumer and community advisory groups involved in service planning, designing care, measuring and evaluating health care services, and supports SA Health's commitment to consumer and community partnerships.

- A Framework for Active Partnership with Consumers and the Community (the Framework) will ensure there are mechanisms in place to actively engage with consumers and the community in order to meet their needs, and develop appropriate services. The Framework also ensures the methods and practice of consumer engagement are guided by current best practice. The principles and standards recognise the importance of partnering with consumers and the community and maintaining high quality and efficient health services. The Framework also outlines the roles and responsibilities for all SA Health staff.
- The SA Health Guide for Engaging with Consumers and the Community (the Guide) is a practical tool to assist health care services to implement the Framework. The Guide is to be used by all SA Health staff to strengthen and improve the practice of consumer and community engagement processes across SA Health. The accompanying tools will assist staff who are planning, managing or implementing consumer and community quality improvement projects, programs activities. The tools are based on current best practice consumer methodology toolkits and resource guides.

Notifications to the SA Coroner

SA Health Portfolio and the Minister for Health or the Minister for Mental Health and Substance Abuse have reporting obligations with regard to the *Coroners Act 2003* and *Coroners Regulations 2005*.

SA Health has developed the *Policy Directive Coronial Process and Coroners Act 2003* to provide SA Health employees and other organisations contracted to provide a health service with a better understanding of the *Coroners Act 2003*, and to give clear direction and guidance regarding their obligations.

The Coronial Process Guideline outlines the process for reporting SA Health related deaths to the State Coroner's. Relevant to challenging behavior, Coronial notification is required if a death has occurred:

- unexpectedly, unusually or by a violent, unnatural or unknown cause
- while in custody
- during, as a result or within 24 hours of certain surgical or invasive medical procedures, including the giving of an anaesthetic for the purpose of performing the procedure
- within 24 hours of being discharged from a hospital or having sought emergency treatment at a hospital
- while the deceased was a 'protected' person
- while the deceased was under a custody or guardianship order under the *Children's Protection Act 1999*
- while the deceased was a patient in an approved treatment centre under the *Mental Health Act 2009*
- while the deceased was a resident of a licensed supported residential facility under the *Supported Residential Facilities Act 1992*
- while the deceased was in a hospital or other facility being treated for drug addiction
- during, as a result or within 24 hours of medical treatment to which consent had been given under Part 5 of the *Guardianship and Administration Act 1993*,or
- when a cause of death was not certified by a doctor.

Credentialing and scope of practice of health professionals

- The Authenticating SA Health Allied Health Professionals Credentials including Access Appointments directive is a policy update to include a process for documenting Access Appointments and the entering of allied health professional credentialing information onto the Credentialing and Scope of Clinical Practice System (CSCPS) database.
- See also the SA Health Registration, credentialing and professional associations in allied health website
- The Authenticating Nurse Practitioner Credentials Policy outlines the requirements to authenticate the credentials of nurse practitioners employed in advanced practice roles across SA Health.
- The Credentialing and Defining the Scope of Clinical Practice for Medical and Dental Practitioner policy directive and policy guideline describes the processes for Credentialing and Defining the Scope of Clinical Practice for Medical Practitioners who are undertaking or planning to undertake clinical practice in a public Health Care Facility in South Australia. It gives guidance on the requirements and processes for ensuring medical and dental practitioner credentials are reviewed and an appropriate scope of practice is defined.
- See also Registration of health professionals and the SA Health

Criminal screening

- The intent of the Criminal and Relevant History Screening policy directive is to ensure that SA Health complies with legal requirements for criminal and relevant history screening of all workers and risks to clients, including vulnerable clients, patients, employees, other workers and the organisation are minimised.

Disability discrimination

- The Disability Action Plan 2008-2013 directive sets out SA Health obligations and reporting requirements to eliminate practices that discriminate against people with a disability who use public health services and who are employed within the public health system. Also refer to the *Disability Inclusion Act 2018.*

Employee wellbeing

- The Employee Assistance Program directive aims to address personal or work related problems which may affect the work performance, safety, health or wellbeing of employees. SA Health has secured the services of a panel of EAP providers to provide free, confidential, professional counselling services to SA Health employees and their immediate families.

For more information access the SA Health Employee Assistance Program Intranet page

Forensic Mental Health

- The Forensic Mental Health Patient Admission to SA Health Facilities policy directive outlines the processes and legal parameters for the admission of forensic mental health patients to SA Health facilities. People committed to detention (supervision orders) (s269O and s269U orders) or committed to custody (s269X orders) under the Criminal Law Consolidation Act 1935 should, wherever possible, be admitted directly to Forensic Mental Health Services or to an Acute Mental Health Service. See also Prisoner health care.
- Part 8A of the *Criminal Law Consolidation Act 1935*, (the legislation that governs forensic mental health patients and forensic mental health orders) provides additional options to the Courts, the Minister and the Forensic Mental Health Service for the custody, supervision and care of forensic mental health patients.

Forms, protocols and factsheets to assist with the implementation of this legislation can be found at the Office of the Chief Psychiatrist website: www.chiefpsychiatrist.sa.gov.au.

Health care for immigration detainees

- The MOU for the provision of health services to immigration detainees is a Commonwealth and State government agreement that details the requirements that must be followed in relation to the provision of health services to people in immigration detention.

Incident management

- The Patient Incident Management and Open Disclosure policy directive describes the systems that ensures all staff use the SA Health incident management reporting system Safety Learning System (SLS) for reporting and documentation; provide appropriate open disclosure to, and engage with, patients and their carers, families and support persons; respond effectively to patient incidents; promote safety and quality improvement; and maintain compliance with relevant law and codes of conduct in relation to transparent and fair treatment, privacy and confidentiality.
- There are 2 types of patient incidents relevant to challenging behaviour that are defined as Australian Sentinel events
  - Suspected suicide of a patient in an acute psychiatric unit or acute psychiatric ward
  - Use of physical or mechanical restraint resulting in serious harm or death
- There are several types of incidents relevant to challenging behaviour that are termed Adverse incidents, and described in the Health Care Act. These can be investigated (using Root Cause Analysis) under protection of Part 8 of that Act. These are
  - Sentinel events (see above)
  - the suspected homicide or suicide, and/or attempted homicide or suicide committed by a person who has received care or treatment from a health services entity where there are reasonable clinical grounds to suspect a connection between the death and the care or treatment provided by the entity
  - the suspected suicide or the suspected attempted suicide of a person in custody applying the definition of "custody" in the *Coroners Act 2003* (SA)
  - An incident where a patient;
    - Suffers a major permanent loss of function (sensory, motor , physiologic or intellectual) unrelated to the natural course of the patients illness and differing from the expected outcome of the patients health care management is, or was at significant risk due to being absent against medical advice (i.e. absconded)
    - Who, whilst detained, has:
    - without leave, left the place at which he or she has been detained, or
    - having been absent with leave from the pace at which he or she has been detained, failed to return at the conclusion of the period of leave and has been at significant risk during the period of absence or unauthorised absence.

Information sharing

- The Information Sharing Guidelines for the Promoting Safety and Wellbeing: SA Health ISG Appendix Policy Directive provides a consistent state wide approach for information sharing when it is believed a person is at risk of harm (from others or as a result of their own actions) and adverse outcomes can be expected unless appropriate services are provided. It includes authorisation to disclose personal information under S.93 of the *Health Care Act 2008* and S.106 of the Mental Health Act 2009, if the disclosure is required to lessen or prevent a serious threat to life, health or safety of a person – this does not need an authorisation from CE/CEO and does not breach the confidentiality provisions.

Also see the South Australian Information Sharing Guidelines for Promoting Safety and Wellbeing (ISG).

Injury management for workers

- The Management of Work Related Injury/Illness (WHSIM) policy directive facilitates and enables the provision of consistent, equitable, effective, appropriate and early injury management intervention which rehabilitates, compensates and retains / returns injured workers to a safe workplace and community.

