

**Legislative Council—No 169A**

As reported with amendments, report adopted, Standing Orders suspended and passed remaining stages, 17 November 2021

South Australia

**Ageing and Adult Safeguarding (Restrictive Practices) Amendment Bill 2021**

A BILL FOR

An Act to amend the *Ageing and Adult Safeguarding Act 1995*.

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**The Parliament of South Australia enacts as follows:****Part 1—Preliminary****1—Short title**

5 This Act may be cited as the *Ageing and Adult Safeguarding (Restrictive Practices) Amendment Act 2021*.

**2—Commencement**

This Act comes into operation 6 months after the day on which it is assented to by the Governor.

**3—Amendment provisions**

10 In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

**Part 2—Amendment of *Ageing and Adult Safeguarding Act 1995*****4—Insertion of Part 4A**

After section 37 insert:

**15 Division 1—Preliminary****37A—Application of Part**

- 20
- (1) This Part applies to the use of restrictive practices by prescribed aged care service providers in relation to prescribed persons in the course of the provision of residential care or home care provided under the *Aged Care Act 1997* of the Commonwealth.
  - (2) This Part does not apply to the use of restrictive practices of a kind, or in circumstances, prescribed by the regulations for the purposes of this subsection.
  - (3) Nothing in this Part authorises the use of restrictive practices other than in accordance with this Part.
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### 37B—Interpretation

- (1) In this Part, unless the contrary intention appears—

**approved provider**, of aged care services, means an approved provider within the meaning of the *Aged Care Quality and Safety Commission Act 2018* of the Commonwealth;

**home care** has the same meaning as in the *Aged Care Act 1997* of the Commonwealth;

**Note—**

This service is currently known as the Commonwealth Home Support Programme.

**positive behaviour support plan**, for a prescribed person—see section 37R;

**premises** includes a part of premises;

**prescribed aged care service provider**—see subsection (3);

**prescribed person**—see subsection (2);

**prohibited restrictive practices**—see section 37E;

**residential aged care facility** means a facility at which residential aged care is provided by an approved provider under the *Aged Care Act 1997* of the Commonwealth;

**residential care** has the same meaning as in the *Aged Care Act 1997* of the Commonwealth;

**restrictive practices**—see section 37C;

**risk of harm**—see subsection (4);

**Senior Practitioner** means the person from time to time appointed as the Senior Practitioner under section 37K and includes a person appointed as acting Senior Practitioner.

- (2) For the purposes of this Part, the following persons are **prescribed persons**:

(a) a person who is provided with residential care or home care under the *Aged Care Act 1997* of the Commonwealth;

(b) any other person, or person of a class, prescribed by the regulations for the purposes of this paragraph.

- (3) For the purposes of this Part, the following persons are **prescribed aged care service providers**:

(a) an approved provider who provides residential care or home care to a prescribed person under the *Aged Care Act 1997* of the Commonwealth;

(b) a person who provides residential care or home care to a prescribed person as an employee or otherwise on behalf of an approved provider (including, to avoid doubt, on a voluntary basis);

- (c) any other person, or person of a class, prescribed by the regulations for the purposes of this paragraph,

but does not include a person or body declared by the regulations to be an exempt aged care service provider.

- 5 (4) For the purposes of this Part, a reference to behaviour of a person that constitutes a ***risk of harm*** will be taken to be a reference to any of the following behaviours, or a combination of any of the following behaviours:
- 10 (a) the use of force against another person;
- (b) self-harm;
- (c) any other behaviour of a kind prescribed by the regulations.

### 37C—Meaning of *restrictive practices*

- 15 (1) For the purposes of this Part, a reference to ***restrictive practices*** will be taken to be a reference to any of the following, or a combination of any of the following (however described):

- (a) the restriction of a person's free access to all parts of their environment, including items or activities (***environmental restraint***);
- 20 (b) the restraint of a person by physical means (***physical restraint***);
- (c) the restraint of a person by mechanical means (***mechanical restraint***);
- (d) the use of chemical means to restrain or sedate, or alter the behaviour of, a person (***chemical restraint***);
- 25 (e) the sole confinement of a person in a room or physical space, at any time of the day or night, from which free or voluntary exit is prevented, or not facilitated, or it is implied that voluntary exit is not permitted (***seclusion***);
- 30 (f) any other act or omission of a kind prescribed by the regulations,

but does not include an act or omission of a kind that is declared by the regulations not to constitute restrictive practices for the purposes of this Part.