Legal professional privilege

- The Maintaining Legal Professional Privilege guideline aims to assist SA Health staff in understanding the function of legal professional privilege and when it may apply to documents.

Mental Health and Wellbeing

- South Australia's Mental Health and Wellbeing Policy 2010 – 2015 recognises that good mental health and wellbeing depends on a wide range of factors and that a holistic, whole of community approach is essential to prevent and reduce the impacts of mental illness and help people who are experiencing mental ill-health achieve their recovery goals.

Mental health services

- The Mental Health Services Pathways to Care policy directive and policy guideline were developed in consultation with people who experience a mental illness, their support people and service providers, and articulate an integrated way of working and delivering care. The policies describe equitable and respectful care and treatment of people with a mental illness The policy directive applies to all mental health services (MHS) in South Australia providing care to adults and older persons inclusive of specific Veteran Services, Forensic Services and Youth services. The Directive extends to the working relationship that these services have with partners such as emergency services, non-government organisations, Disability, Drug and Alcohol Services South Australia (DASSA) and primary health care.

Performance review and development of staff

> The Performance Review and Development policy directive highlights the strong link between the organisation's objectives, the contribution of the individual in their team and work unit, and the important role that each employee plays in the achievement of these objectives. It provides opportunities for employees to develop their skills, knowledge and job performance, and to enhance their career opportunities.

Police information and witness statements

> The Protocol for Police Requests for Information and Witness Statements in the Public Health System in South Australia outlines the processes to be adopted by South Australia Police and health services for dealing with police requests for information, including medical records and witness statements from employees and patients.

> Subpoena and other Legal Requests for Information - guidelines on the law and procedure - To provide assistance to SA Health staff in dealing with subpoenas and other legal processes that seek access to information, and may include confidential or personal information.

Prisoner health care

> The Prisoners Care and Treatment in SA Health Services policy directive has been developed to inform medical professionals of their rights and responsibilities when treating prisoners within SA Health who are in the custody of the Department for Correctional Services (DCS). The policy promotes not only an agreed escalation process with DCS, but also offers general information in relation to the treatment of prisoner patients in the care of SA Health, particularly the role of the SA Prison Health Service, and the mental health treatment service options available for prisoners. It does not apply to juvenile offenders in custody of the Department of Communities and Social Inclusion. See also Forensic mental health.

Privacy and Confidentiality

> The Privacy Policy Directive (PDF 229KB) and the accompanying Privacy Policy Framework and Privacy Impact Assessment Policy Framework, outlines the legislative and policy requirements that apply to all persons working within the SA Health public health system, including employees, members of governing boards, contractors, volunteers and other health service providers who have access to personal information, collected, used, disclosed or stored by, or on behalf of, SA Health

Protective Security

> SA Health is firmly committed to maintaining essential services and protecting the community as far as possible from harm. The appropriate application of protective security by SA Health through the Protective Security Policy Framework (PSPF) and the Protective Security policy ensures the operational environment necessary for the confident and secure conduct of Government business. The PSPF articulates government protective security policy. It also provides guidance to entities to support the effective implementation of the policy across the areas of security governance, personnel security, physical security and information security.

> The Protective Security Policy ensures SA Health application of the Protective Security Policy Framework within the operational environment necessary for the confident and secure conduct of Government business. Managing security risks proportionately and effectively enables SA Health to provide the necessary protection of the Government's people, information and assets.

Providing Medical Assessment and or Treatment where patient consent cannot be obtained

> The purpose of the Providing Medical Assessment and or Treatment where patient consent cannot be obtained directive is to assist clinicians in meeting their legal obligations with respect to providing medical assessment and/or treatment where consent cannot be obtained from a patient.

> This policy is to be read / administered in conjunction with The Consent to Medical Treatment and Health Care policy guideline and the Advance Care Directives policy directive.

Public Interest Disclosure (formally Whistleblowing)

> The Public Interest Disclosure Policy Directive (formally Whistleblowers Protection Policy) applies to all employees of SA Health and to members of the public who wish to make a public interest disclosure. This reflects the SA Government's commitment to ensuring the public sector is free from corruption, the misuse and waste of public resources and poor administration practices.

Registration of health professionals

> The Registration of Health Practitioners – Recording and Monitoring policy directive establishes standards for the recording and monitoring of professional registrations for health practitioners employed by SA Health who are required to have registration with a National Board supported and managed by the Australian Health Practitioners Regulation Agency (AHPRA). The policy directive outlines the health practitioner and management responsibilities, processes, standards and timeframes to ensure the ongoing verification of health practitioner registrations with relevant professional bodies. See also Credentialing and scope of practice.

Remote or Isolated Work Safety, (including Gayle's Law)

- The Remote or Isolated Work Safety (WHS) policy directive and guideline provides direction for a risk management approach to the identification of hazards and risks associated with remote and/or isolated work.
- The Health Practitioner Regulation National Law (South Australia) (Remote Area Attendance) *Amendment Act 2017*, more commonly referred to as 'Gayle's Law', was passed by Parliament to provide better protection for health practitioners working in remote areas of South Australia.

Gayle's Law will apply to any health practitioner who provides a health service in response to an out of hours or unscheduled callout in a remote area of South Australia.

To find out more information download the frequently asked questions about Gayle's Law at SA Health Gayle's Law webpage.

Reporting sexual assault

- The purpose of the Reporting and Management of Incidents of Suspected or Alleged Sexual Assault of an Adult, or Sexual Misconduct by an Adult within SA Health Facilities and the Responding to Suspected or Alleged Offences Against a Child Occurring at a SA Health Facility and/or Service Policy Guideline provide clear directions for SA Health employees in regards to reporting and managing these incidents within SA Health facilities.

Respectful behaviour

- The purpose of the Respectful Behaviour policy directive is to foster positive, professional working environments, and a culture of respect to ensure staff and consumers are valued and supported. SA Health is committed to providing workplaces that are safe and supportive of its staff and in which the culture of the organisation reflects the underpinning principles of the ethical framework of the South Australian public sector, namely democratic values, service, respect and courtesy, honesty and integrity, accountability and professional conduct standards.

Restraint and Seclusion in Mental Health

- The Restraint and Seclusion in Mental Health Services Policy Guideline and accompanying toolkit is designed to provide staff with information to:
  - implement the SA Health Minimising restrictive practices policy directive
  - meet relevant legislative requirements
  - guide the development of restraint and seclusion reduction programs
  - ensure that when restraint or seclusion is used the person's rights and dignity are maintained
  - ensure that a review process occurs to assist in preventing further incidents of restraint and seclusion.
- The accompanying toolkit includes:
  - recommendations for staff training
  - strategies for prevention of restraint and seclusion
  - post incident debriefing strategies to limit the potential trauma restraint and seclusion may cause
  - prevention of further episodes of use where it has occurred.

Restrictive practices

- The policy directive Minimising Restrictive Practices in Health Care and accompanying toolkit, outlines the requirements for SA Health services to act to minimise the use of restrictive practices during health care and comply with relevant legislation. It is aligned with the Restraint and Seclusion in Mental Health Services policy guideline and the Chief Psychiatrist's Standard.

See also the SA Health Minimising Restrictive Practices Toolkit to support implementation

Safety and Wellbeing in the public sector

- The Office of the Commissioner for Public Sector Employment (OCPSE) Workforce Wellbeing Framework aims to promote practices that support workplace health and wellbeing and achieve improved workforce and business outcomes.

Also see the OCPSE Building Safety Excellence in the Public Sector

Same gender accommodation

- The Same Gender Accommodation policy directive (PDF 279KB) and guideline mandates that all patients staying overnight in a South Australian public hospital are to be placed in same gender accommodation, use same gender accommodation facilities, and are not required to move through mixed gender areas to reach their own facilities (except when considered clinically appropriate).

Sampling for blood alcohol

- The purpose of the Taking Blood Samples after Motor Vehicle Accidents under section 47i of the Road Traffic Act 1961 directive is to clarify for all clinical SA Health staff in metropolitan and country hospitals/ services the requirements of section 47i of the *Road Traffic Act 1961*.