- 35 (2) For the purposes of this Part, the following will be taken not to be restrictive practices:
- (a) the use of a hands-on technique in a reflexive way to guide or redirect a person away from potential harm or injury, consistent with what could reasonably be considered the exercise of care towards the person;
- 40 (b) the use of devices for safety, therapeutic or non-behavioural purposes;

- (c) the use of medication prescribed by a medical specialist for the treatment of, or to enable treatment of, a diagnosed mental disorder, a physical illness or a physical condition.

### **37E—Prohibited restrictive practices**

- (1) The Governor may, by regulation, prohibit the use of restrictive practices of a specified kind (*prohibited restrictive practices*) for the purposes of this Part.
- (2) Nothing in this Part authorises the use of a prohibited restrictive practice.

### **37F—Limits on kinds of restrictive practices that may be used by person**

Nothing in this Part authorises a person to use a restrictive practice of a particular kind if the person does not hold an authorisation (however described) required under any other Act or law to use such a restrictive practice.

### **37G—Interaction with other Acts and laws**

- (1) Nothing in this Part limits the operation of the *Aged Care Act 1997* or the *Aged Care Quality and Safety Commission Act 2018* of the Commonwealth.

#### **Note—**

Approved providers who use restrictive practices under this Part will still need to comply with any requirements under those Acts relating to the use of restrictive practices.

- (2) This Part is in addition to, and does not derogate from, Part 6A of the *Disability Inclusion Act 2018*, the *Mental Health Act 2009*, the *Guardianship and Administration Act 1993* or any other Act or law that authorises the use of restrictive practices.
- (3) Nothing in this Part limits the operation of the *Controlled Substances Act 1984* (and, in particular, a drug may only be administered in the course of a restrictive practice or administration of medical treatment by a person authorised to do so in accordance with that Act).

## **Division 2—Objects and principles relating to use of restrictive practices under Part**

### **37H—Objects of Part**

- (1) The overall object of this Part is to limit, and where possible eliminate, the use of restrictive practices in the aged care sector.

(2) Without limiting subsection (1), further objects of this Part include—

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- (a) bringing about a change in community thinking, including amongst aged care service providers, by ensuring that restrictive practices are only used in very limited circumstances, as a last resort, in the least restrictive way and for the shortest period possible in the circumstances; and
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- (b) providing a framework for the significant reduction in the use of restrictive practices by means of a robust authorisation process for the use of restrictive practices where unavoidable, including by requiring restrictive practices to be used in accordance with a person's positive behaviour plan; and
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- (c) ensuring that, where the use of restrictive practices is necessary, that use—
- (i) is consistent with the person's human rights and quality of life; and
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- (ii) is proportionate to the potential negative consequences, or risk of harm, that safeguards the person and others from harm; and
- (iii) maximises the opportunity for positive outcomes and aims to reduce or eliminate the need for use of restrictive practices; and
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- (d) establishing principles that will encourage providers of aged care services to address behaviour that causes harm without the use of restrictive practices;
- (e) establishing a Senior Practitioner to oversee the operation of this Part and to further these objects.

### **37I—Principles relating to use of restrictive practices under Part**

30 The following principles are to be observed in the operation of this Part:

- (a) restrictive practices should only be used in limited circumstances, as a last resort, in the least restrictive way and for the shortest period possible in the circumstances;
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- (b) the use of restrictive practices is to be limited to circumstances in which prescribed persons cause harm to themselves or others;
- (c) the use of restrictive practices in relation to a prescribed person must be done in a manner that—
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- (i) takes into account the prescribed person's human rights; and
- (ii) safeguards the prescribed person and others from harm; and

- (iii) is proportionate to the potential negative consequence or risk of harm; and
- (iv) maximises the opportunity for positive outcomes and aims to reduce or eliminate the need for use of restrictive practices; and
- (v) ensures transparency and accountability; and
- (d) the use of restrictive practices in relation to a prescribed person must be done in accordance with the prescribed person's positive behaviour support plan; and
- (e) the use of restrictive practices must not be used—
- (i) as a punishment or for the convenience of others; or
- (ii) to address inadequate levels of staffing, equipment or facilities.