Smoking

- The Smoke-free Policy aims to protect the health of all persons entering SA Health premises by prohibiting smoking, and providing assistance to staff and consumers who wish to address their tobacco smoking.

Surveillance

The workplace surveillance policy directive provides information and direction on the use of overt and covert surveillance in and associated with SA Health workplaces, including residential aged care .

Work Health and Safety

- The policy guideline Challenging Behaviour Safety Management (WHS) has resource tools including an organisation-wide self-assessment audit tool (Tool 2).
- The Work Health, Safety and Injury Management (WHSIM) policy directive outlines roles and responsibilities of SA Health workers with regard to meeting the legislative requirements of the *Work Health Safety Act 2012* (SA), *Return to Work Act 2014*, and the Office of the Public Sector WHSIM Audit Verification System.
- The Work Health and Safety Reporting and Investigation policy aims to standardise SA Health's processes for work health and safety reporting and investigation to comply with legal requirements. SA Health is required to keep records of reported hazards, work related injuries, illness and dangerous occurrences as part of systematic hazard control and incident prevention.

Section 3
South Australian Acts and Regulations

Readers who require additional information are referred to the Acts, Regulations and Rules on the South Australian Legislation website.

Advance Care Directives Act 2013

This Act simplifies future decision-making about health care, residential and accommodation arrangements and personal matters. It replaces:

- Enduring Power of Guardianship
- Medical Power of Attorney
- Anticipatory Direction.

It applies to any period of impaired decision-making capacity or as determined by the person, and therefore has implications for seeking consent for medical treatment and health care.

An Advance Care Directive can include decisions regarding health and well-being and is not restricted to medical treatment decisions at the end of life.

The Act:

- enables a person (a competent adult) to make decisions and give directions in relation to their future health care, residential and accommodation arrangements and personal affairs
- provides for the person to appoint of substitute decision-maker(s) to make such decisions on behalf of the person
- ensures that health care is delivered to the person in a manner consistent with their wishes and instructions
- facilitates the resolution of disputes relating to advance care directives
- provides protections for health practitioners, substitute decision-makers and other persons giving effect to an advance care directive.

Carers Recognition Act 2005

An Act to provide for the recognition of carers and for other purposes. It enables carers to have choices within their caring role.

The South Australian Carers Charter acknowledges that:

- service providers work in partnership with carers
- the role of carers must be recognised by including carers in the assessment, planning, delivery and review of services that impact on them and the role of carers
- the views and needs of carers must be taken into account along with the views, needs and best interests of people receiving care when decisions are made that impact on carers and the role of carers
- caring is a social and public responsibility shared by individuals, families, business and community organisations, public institutions and all levels of government
- carers should be recognised as individuals with their own needs, within and beyond the caring situations
- the relationship between a carer and the person they care for needs to be respected and honoured
- carers in Aboriginal and Torres Strait Islander communities need specific consideration
- resources are available to provide timely, appropriate and adequate assistance to carers
- all children and young people (who are carers) have the right to enjoy life and reach their potential
- carer's health and well-being is critical to the community
- carers play a critical role in maintaining the fabric of society.

A person is a carer for the purposes of this Act if he or she is a natural person who provides ongoing care or assistance to:

- a person who has a disability within the meaning of the *Disability Inclusion Act 2018*; or
- a person who has a chronic illness, including a mental illness within the meaning of the *Mental Health Act 2009*; or
- a person who, because of frailty, requires assistance with the carrying out of everyday tasks; or
- a person of a class prescribed by regulation.

Children and Young People (Safety) Act 2017

This Act enables protection of children from physical, sexual, emotional and psychological abuse and neglect, and also promotes children's health and wellbeing

Part 3 – Custody agreements

Part 4 – Notification and investigations

- Division 1 - Notification of abuse or neglect.
  - This requirement applies to a medical practitioner; a pharmacist; a registered or enrolled nurse; a dentist; a psychologist; a social worker; and any other person who is an employee of, or volunteer in, an organisation that provides health services wholly or partly for children, being a person who is engaged in the actual delivery of those services to children; or holds a management position the duties of which include direct responsibility for, or direct supervision of the provision of those services to children.
- Division 2 – Removal of children in danger
- Division 5 – Section 26 – Examination and assessment of children.
  - While a child is in the custody of the Minister pursuant to having been removed from any person, premises or place under Division 2; or
  - While an investigation and assessment order under Division 4 authorising examination and assessment of a child is in force, an employee of the Department may take the child to such persons or places (including admitting the child to hospital) as the Chief Executive may authorise for the purpose of having the child professionally examined, tested or assessed.
  - A medical practitioner or dentist to whom a child is referred under this section may give such treatment to the child as he or she thinks necessary for alleviating any immediate injury or suffering of the child.
  - A person who is to examine, test, assess or treat a child pursuant to this section may do so despite the absence or refusal of the consent of the child's guardians, but nothing in this section requires the person to carry out any examination, test, assessment or treatment if the child refuses consent.

Part 5 – Children in need of care and protection

- Division 2 – Care and protection orders
  - If the Court places a child under the guardianship of the Minister or any other person or persons under this Division, the Minister or the other person or persons is, or are, the lawful guardian, or guardians, of the child to the exclusion of the rights of any other person (section 43).
  - The Minister can apply to the Youth Court for an order for a parent or guardian to undergo treatment and testing for drug abuse.

Part 7 – Children under Minister's care and protection

- Division 1 section 51 Powers of the Minister
  - The Minister may from time to time make provision for the care of a child who is under the guardianship of the Minister, in any of the following ways:
    - (e) by making arrangements (including admission to hospital) for the medical or dental examination or treatment of the child or for such other professional examination or treatment as may be necessary or desirable.

Recent changes to the child safe environments provisions are outlined at https://www.education.sa.gov.au/child-protection/child-safe-environments

Part 7A – The Guardian, the Youth Advisory Committee and the Charter

- Division 3, section 52EF – Obligations of persons involved with children in care
  - A person exercising functions or powers under a relevant law must, in any dealings with, or in relation to, a child who is under the guardianship, or in the custody, of the Minister, have regard to, and seek to implement to the fullest extent possible, the terms of the Charter of Rights for Children and Young People in Care. The SA Health Child Safe Environments Policy Directive fulfils SA Health's obligations.

Civil Liability Act 1936

Enables the determination of liability and the assessment of damages for harm arising from an accident occurring. Relevant sections include:

Part 5 – Wrongful acts or neglect causing death

Part 6 – Negligence

- Division 1 – Duty of care
  - 31 – Standard of care
  - 32 – Precautions against risk
  - 33 – Mental harm – duty of care
- Division 3 – Causation - In determining liability for negligence, the plaintiff always bears the burden of proving, on the balance of probabilities, any fact relevant to the issue of causation
- Division 4 – Negligence on the part of persons professing to have a particular skill
  - 40 – Standard of care to be expected of persons professing to have a particular skill
  - 41 – Standard of care for professionals
- Division 6
  - 43 – Exclusion of liability for criminal conduct

Part 7 – Contributory negligence

- 46 – Presumption of contributory negligence where injured person intoxicated

Part 8 – Damages for personal injury

- 53 – Damages for mental harm

Part 9 – Miscellaneous

> Division 10 – Racial victimisation, including but not limited to a public act inciting hatred, serious contempt or severe ridicule of a person or group of persons on the ground of their race

> Division 11 – Good Samaritans. A good Samaritan incurs no personal civil liability for an act or omission done or made in good faith and without recklessness in assisting a person in apparent need of emergency assistance

Consent to Medical Treatment and Palliative Care Act 1995

For further information refer to the SA Health Policies and associated fact sheets, as follows.

> Providing medical assessment and/or treatment where consent cannot be obtained Policy Directive

> Consent to Medical Treatment and Health Care Policy Guideline

An Act to deal with consent to medical treatment; to regulate medical practice so far as it affects the care of people who are dying; and for other purposes:

> to allow persons of or over the age of 16 years to decide freely for themselves on an informed basis whether or not to undergo medical treatment

> to provide for the administration of emergency medical treatment in certain circumstances without consent

> to provide for the medical treatment of people who have impaired decision-making capacity

> to allow for the provision of palliative care, in accordance with proper standards, to people who are dying and to protect them from medical treatment that is intrusive, burdensome and futile.