### **Division 3—Senior Practitioner**

#### **37J—Senior Practitioner**

- (1) There is to be a Senior Practitioner.
- (2) The Senior Practitioner is independent of direction or control by the Minister.

#### **37K—Appointment of Senior Practitioner**

- (1) The Senior Practitioner will be appointed by the Governor on conditions, and for a term (not exceeding 7 years), determined by the Governor and specified in the instrument of appointment.
- (2) A person appointed to be the Senior Practitioner is, at the end of a term of appointment, eligible for reappointment but cannot hold office for terms (including any term as Acting Senior Practitioner) that exceed 10 years in total.
- (3) A person may only be appointed to be the Senior Practitioner if, following referral by the Minister of the proposed appointment to the Statutory Officers Committee established under the *Parliamentary Committees Act 1991*—
- (a) the appointment has been approved by the Committee; or
- (b) the Committee has not, within 7 days of the referral, or such longer period as is allowed by the Minister, notified the Minister in writing that it does not approve the appointment.
- (4) If the Senior Practitioner was, immediately before their appointment, employed in the Public Service, the Senior Practitioner retains existing and accruing rights in respect of leave.
- (5) The Senior Practitioner must not, without the consent of the Minister, engage in any remunerated employment or activity apart from official duties.

- (6) The Governor may, on the address of both Houses of Parliament, remove the Senior Practitioner from office.
- (7) The Governor may suspend the Senior Practitioner from office (with, or without, pay) for—
- 5                   (a) contravention of a condition of appointment; or
- (b) misconduct or conduct that may bring the office of Senior Practitioner into disrepute; or
- (c) failure or incapacity to carry out official duties satisfactorily.
- (8) If the Governor suspends the Senior Practitioner from office, a full statement of the reason for the suspension must be laid before both Houses of Parliament within 7 days after the suspension if Parliament is then in session or, if not, within 7 days after the commencement of the next session of Parliament.
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- (9) If, at the end of 20 sitting days after the statement is laid before Parliament, neither House of Parliament has presented an address to the Governor requiring the Senior Practitioner to be restored to office, the Senior Practitioner is removed from office.
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- (10) If within 20 sitting days after the statement is laid before Parliament either House of Parliament presents an address to the Governor requiring the Senior Practitioner to be restored to office, the Senior Practitioner is restored to office.
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- (11) The office of Senior Practitioner becomes vacant if the holder—
- (a) dies; or
- (b) completes a term of office and is not reappointed; or
- 25                   (c) resigns by written notice to the Governor; or
- (d) is nominated for election as a member of an Australian Parliament; or
- (e) becomes an insolvent under administration within the meaning of the *Corporations Act 2001* of the Commonwealth; or
- 30                   (f) is convicted of—
- (i) an indictable offence against the law of this State; or
- (ii) an offence against the law of this State that is punishable by imprisonment for a term of at least 12 months; or
- 35                    (iii) an offence against the law of another jurisdiction that, if committed in this State, would be an offence of a kind referred to in a preceding paragraph; or
- (g) is sentenced to imprisonment for an offence (whether against a law of this State or another jurisdiction); or
- 40                   (h) is removed from office by the Governor under this section.

(12) Except as is provided by this section, the Senior Practitioner may not be removed or suspended from office, nor will the office of the Senior Practitioner become vacant.

(13) The Senior Practitioner is a senior official for the purposes of the *Public Sector (Honesty and Accountability) Act 1995*.

### **37L—Appointment of acting Senior Practitioner**

(1) The Governor may appoint a person (who may be a Public Service employee) to act as the Senior Practitioner during any period for which—

(a) no person is for the time being appointed as the Senior Practitioner; or

(b) the Senior Practitioner is absent from, or unable to discharge, official duties.

(2) The terms and conditions of appointment of the person appointed to act as the Senior Practitioner will be determined by the Governor.

(3) A person appointed to act as the Senior Practitioner is a senior official for the purposes of the *Public Sector (Honesty and Accountability) Act 1995*.

### **37M—Functions of Senior Practitioner**

(1) The Senior Practitioner has the following functions under this Part:

(a) to assist the Minister in the preparation, variation or substitution of guidelines under this Part;

(b) to promote the reduction and, where possible, the elimination of the use of restrictive practices in the aged care sector as far as is reasonably practicable;

(c) to provide education and training relating to the use of restrictive practices;

(d) to undertake research into use of restrictive practices, including the reduction or elimination of such use, and provide best practice information to aged care service providers;

(e) to advise the Minister and other persons in relation to the use of restrictive practices in the aged care sector;

(f) such other functions as may be assigned to the Senior Practitioner by or under this Part.

(2) The Senior Practitioner has such powers as may be necessary or expedient for the purposes of performing the Senior Practitioner's functions under this Part.

### 37N—Power of delegation

- 5
- (1) The Senior Practitioner may delegate a function or power under this Part (other than a prescribed function or power) to a specified person or body.
- (2) A delegation under this section—
- (a) must be by instrument in writing; and
  - (b) may be absolute or conditional; and
  - (c) does not derogate from the ability of the Senior Practitioner to act in any matter; and
  - 10 (d) is revocable at will.
- (3) A function or power delegated under this section may, if the instrument of delegation so provides, be further delegated.

### 37O—Use of staff etc of Public Service

15 The Senior Practitioner may, by agreement with the Minister responsible for an administrative unit of the Public Service, make use of the services of the staff, equipment or facilities of that administrative unit.

### 37P—Annual report

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- (1) The Senior Practitioner must, on or before 31 October in each year, report to the Minister on the performance of the Senior Practitioner's functions during the preceding financial year.
- (2) The Minister must, within 6 sitting days after receiving a report from the Senior Practitioner, have copies of the report laid before both Houses of Parliament.

## Division 5—Positive behaviour support planning

### 37Q—Minister to publish positive behaviour support planning guidelines

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- (1) The Minister must, by notice in the Gazette, publish guidelines (the *positive behaviour support planning guidelines*) for the purposes of this Part.
- (2) The Minister may, by subsequent notice in the Gazette, vary, substitute or revoke the positive behaviour support planning guidelines published under subsection (1).
- 35 (3) In preparing, varying or substituting the positive behaviour support planning guidelines, the Minister—
- (a) must seek submissions from the Senior Practitioner and have regard to those submissions; and
  - (b) must undertake such consultation as may be required by the regulations (and may undertake such other consultation as the Minister thinks fit); and
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- (c) must comply with any other requirements set out in the regulations.
- (4) The Minister must, within 6 sitting days after publishing the positive behaviour support planning guidelines, lay a copy of the guidelines (or the guidelines as varied) before both Houses of Parliament.
- (5) The Minister must cause the positive behaviour support planning guidelines to be published on a website determined by the Minister.

### **37R—Positive behaviour support plans**

- (1) A prescribed aged care service provider may, in accordance with any requirements set out in the positive behaviour support planning guidelines and the regulations, prepare a positive behaviour support plan in relation to a specified prescribed person.
- (2) A positive behaviour support plan must set out—
- (a) the name, address and date of birth of the prescribed person to whom the positive behaviour support plan relates; and
  - (b) the name and address of each prescribed aged care service provider authorised to use restrictive practices pursuant to the positive behaviour support plan; and
  - (c) the kinds of restrictive practices that may, or may not, be used pursuant to the positive behaviour support plan; and
  - (d) the circumstances in which restrictive practices may, or may not, be used pursuant to the positive behaviour support plan (including a description of the behaviours that may cause restrictive practices to be so used); and
  - (e) strategies for reducing the use of restrictive practices pursuant to the positive behaviour support plan;
  - (f) such other information as may be required by the positive behaviour support planning guidelines or the regulations,
- and may set out any other information the prescribed aged care service provider thinks appropriate in relation to the prescribed person.
- (3) A prescribed aged care service provider must, in accordance with the requirements set out in the regulations, keep a positive behaviour support plan under review to ensure that it continues to reflect the needs of the prescribed person (however a failure to comply with this subsection does not, of itself, affect the validity of a positive behaviour support plan).
- (4) A prescribed aged care service provider may, in accordance with any requirements set out in the positive behaviour support planning guidelines and the regulations, vary or revoke a positive behaviour support plan.