Part 2 - Consent to medical treatment generally

> Division 1 part 6 – Legal competence to consent to medical treatment

> Division 4 – Section 12 – Medical treatment of children (persons under the age of 16)

A medical practitioner may administer medical treatment to a child if:

a. the parent or guardian consents; or

b. the child consents and:

   i. the medical practitioner who is to administer the treatment is of the opinion that the child is capable of understanding the nature, consequences and risks of the treatment and that the treatment is in the best interest of the child's health and well-being; and

   ii. that opinion is supported by the written opinion of at least one other medical practitioner who personally examines the child before the treatment is commenced.

> Division 5 – section 13 - Emergency Medical treatment

A medical practitioner may lawfully administer medical treatment to a person (the patient) if:

a. the patient is incapable of consenting (whether or not the person has impaired decision-making capacity in respect of a particular decision); and

b. the medical practitioner who administers the treatment is of the opinion that the treatment is necessary to meet an imminent risk to life or health and that opinion is supported by the written opinion of another medical practitioner who has personally examined the patient; and

c. the patient (if of or over 16 years of age) has not, to the best of the medical practitioner's knowledge, refused to consent to the treatment; and

d. the medical practitioner proposing to administer the treatment has made, or has caused to be made, reasonable inquiries to ascertain whether the patient (if the patient is 18 or more years of age) has given an advance care directive.

Subject to this section, a medical practitioner may lawfully administer medical treatment to a person (the patient) despite a provision of an advance care directive given by the patient comprising a refusal of medical treatment if:

a. the medical practitioner who administers the treatment reasonably believes that the provision of the advance care directive is not intended to apply:

   i. to treatment of the kind proposed; or

   ii. in the circumstances in which the proposed medical treatment is to be administered; and

b. it is not reasonably practicable in the circumstances of the case to have the matter dealt with under Part 7 of the *Advance Care Directives Act 2013*. Inquiries need not be made if in the circumstances of the case it is not reasonably practicable to do so.

A supporting opinion is not necessary for the above if in the circumstances of the case it is not practicable to obtain such an opinion.

Emergency medical treatment must not be administered without the consent of the substitute decision-maker or guardian or person responsible if:

a. the patient has given an advance care directive; and

b. the medical practitioner proposing to administer the treatment is aware of that fact; and

c. a substitute decision-maker(s) , person responsible or guardian is reasonably available to make such a decision.

However, if a child's guardian refuses consent and the treatment is in the best interests of the child, the treatment can be administered.

Part 2A – Consent to medical treatment if person has impaired decision-making capacity

Part 3 – Provisions governing medical practice – section 15 Medical Practitioners duty to explain

> Division 5 - Section 14 defines the terms 'Person responsible' and also 'prescribed relative'

> Division 5 – Section 15 describes that a medical practitioner has a duty to explain to a patient (or the patient's representative):

  - the nature, consequences and risks of proposed medical treatment; and
  - the likely consequences of not undertaking the treatment; and
  - any alternative treatment or courses of action that might be reasonably considered in the circumstances of the particular case.

The Act describes the protection provided for the health care team responsible for treatment or care of a patient (section 16), and for the care or people who are dying (section 17).

A medical practitioner responsible for the treatment or care of a patient, or a person participating in the treatment or care of the patient under the medical practitioner's supervision, incurs no civil or criminal liability for an act or omission done or made:

> with the consent of the patient or the patient's representative or without consent but in accordance with an authority conferred by this Act or any other Act; and

> in good faith and without negligence; and

> in accordance with proper professional standards of medical practice; and

> in order to preserve or improve the quality of life.

Information should be provided in a way that ensures as far as practicable that it can be understood by those to whom it is provided.

For the purposes of this Act, a person will be taken to have impaired decision-making capacity in respect of a particular decision if:

> the person is not capable of:

  - understanding any information that may be relevant to the decision (including information relating to the consequences of making a particular decision); or
  - retaining such information; or
  - using such information in the course of making the decision; or
  - communicating his or her decision in any manner; or

> the person is, by reason of being comatose or otherwise unconscious, unable to make a particular decision about his or her medical treatment: or

> the person has satisfied any requirement in an Advance Care Directive given by the person that sets out when he or she is to be considered to have impaired decision-making capacity (however described) in respect of a decision of the relevant kind.

Coroners Act 2003

The *Coroners Act 2003* requires that a person immediately after becoming aware of a death that is, or may be, a reportable death, notify the State Coroner or SA Police.

Reportable deaths relevant to challenging behavior include, but are not limited to, a death where it has occurred:

> unexpectedly, usually or by a violent, unnatural or unknown cause

> while in custody

> while the deceased was a "protected person" – (see Guardianship and Administration Act definition of a protected person – person under guardianship or administration order (or both))

> while the deceased was a patient in an approved treatment centre under the *Mental Health Act 2009*

> while the deceased was in hospital or other facility being treated for drug addiction

> during, as a result within 24 hours of medical treatment to which consent had been given under part 5 of the *Guardianship and Administration Act 1993*

Criminal Law Consolidation Act 1935

The Act defines and sets punishment for all forms of criminal behaviour. Sections of the Act include:

- Unlawful threats
- Assault/Assault with intent
- Stalking
- Causing physical or mental harm
- Offences with respect to property
- Custody, supervision and care of detainees and prisoners
- Intoxication
- Offences of a public nature
- Mental Impairment
- Apprehension of Offenders

Deliberate or intentionally aggressive, violent or threatening behaviour towards health care workers by patients, family members, carers and other people such as bystanders may constitute assault under the *Criminal Law Consolidation Act 1935*. (Reference may be made to the Criminal Law Consolidation Act section 5AA),

Of relevance to challenging behaviour, there is an aggravated offence against a person in a prescribed occupation or employment (Section 5AA (1)(k)(ii)), including:

- emergency work;
- employment as a medical practitioner, a nurse or midwife in a hospital;
- an occupation consisting of the provision of assistance or services, in a hospital, to a medical practitioner, nurse or midwife acting in the course of his or her employment in the hospital.

Part 3 – Offences against the person

- Division 2 – Defence of life and property. This division describes what is considered to be reasonable actions to defend self and property and to make or assist in lawful arrest.
- Division 4 – Unlawful threats
- Division 5 – Stalking
- Division 7 – Assault. Section 20 – Assault – A person commits an assault if the person, without the consent of another person (the victim):

a. intentionally applies force (directly or indirectly) to the victim; or

b. intentionally makes physical contact (directly or indirectly) with the victim, knowing that the victim might reasonably object to the contact in the circumstances (whether or not the victim was at the time aware of the contact); or

c. threatens (by words or conduct) to apply force (directly or indirectly) to the victim and there are reasonable grounds for the victim to believe that:

i. the person who makes the threat is in a position to carry out the threat and intends to do so; or

ii. there is a real possibility that the person will carry out the threat; or

a. does an act of which the intended purpose is to apply force (directly or indirectly) to the victim; or

b. accosts or impedes another in a threatening manner.

- Division 7A – causing physical or mental harm

Part 8 – Intoxication

- Section 268 mental element of offence to be presumed . This section describes conviction or otherwise of people who commit offences while intoxicated

Part 8A – Mental impairment

- Division 2 – Mental Competence to commit offences. Section 269C – A person is mentally incompetent to commit an offence if, at the time of the conduct alleged to give rise to the offence, the person is suffering from a mental impairment and, in consequence of the mental impairment:
  - does not know the nature and quality of the conduct; or
  - does not know that the conduct is wrong; or
  - is unable to control the conduct.
- Section 269D – Presumption of mental competence. A person's mental competence to commit an offence is to be presumed unless the person is found, on an investigation under this Division, to have been mentally incompetent to commit the offence.