- (5) If a positive behaviour support plan is varied or revoked under this section, the prescribed aged care service provider must notify the Senior Practitioner of that fact within 24 hours.

### 37S—Approval of positive behaviour support plan

- 5 (1) A prescribed aged care service provider must apply to an accredited approval panel for approval of a positive behaviour support plan prepared under section 37R, or approval of a variation of a positive behaviour support plan.
- 10 (2) A prescribed aged care service provider who, without reasonable excuse, refuses or fails to comply with subsection (1) is guilty of an offence.  
Maximum penalty: \$5 000.
- 15 (3) On an application under this section, an accredited approval panel must, in accordance with any requirements set out in the positive behaviour support planning guidelines and the regulations, assess the plan or variation and may, if satisfied that plan or variation is consistent with the positive behaviour support planning guidelines and this Part, approve the positive behaviour support plan or variation.
- 20 (4) An approval—  
(a) must by notice in writing; and  
(b) will have effect for 12 months from the date on which the approval is granted (or such shorter period as may be specified in the approval).
- 25 (5) A copy of the approval must be provided to the prescribed person and—  
(a) if the prescribed person has a guardian or carer—that person or those persons; or  
(b) in any other case—the Public Advocate.
- 30 (6) If an accredited approval panel refuses to approve a positive behaviour support plan or variation in relation to a prescribed person, the panel must give written reasons for its decision to the relevant prescribed aged care service provider.
- 35 (7) In this section—  
*accredited approval panel* means a person or body, or group of persons, accredited by the Senior Practitioner in accordance with any requirements set out in the positive behaviour support planning guidelines and the regulations as an approval panel for the purposes of this section.

### 40 37T—Register

- (1) The Senior Practitioner must establish and maintain a register for the purposes of this Part.

- (2) The register must contain a separate part for positive behaviour support plans, containing the following for each entry:
- (a) the full name, address and date of birth of the prescribed person to whom the positive behaviour support plan relates;
  - (b) each prescribed aged care service provider authorised to use restrictive practices pursuant to the positive behaviour support plan;
  - (c) a copy of each positive behaviour support plan (including, in the case of a positive behaviour support plan that has been varied, the plan as so varied);
  - (d) the expiry date for the positive behaviour support plan;
  - (e) a copy of any approval relating to the positive behaviour support plan granted under section 37S;
  - (f) such other information as may be required by the regulations.
- (3) The register must contain a separate part for accredited approval panels setting out the information required by the regulations in respect of each panel.
- (4) The register may be kept wholly or partly in an electronic form, or in any other form the Registrar considers appropriate.
- (5) The register may only be inspected in accordance with the regulations.

### **37U—Registration of positive behaviour support plans**

- (1) A prescribed aged care service provider must apply to the Senior Practitioner for registration of a positive behaviour support plan in relation to a prescribed person that has been approved under section 37S.
- (2) A prescribed aged care service provider who, without reasonable excuse, refuses or fails to comply with subsection (1) is guilty of an offence.  
Maximum penalty: \$5 000.
- (3) An application for registration of a positive behaviour support plan is to be made in a manner and form determined by the Senior Practitioner and must be accompanied by such documents or information as may be required by the Senior Practitioner.
- (4) The Senior Practitioner may require information provided in an application for registration of a positive behaviour support plan to be verified by statutory declaration.
- (5) The Senior Practitioner may refuse to register a positive behaviour support plan for any reason the Senior Practitioner thinks fit.