Disability Inclusion Act 2018

An Act to promote the full inclusion in the community of people with disability; to assist people with disability to achieve their full potential as equal citizens; to promote improved access to mainstream supports and services by people with disability; to provide for the screening of persons who want to work or volunteer with people with disability and to prohibit those who pose an unacceptable risk to people with disability from working or volunteering with them; to provide for a community visitor scheme; to provide for responsibilities of the State during and following the transition to the National Disability Insurance Scheme; and for other purposes.

The intention of this Act is to support and further the principles and purposes of the United Nations Convention on the Rights of Persons with Disabilities. Further information is available in the State Disability Inclusion Plan

Firearms Act 2015 and Firearms Regulations 2017

This Act defines the requirements for the possession, use and sale of firearms, and for deterrence, detection and management of weapons by police.

Health related sections are:

> 53 – Power of Registrar to require medical examination or medical report

Where a person wishes to hold a firearm and there is concern about their physical and/or mental state, the Registrar of Firearms can require that person to submit to an examination by, or to provide a medical report from, a health professional.

Firearms Regulations 2017

The regulation includes mandatory reporting relevant to health professionals which may require specific action to be taken.

Regulation 97 – Wounds inflicted by firearms

Mandatory reporting obligations for medical practitioners to report suspected firearms injuries, and requires that reasonable steps are undertaken to retain projectiles or fragments taken from wounds for evidentiary purposes.

Regulation 96 – Obligations to report unsafe situations with firearms

Requires medical practitioners, nurses, psychologists, professional counsellors, or social workers, to make a report when they suspect that a patient is suffering from a physical or mental illness, and there is a threat to the patient's own safety or the safety of another person from the patient's possession of, or intention to acquire, a firearm.

Also refer to the SA Health Firearm notifications – Mandatory reporting by health professionals

Guardianship and Administration Act 1993

This Act provides for the guardianship and administration of persons unable to look after their own health, safety and welfare or to manage their own affairs and for the management of the estates of such persons.

The Act describes care of people with mental incapacity, in terms of decision-making about finances and care The Act describes the role of the Public Advocate, South Australian Civil and Administrative Tribunal (SACAT), and Public Trustee.

Part 4 – Orders for guardianship or administration

Part 5 – Consent to prescribed medical and dental treatment of mentally incapacitated persons.

If a person with a mental incapacity cannot consent to his or her own treatment, consent must be sought from a substitute decision-maker(s), who can be a medical agent, a guardian appointed by the (South Australian Civil and Administrative Tribunal); an enduring guardian; or specified relatives.

Section 32 provides for Special powers to place and detain certain persons. This section applies to the following persons:

> a protected person;

> a person who has given an advance care directive under which at least 1 substitute decision-maker has been appointed.

SACAT, on application, can make an order under S32 made by an appropriate authority may, by order:

> direct that the person reside with a specified person or in a specified place; or with such person or in such place as the appropriate authority from time to time thinks fit; and

> authorise the detention of the person in the place in which he or she will so reside; and

> authorise the persons from time to time involved in the care of the person to use such force as may be reasonably necessary for the purpose of ensuring the proper medical or dental treatment, day-to-day care and wellbeing of the person.

Section 61 – Except where circumstances exist for the giving of emergency medical treatment under the *Consent to Medical Treatment and Palliative Care Act 1995*, but otherwise notwithstanding that Act, a medical practitioner must not give prescribed treatment to a person who, by reason of his or her mental incapacity, is incapable of giving effective consent (whether or not he or she is a protected person):

a. without the(South Australian Civil and Administrative Tribunal)consent; and

b. otherwise than in accordance with the regulations. The Act describes prescribed treatments:

  - termination of pregnancy
  - sterilisation
  - any other medical treatment prescribed by the regulations.

Health and Community Services Complaints Act 2004

An Act to provide for the making and resolution of complaints against health or community service providers; to make provision in respect of the rights and responsibilities of health and community service users and providers; to identify, investigate and report on systemic issues concerning the delivery of health and community services and for other purposes.

Part 2 – Charter of Health and Community Services Rights

The Act describes the role of the Health and Community Services Complaints Commissioner.

The objects of this Act are:

- to improve the quality and safety of health and community services in South Australia through the provision of a fair and independent means for the assessment, conciliation, investigation and resolution of complaints
- to provide effective alternative dispute resolution mechanisms for consumers and providers of health or community services to resolve complaints
- to promote the development and application of principles and practices of the highest standard in the handling of complaints concerning health or community services
- to provide a scheme that can be used to monitor trends in complaints concerning health or community services
- to identify, investigate and report on systemic issues concerning the delivery of health or community services.

Part 4 – Complaints

Section 25 describes the grounds on which a complaint may be made.

Part 6 – Investigations

Division 5 – Action against unregistered health practitioners describes the Code of Conduct, investigation process and actions that are taken if an interim or public Order is imposed.

Part 7 – Relationship between Commission and registration authorities (AHPRA)

Section 57 describes the process if a complaint is received by the Commissioner that relates to a registered service provider.

Health Care Act 2008 and Health Care Regulations

An Act to provide for the administration of hospitals and other health services; to establish systems to support the provision of high-quality health outcomes; and for other purposes.

This enables the:

- provision of an integrated health system that provides optimal health outcomes for South Australians
- facilitation of the provision of safe, high-quality health services that are focused on the prevention and proper management of disease, illness and injury
- facilitation of a scheme for health services to meet recognised standards

There are 3 sections of particular relevance to challenging behaviour.

Appointment of Authorised officers

Provide for the appointment of authorised officers, and to confer functions and powers on authorised officers and other persons, in connection with the administration of the hospital or the operation or enforcement of the by-law;

This means an authorised officer appointed under a by-law made by an incorporated hospital, to enforce the by-laws. Authorised officers consist of members of the South Australian police force, and the following appointed by the Chief Executive Officers:

- a number of SA Health employees
- security officers working at the incorporated hospitals who hold a current *Security Agents Licence under the Security and Investigation Industry Act 1995*
- protective security officers currently appointed under the *Protective Security Act 2007*.

Division 7 – By-laws, and removal of Persons

Section 42 – By-laws

An incorporated hospital may make, alter and repeal by-laws to maintain public order and regulate traffic. Relevant sections include:

a. to prohibit persons from trespassing on the grounds of the hospital;

b. to define parts of the grounds of the hospital as prohibited areas and to prohibit persons from entering any part of any such prohibited area or to provide for the removal of persons from any such area;

c. to prevent damage to the property, buildings or grounds of the hospital;

j. to prohibit disorderly or offensive behavior within the hospital or the grounds of the hospital

k. to regulate, restrict or prohibit the consumption of alcoholic liquor or unlawful substances within the hospital or the grounds of the hospital;

l. to prohibit or regulate the smoking of tobacco;

m. to prevent undue noise within the hospital or the grounds of the hospital;

o. to prescribe any other matters necessary or expedient for the maintenance of good order, the protection of property of the hospital or the prevention of hindrance to, or interference with, any activities conducted within the hospital or its grounds.

Section 43 – Removal of person(s) who is considered by an authorised officer:

> to be acting in a manner that constitutes disorderly or offensive behaviour; or

> to be a threat to another person at the site; or

> of being unlawfully in possession of an article or substance; or

> to have committed, or to be likely to commit, an offence against any Act or law.

Subsection 2 An authorised officer may exercise 1 or more of the following powers in relation to a person to whom this section applies:

a. require the person to provide the person's name and address, and to answer questions;

b. require the person to submit to a search of his or her clothes, or of anything in his or her possession;

c. seize anything in the person's possession that the authorised officer believes on reasonable grounds could be used to harm a person on the site; or constitutes an article or substance the possession of which is unlawful in the circumstances;

d. require the person to leave the site and, if the person does not immediately do so, the authorised officer may use reasonable force to remove the person;

e. require that the person not return to the site for a period (not exceeding 24 hours).

An authorised officer must, before acting take reasonable steps to ensure that the person is not in need of medical assistance.