## Division 6—Use of restrictive practices

### 37V—Prescribed aged care service provider may use restrictive practices in accordance with positive behaviour support plan

- 5 (1) A prescribed aged care service provider may use restrictive practices in relation to a prescribed person if, and only if, the prescribed aged care service provider believes on reasonable grounds that—
- 10 (a) the prescribed person is displaying behaviour that constitutes a risk of harm; and
- (b) the use of restrictive practices is necessary to minimise the risk of harm, or to prevent further harm from being caused; and
- (c) the use of the restrictive practices is done in accordance with the prescribed person's positive behaviour support plan.
- 15 (2) A prescribed aged care service provider must, in using restrictive practices, comply with any requirements set out in the regulations.
- (3) A prescribed aged care service provider may only use restrictive practices in relation to a prescribed person in accordance with the person's positive behaviour support plan—
- 20 (a) if a maximum period is set out in the person's positive behaviour support plan—until the end of that maximum period; or
- (b) in any other case—no longer than is reasonably necessary to prevent the prescribed person from causing harm to themselves or others, in accordance with the person's positive behaviour support plan.
- 25 (4) A prescribed aged care service provider who uses restrictive practices in relation to a prescribed person under this section must, in accordance with any requirements set out in the regulations, cause a written notice in respect of the use of restrictive practices to be given to—
- 30 (a) in the case of a prescribed person who has a guardian or substitute decision maker—the guardian or substitute decision maker (as the case requires) and the prescribed person; or
- 35 (b) in any other case—the prescribed person.
- (5) The regulations may make further provisions in relation to the use of restrictive practices under this section (including by prohibiting or limiting the use of restrictive practices under this section in specified circumstances).
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**Division 7—Reporting use of restrictive practices  
authorised under *Aged Care Act 1997* of  
Commonwealth**

**37W—Reporting use of restrictive practices under *Aged Care  
Act 1997* of Commonwealth**

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- (1) A prescribed aged care service provider who, pursuant to the *Aged Care Act 1997* of the Commonwealth, uses restrictive practices in relation to a prescribed person (not being restrictive practices used under section 37V of this Act) must, within 24 hours after doing so, provide a report to the Senior Practitioner setting out the information required by the regulations.
  - (2) A prescribed aged care service provider who refuses or fails to comply with a notice under subsection (1) is guilty of an offence.  
Maximum penalty: \$5 000.
  - (3) To avoid doubt, nothing in this Part provides protection to a prescribed aged care service provider who uses restrictive practices in relation to a prescribed person other than in accordance with the prescribed person's positive behaviour support plan.

**Division 8—Information gathering and sharing**

**37X—Senior Practitioner may require information from State  
authorities**

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- (1) The Senior Practitioner may, by notice in writing, require a State authority to provide to the Senior Practitioner such information relating to a specified person as may be in the State authority's possession and that the Senior Practitioner reasonably requires for the purposes of this Part.
  - (2) A State authority must provide the information to the Senior Practitioner in the manner, and within the period, specified in the notice.
  - (3) If a State authority refuses or fails to comply with a notice under subsection (1), the Senior Practitioner may, after consultation with the State authority, report the refusal or failure to the Minister and to the Minister responsible for the State authority.

**37Y—Senior Practitioner may require information from other  
persons**

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- (1) The Senior Practitioner may, by notice in writing, require a specified person (whether or not the person is a prescribed aged care service provider) to provide to the Senior Practitioner such information relating to a specified person as may be in the person's possession and that the Senior Practitioner reasonably requires for the purposes of this Part.

(2) A person to whom a notice is given under subsection (1) must provide the information to the Senior Practitioner in the manner, and within the period, specified in the notice.

(3) A person who refuses or fails to comply with a notice under subsection (1) is guilty of an offence.

Maximum penalty: \$5 000.

### **37Z—Disclosure of information for research purposes**

Despite a provision of this or any other Act or law, the Senior Practitioner may disclose information obtained in the course of the administration or operation of this Part to an appropriate person or body for the purposes of research into the operation of this Part or a law of another State or Territory related to the use of restrictive practices.

### **37ZA—Provision of other information to Senior Practitioner**

(1) Despite a provision of this or any other Act or law, a person or body (including, to avoid doubt, an administrative unit or public sector employee within the meaning of the *Public Sector Act 2009*) may provide to the Senior Practitioner any information that the person or body reasonably believes is relevant to the functions of the Senior Practitioner under this Act.