An authorised officer may restrain a person to the extent necessary to exercise a power under subsection 2 and may be assisted by such persons as may be necessary or desirable in the circumstances.

A person is guilty of an offence if they:

a. without reasonable excuse, fails to comply with a requirement of an authorised officer under this section; or

b. uses abusive, threatening or insulting language to an authorised officer, or a person assisting an authorised officer; or

c. without reasonable excuse, fails to answer, to the best of the person's knowledge, information and belief, a question put by an authorised officer.

Mental Health Act 2009

The Act enables persons with serious mental illness:

> to receive treatment, care and rehabilitation with the goal of bringing about their recovery as far as is possible

> to retain their freedom, rights, dignity and self-respect as far as is consistent with their protection, the protection of the public and the proper delivery of services.

The Act describes many protections for persons with mental illness.

Of relevance to challenging behaviour, the Act sets out guiding principles, that services should:

> be designed to bring about the best therapeutic outcomes for patients, and, as far as possible, their recovery and participation in community life

> be provided on a voluntary basis as far as possible, and otherwise in the least restrictive way and in the least restrictive environment, consistent with their efficacy and public safety, and at places as near as practicable to where the patients, or their families or other carers or supporters, reside. It specifies that

  – medication should be used only for therapeutic purposes or safety reasons and not as a punishment or for the convenience of others, and

  – mechanical body restraints and seclusion should be used only as a last resort for safety reasons and not as a punishment or for the convenience of others

> be governed by comprehensive treatment and care plans that are developed in a multi-disciplinary framework in consultation with the patients (including children) and their family or other carers or supporters

  – taking into account the different developmental stages of children and young persons and the needs of the aged, and

  – taking into account the different cultural backgrounds of patients, and in the case of patients of Aboriginal or Torres Strait Islander descent, take into account the patients' traditional beliefs and practices and, when practicable and appropriate, involve collaboration with health workers and traditional healers from their communities.

Patients (together with their family or other carers or supporters) should be provided with comprehensive information about their illnesses, any orders that apply to them, their legal rights, the treatments and other services that are to be provided or offered to them and what alternatives are available.

Part 4 – Orders for treatment of persons with mental illness

The Act confers limited powers on authorised mental health professionals (Division 4 – 94) to make orders for community treatment, or involuntary admission and treatment of such persons, where required.

Part 5 – Orders for treatment as inpatient of persons with mental illness

Part 6 – Treatment and care plans

Part 7 – Regulation of prescribed psychiatric treatments

Part 8 – Further protections for persons with mental illness

It is an offence to willfully neglect or ill-treat a patient (Part 8, Division 1, section 49)

Under Part 8 Division 2 of the Act, the Community Visitor Scheme was established as a protection for people with a mental illness. Community visitors' responsibilities include:

- advocating for patients to promote the proper resolution of issues relating to the care, treatment or control of patients, including issues raised by a guardian, carer, relative, friend or medical agent of the patient
- referring matters of concern regarding the care, treatment or control of patients to the Minister, the Chief Psychiatrist or any other appropriate person.

Part 9 – Powers relating to persons who have or appear to have mental illness

Care and control (Part 9 section 56)

Where it appears to an Authorised Officer that:

- the person has a mental illness; and the person has caused, or there is significant risk of the person causing, harm to himself or herself or others or property, or
- the person otherwise requires medical examination, or that
- the person is a patient subject to an inpatient treatment order and is at large, or that
- the person is the subject of a patient transport request under section 55 of the *Mental Health Act*; then an Authorised Officer may exercise the following listed powers (section 56 (3):
- take the person into his or her care and control
- transport the person from place to place
- restrain the person and otherwise use force in relation to the person as reasonably required in the circumstances
- restrain the person by means of the administration of a drug when that is reasonably required in the circumstances (if the medical professional is authorised to do so under the *Controlled Substances Act 1984*)
- enter and remain in a place where the Authorised Officer reasonably suspects the person may be found
- search the person's clothing or possessions and take possession of anything in the person's possession that the person may use to cause harm to himself or herself or others or property.

The Act indicates when and by who restraint can be used:

- by an authorised officer (Part 9 – 56) to enable assessment and treatment when the person is taken under care and control with a known or suspected mental health diagnosis
- to ensure provision of medication and treatment deemed essential and required imminently.

Under Part 9, Section 34A, for a patient under an ITO, treatment centre staff may take measures for the confinement of the patient, and exercise powers (including the power to use reasonable force), as reasonably required:

- for carrying the inpatient treatment order applying to the patient into effect and ensuring compliance with this Act; and
- for the maintenance of order and security at the centre or the prevention of harm or nuisance to others
- to prevent the person from leaving, unless they are granted leave of absence by the centre director, only when the risk to them or others if they left the treatment centre is greater than the risk of restraint.

Part 12 – Administration – Division 3 Authorised Medical Practitioners

Public Interest Act 2018 (formerly the Whistleblowers Protection Act 1993)

An Act to protect and provide immunity to persons disclosing illegal, dangerous or improper conduct; and for other purposes. For example where a person or government agency is involved in illegal activity or in conduct that causes a substantial risk to public health or safety, and may also include maladministration (impropriety or negligence) and waste in the public sector.

Public Intoxication Act 1984

An Act to provide for the apprehension and care of persons found in a public place under the influence of a drug or alcohol; and to provide for other incidental matters. Applies to any person, whether child or adult.

The Act enables:

- apprehension of persons under the influence of a drug or alcohol where a member of the police force or an authorised officer under the *Public Intoxication Act 1984*, has reasonable grounds to believe that a person who is in a public place is under the influence of a drug or alcohol; and that by reason of that fact the person is unable to take proper care of himself,
- the police officer or authorised officer may exercise such force as is reasonably necessary to apprehend the person, search the person for the purpose of removing any object that may be a danger and take them to a sobering-up centre for admission as a patient.

Part 2 – Apprehension and care of persons under the influence of a drug or alcohol

Part 10 – Custody of persons detained

Parts 11 and 12

It is an offence to ill-treat or neglect persons detained, and for removal or aiding escape of persons detained.

Road Traffic Act 1961

When blood is required to be taken as a result of a motor vehicle accident under Section 47i of the *Road Traffic Act 1961*, the sample can only be taken by a legally qualified Medical Practitioner, and not a registered nurse. However, where a driver returns a positive breath test result and, being outside metropolitan Adelaide, a registered nurse is lawfully able to take a blood sample.

The relevant provisions of the are sections 47E(4a), 47EAA(2), 47EAA(11), and 47K(2a).

Section 162A describes requirements for seatbelts and restraints.

South Australian Public Health Act 2011

An Act to promote and to provide for the protection of the health of the public of South Australia and to reduce the incidence of preventable illness, injury and disability and for other purposes.

Part 10 – Controlled notifiable conditions

Division 2 – Controls

The Chief Public Health Officer can direct a person to undergo an examination, test or treatment for a controlled notifiable condition (such as a communicable disease), receive counselling, and to refrain from certain activities, travel and association (Sections 73, 74, and 75). A person who is not compliant may be detained (Section 77) and may be apprehended to achieve compliance (Section 79).

Public health officials can take action on a health hazard that presents a serious and immediate threat to public health. The Act provides powers to health professionals to take action to minimise the risk of communicable disease.

If a public health incident or public health emergency is declared, there are similar provisions in the *Emergency Management Act 2004*.

Public Health Statutory Instruments – The *South Australian Public Health Act 2011* provides for a range of subsidiary legislation and other statutory instruments, policy directives, codes of practice, policy guidelines and protocols on the management of a person who is, or a group of persons who are, the subject of an order, requirement or direction.

Summary Offences Act 1953

The Act enables provision for:

- certain offences against public order and for other summary offences
- powers of police officers in relation to investigation of offences; and for other purposes. The Act defines:
- offenses against certain behaviour in public places, including, but not limited to obscene, threatening and abusive behaviour
- controls for the possession, use and sale of firearms, deterrence, detection and management of weapons.

Part 3 – Offences against public order

Part 3A – Weapons etc.

21G Knife related injuries – If a medical practitioner or a registered or enrolled nurse has reasonable cause to suspect in relation to a person who he or she has seen in his or her professional capacity that the person is suffering from a wound inflicted by a knife, the medical practitioner or nurse must, as soon as practicable after forming the suspicion, make a report to the prescribed person or body.

Part 5 – Offences against decency and morality

Surveillance Devices Act 2016

An Act to make provision relating to the use of surveillance devices, inclusive of but not limited to, listening and optical surveillance devices.

Work Health and Safety Act 2012 and *Work Health and Safety Regulations 2012*

The purpose of the Act is to establish health and safety duties, including the primary duty to protect any person from exposure to hazards and risks that arise from work, to ensure that the health and safety of members of the public is not placed at risk, and to provide for the involvement of all parties in the development and implementation of health, safety standards.

The Work Health and Safety Regulations 2012 identify the control measures that must be applied to specific work activities and hazards, and can be applied in the recognition and management of challenging behaviour. Most relevant sections include:

Part 2 – Health and safety duties

- Division 2 – Primary duty of care
- Division 3 – Further duties of persons conducting businesses or undertakings
- Division 4 – Duty of officers, workers and other persons

Part 3 – Incident notification.

The Act defines health to mean physical and psychological health. Regard must be given to the principle that workers and other persons should be given the highest level of protection against harm to their health, safety and welfare from hazards and risks arising from work, or from specified types of substances or plant, as is reasonably practicable.

The Act enables the provision of a balanced and nationally consistent framework to secure the health and safety of workers and workplaces by:

- protecting workers and other persons against harm to their health, safety and welfare through the elimination or minimisation of risks arising from work or from specified types of substances or plant; and
- providing for fair and effective workplace representation, consultation, cooperation and issue resolution in relation to work health and safety; and
- encouraging unions and employer organisations to take a constructive role in promoting improvements in work health and safety practices, and assisting persons conducting businesses or undertakings and workers to achieve a healthier and safer working environment; and
- promoting the provision of advice, information, education and training in relation to work health and safety; and
- securing compliance with this Act through effective and appropriate compliance and enforcement measures; and
- ensuring appropriate scrutiny and review of actions taken by persons exercising powers and performing functions under this Act; and
- providing a framework for continuous improvement and progressively higher standards of work health and safety; and
- maintaining and strengthening the national harmonisation of laws relating to work health and safety and to facilitate a consistent national approach to work health and safety in this jurisdiction.

The Act further defines the duties of WHS defined Officers, workers and other persons It defines a notifiable incident as:

- the death of a person; or
- a dangerous incident; or
- a serious injury or illness of a person; where this means an injury or illness requiring the person to have:
  - immediate treatment as an in-patient in a hospital; or
  - immediate treatment for:
  - the amputation of any part of his or her body; or
  - a serious head injury; or
  - a serious eye injury; or
  - a serious burn; or
  - the separation of his or her skin from an underlying tissue (such as degloving or scalping); or
  - a spinal injury; the loss of a bodily function; or
  - serious lacerations; or
  - medical treatment within 48 hours of exposure to a substance, and includes any other injury or illness prescribed by the regulations but does not include an illness and/or injury of a prescribed kind.

Return to Work Act 2014

The objective of the Return to Work Act is to establish a scheme that supports workers who suffer injuries at work and that has as its primary objective to provide early intervention in respect of claims so as to ensure that action is taken to support workers:

- in realising the health benefits of work; and
- in recovering from injury; and
- in returning to work (including, if required, after retraining); and
- in being restored to the community when return to work is not possible.

Section 4
Australian Legislation

Aged Care Act 1997

This Act governs all aspects of the provision of residential care, flexible care and Community Aged Care Packages to older Australians. SA Health is a large provider of aged care services, particularly outside the metropolitan area.

The Act sets out matters relating to planning of services, approval of service providers and care recipients, payment of subsidies, and responsibilities of service providers.

Division 54-1 – Quality of care

For the consumer, section 54-1 describes that the quality of care is in compliance with the relevant Aged Care Quality Standards. The responsibilities of an approved provider in relation to the quality of the aged care provided are as follows:

- to maintain an adequate number of appropriately skilled staff to ensure that the care needs of care recipients are met
- to provide care and services of a quality that is consistent with any rights and responsibilities of care recipients that are specified in the User Rights Principles.

User Rights Principles (Part 4.2)

Relevant to challenging behaviour, the Act sets out the User Rights Principles (Part 4.2) which states that each resident of a residential care service is required to respect the rights of staff and the proprietor to work in an environment which is free from harassment.

Accreditation Standards are standards for quality of care and quality of life for the provision of residential care, and deal with matters such as:

- health and personal care of care recipients
- the lifestyle of care recipients
- safe practices and the physical environment in which residential care is provided
- management systems, staffing and organisational development relating to the provision of residential care.

Quality of Care Amendment (Minimising the Use of Restraints) Principles 2019

The Quality of Care Amendment (Minimising the Use of Restraints) Principles 2019 (Amending Principles) amends the Quality of Care Principles 2014 (Quality of Care Principles) to limit the use of chemical and physical restraint by approved providers of residential care and short-term restorative care in a residential setting.

To promote a restraint-free environment, the Amending Principles introduce two new provider responsibilities which regulate the use of restraint.

Physical restraint must not be used unless:

- the consumer has been assessed by an approved health practitioner with day-to-day knowledge of the consumer as posing a risk of harm to themselves or others; and as requiring restraint;
- alternatives to restraint have been used for the consumer to the extent possible;
- the restraint is the least restrictive form of restraint possible; and
- the provider has the informed consent of the consumer (or their representative) to the use of restraint, unless the restraint is necessary in an emergency.

Chemical restraint must not be used unless:

- a medical practitioner or nurse practitioner has assessed the consumer as requiring the restraint and has prescribed the medication for the purposes of restraint;
- the decision to use restraint is documented in the consumer's care and services plan; and
- the consumer's representative is informed of the use of the chemical restraint.

If restraint is used, the Amending Principles, require providers to regularly monitor the consumer and record information in the consumer's care and services plan.

Existing guidance on best practice is set out in the Decision Making Tool: Supporting a Restraint-Free Environment (Decision Making Tool). The Decision Making Tool notes the use of restraint should always be the last resort and viewed as a temporary solution to any behaviour causing concern. Additionally, its use should only be considered after exhausting all reasonable alternative options and be informed by a comprehensive assessment of a consumer and their interactions.

Part 4A – Minimising the use of physical and chemical restraint

15F Use of physical restraint

15G Use of chemical restraint

Australian Human Rights Commission Act 1986

Relevant sections describe how the Act enables the functions of the Commission under this or any other Act to be performed, with regard for:

- the indivisibility and universality of human rights
- the principle that every person is free and equal in dignity and rights
- efficiency, and with the greatest possible benefit to the people of Australia.

Division 3 – Functions relating to human rights

Schedule 1 – Convention concerning Discrimination in respect of Employment and Occupation

Schedule 2 – International Covenant on Civil and Political Rights

Schedule 3 – Declaration of the Rights of the Child

Schedule 4 – Declaration on the Rights of Mentally Retarded Persons

Schedule 5 – Declaration on the Rights of Disabled Persons.

Transitional Provisions and Consequential Amendments to this Act includes:

- Declaration of the United Nations Convention on the Rights of the Child. This ensures that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.
- Declaration on the Elimination of all forms of Intolerance and of Discrimination based on Religion or Belief.

Disability Discrimination Act 1992

Relevant sections describe how the Act enables elimination, as far as possible, of discrimination against persons on the ground of disability in the areas of:

- work, accommodation, education, access to premises, clubs and sport; and
- the provision of goods, facilities, services and land; and
- existing laws; and
- the administration of Commonwealth laws and programs.

Ensures as far as practicable, that persons with disabilities have the same rights to equality before the law as the rest of the community; and promotes recognition and acceptance within the community of the principle that persons with disabilities have the same fundamental rights as the rest of the community.

Part 2 – Prohibition of disability discrimination

Health Practitioners Regulation National Law Act 2010

An Act to make provision for a national legislative scheme for the regulation of health practitioners; to make provision for local matters associated with the regulation of health practitioners, the registration of pharmacy premises and pharmacy depots and the supply of optical appliances; to repeal certain Acts associated with the regulation of health professions; and for other purposes.

Enables the:

- provision for a national legislative scheme for the regulation of health practitioners
- provision for local matters associated with the regulation of health practitioners, the registration of pharmacy premises and pharmacy depots
- disciplining of registered health professional.

Part 6 – Accreditation

Part 7 – Registration of health practitioners

Part 8 – Health, performance and conduct

Racial Discrimination Act 1975

Ensures the prohibition of:

- racial discrimination and hatred
- offensive behaviour based on racial hatred

Part II – Prohibition of racial discrimination

Part IIA – Prohibition of offensive behaviour based on racial hatred

Part IV – Offences

Sex and Age Discrimination Act 1984

Affirms that every individual is equal before and under the law, and has the right to the equal protection and equal benefit of the law, without discrimination on the ground of sex, marital status, pregnancy or potential pregnancy, breastfeeding or family responsibilities.

Ensures the prohibition of discrimination in the areas of work, accommodation, education, the provision of goods, facilities and services, the disposal of land, the activities of clubs and the administration of Commonwealth laws and programs.

Part II – Prohibition of discrimination

Part IV – Offences

Schedule – Convention on the Elimination of all Forms of Discrimination Against Women

Section 5
Regulations and Codes

Approved Regulations and Codes of Practice provide practical guidance to meeting legislative and professional obligations. It is recommended that approved Codes of Practice be followed unless there is another solution which achieves the same or better standard of service delivery in your workplace. It is important to note that, along with legislation and regulation, approved Codes of Practices can be used as evidence in a court of law.

TITLE	ORIGIN
Australian Open Disclosure Framework 2013	Australian Commission on Safety and Quality in Health Care
Code of Ethics for the South Australian Public Sector This Code of Ethics is the Code of Conduct for the purposes of the *Public Sector Act 2009*.	Commissioner for public sector employment
Good Medical Practice: A Code of Conduct for Doctors in Australia This reflects the *Health Practitioners Regulation National Law Act 2009*	National Registration and Accreditation Scheme, Medical Board of Australia (MBA)
Guard and patrol security services AS/NZS 4421:2011 Access via SA Health SALUS webpage	Australian Standards
Planning for emergencies in facilities AS 3745-2010 Access via SA Health SALUS webpage	Australian Standards
Health Care Regulations 2008 (SA)	Health Care Act 2008
Work-Related Violence: Preventing and responding to work-related violence	SafeWork SA: Guide
Work Health and Safety Consultation, Cooperation and Coordination	Safe Work Australia: Model Code of Practice
Managing the Work Environment and Facilities	Safe Work Australia: Model Code of Practice
How to Manage Work Health and Safety Risks	Safe Work Australia: Model Code of Practice
Guide for Handling and Transporting Cash	Safe Work Australia: National Guide
Guide for preventing and responding to workplace bullying	Safe Work Australia: National Guide
Prevention and management of violence and aggression in health services: Information for employers	WorkSafe Victoria
Work Health and Safety Regulations 2012 (SA)	Work Health and Safety Act 2012 (SA)

Section 6
International Human Rights

United Nations:
The Universal Declaration of Human Rights

- Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,
- The peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,
- A common understanding of these rights and freedoms is of the greatest importance for the full realisation of this pledge
- Recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,
- Disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,
- It is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,
- It is essential to promote the development of friendly relations between nations.

Section 7
The consequences for patients and members of the public of challenging behaviour, violence and aggression

Who and what	CHALLENGING BEHAVIOUR EXHIBITED BY PATIENT	CHALLENGING BEHAVIOUR EXHIBITED BY OTHER PERSON (Carer, family member, relative, visitor, friend, bystander or other member of the public)
Overall category	> Challenging behaviour related to medical condition and symptoms (did not have decision-making capacity at the time) > Intentional, deliberate aggression or violence (had decision-making capacity at the time)	> Aggression or violence directed towards workers
Type of behaviour	> Verbal abuse or disruption > Actual or threat of physical abuse, assault > Damage to property or disregard for hospital by-laws > Intrusive behaviour (including stalking, cyber-bullying) > Physical resistance to the provision of lawful treatment. (Where the person does not have decision-making capacity and/or is under a legal order) > Absconding or attempting to leave where there is risk to self or others in doing so > Self-harm – actual, threatened	> Verbal abuse or disruption > Actual or threat of physical abuse, assault > Damage to property or disregard for hospital by-laws > Intrusive behaviour (including stalking, cyber- bullying)
Where incident reported, and how it could be categorised	Safety Learning System (SLS) Patient incident module – Challenging behaviour > Patient to patient > Patient to other person SLS Worker incident > Patient to staff SLS Security module > Emergency – Code Black > Non-emergency – Disregard for Hospital By laws – Security attendance	Safety Learning System (SLS) Work Health Safety module > Other person to staff > Other person to patient, or other person present SLS Security module > Code Black and security attendance SAAS IRQA > Code 51 and code for police attendance

Who and what	CHALLENGING BEHAVIOUR EXHIBITED BY PATIENT	CHALLENGING BEHAVIOUR EXHIBITED BY OTHER PERSON (Carer, family member, relative, visitor, friend, bystander or other member of the public)
Follow-up after the incident	> De-briefing > Ulysses agreement > Behavioural modification program (mental health or disability)	
Mechanisms for resolution	> Complaints mechanisms > Consumer Advisors > Mental Health Community Visitor Scheme > HCSCC Commissioner	> Complaints mechanisms > Consumer Advisors > Mental Health Community Visitor Scheme > HCSCC Commissioner
Consequences	> health service can make agreement with patient, carers, family/other reconditions for the safe provision of service > worker can report alleged criminal conduct to SAPOL, and SAPOL may institute charges against the patient, including aggravated offences under the *Criminal Consolidation Act 1935*	> the person can be prohibited from returning to the services for 24 hours. > security officers and authorised officers can remove a person, search and seize possessions and hold the person until police arrive. > worker can report alleged criminal conduct to SAPOL, and SAPOL may institute charges against charges against the perpetrator, including aggravated offences under the *Criminal Consolidation Act 1935*.

Section 8
The consequences for workers for inappropriate response to challenging behaviour, violence and aggression

WHO AND WHAT	INAPPROPRIATE RESPONSE (SERVICE OR CLINICAL PRACTICE) BY WORKER/HEALTH SERVICE TO CHALLENGING BEHAVIOUR (Carer, family member, relative, visitor, friend, bystander or other member of the public)
Type of inappropriate response	> Abuse of patient by worker – verbal or physical assault > Unlawful restraint, seclusion, confinement (assault) > Unlawful searching and seizing possessions > Treatment without authorisation by consent, or legal order/authorisation > Ignoring complaints or refusing to act on complaints made by patient, family, carer > Failing to – provide proper care (neglect, negligence) – provide a safe working environment – act to protect people from harm > Failing to report – Child protection issues – Weapons – Gunshot wounds, illegal substances > Alleged misconduct by other staff; other
Where incident reported, and how it could be categorised	Registered – AHPRA Unregistered – HCSCC Clinical manager Human Resources (HR) Safety Learning System (SLS) > Patient incident module – Challenging behavior (staff to patient) > Employee Disciplinary Matters module
Follow-up after the incident	> De-briefing > Employee Assistance Program (EAP)
Mechanisms for resolution	> Human resources processes > Medical malpractice investigation > Other
Consequences	> Worker can be investigated for misconduct, other > Disciplinary action from employer and professional body, registering body > Patient can report alleged conduct to SAPOL and SAPOL may institute charges against worker > Unregistered – HCSCC orders

For more information

SA Health
Safety and Quality Unit
Telephone: (08) 8226 9599
sahealth.sa.gov.au/challengingbehaviourstrategy

Public: I1-A1

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