(2) A person or body incurs no civil or criminal liability in respect of the provision of information to the Senior Practitioner in good faith and without negligence under this section.

### **37ZB—Information sharing for national register or database**

Despite a provision of this or any other Act or law, the Senior Practitioner may disclose information obtained in the operation or administration of this Part for the purpose of providing relevant information for entry in a national register or database relating to the use of restrictive practices.

## **Division 9—Complaints**

### **37ZC—Complaints**

(1) A person who is aggrieved by a decision under this Part relating to the use of restrictive practices may make a complaint to the Senior Practitioner in respect of the decision.

(2) A complaint under this section—

- (a) must be made in a manner and form determined by the Senior Practitioner;
- (b) must be made within 30 days after the day on which the decision was made (or such longer period as may be allowed by the Senior Practitioner);

(c) must be accompanied by such information and documents as may be required by the Senior Practitioner;

(d) must comply with any other requirements set out in the regulations.

5 (3) The Senior Practitioner must cause each complaint under this section to be assessed in accordance with any requirements set out in the regulations.

10 (4) The Senior Practitioner may, for the purpose of assessing a complaint, by written notice, require a specified person to produce a written statement of information about a specified matter, or to answer specified questions, within a specified period and in a specified form, verified if the written notice so requires by statutory declaration.

15 (5) A person must not refuse or fail to comply with a requirement of a notice under subsection (4).

Maximum penalty: \$10 000.

(6) Without limiting any other action that may be taken by the Senior Practitioner, the Senior Practitioner may, on completion of an assessment under subsection (3)—

20 (a) cause an investigation into the complaint to be carried out in accordance with any requirements set out in the regulations; or

(b) refer the matter the subject of the complaint to an appropriate State authority or law enforcement agency; or

25 (c) decline to take further action if the Senior Practitioner is satisfied that—

(i) the matter has previously been dealt with under this or any other Act and there is no reason to reexamine the matter; or

30 (ii) the matter is trivial, vexatious or frivolous; or

(iii) there is good reason why no action should be taken in respect of the matter.

35 (7) The Senior Practitioner must include statistical information relating to complaints under this section to be included in the annual report of the Senior Practitioner.

(8) The regulations may make further provision in respect of a complaint under this section (including, to avoid doubt, by limiting the kinds of decisions that may be the subject of a complaint).

### **37ZD—Offence in relation to complaints**

40 A person who—

(a) prevents another person from making a complaint under section 37ZC; or

- (b) hinders or obstructs another person in making a complaint under section 37ZC,

is guilty of an offence.

Maximum penalty: \$10 000.

## **Division 10—Review of decisions by South Australian Civil and Administrative Tribunal**

### **37ZE—Review of decisions by South Australian Civil and Administrative Tribunal**

- (1) Subject to this section, the Tribunal is, by force of this section, conferred with jurisdiction to deal with matters consisting of the review of the following decisions (*reviewable decisions*):
  - (a) a decision of the Senior Practitioner under this Part;
  - (b) any other decision prescribed by the regulations.
- (2) An application for review of a reviewable decision may be made to the Tribunal by—
  - (a) the person to whom the decision relates; or
  - (b) a person, or persons of a class, prescribed by the regulations for the purposes of this paragraph.
- (3) An application must be made within 30 days after the date of the reviewable decision (or such longer period as may be allowed by the Tribunal).
- (4) However, the Tribunal may only allow an extension of time under subsection (3) if satisfied that—
  - (a) special circumstances exist; and
  - (b) another party will not be unreasonably disadvantaged because of the delay in commencing the proceedings.

## **Division 11—Miscellaneous**

### **37ZF—Limitation of liability**

- (1) The Minister, the Senior Practitioner and any other person or body incurs no civil or criminal liability for an act or omission in the course of performing a function under this Part (being an act or omission done or made in good faith and without negligence).
- (2) A prescribed aged care service provider, or a person assisting a prescribed aged care service provider, incurs no civil or criminal liability for an act or omission relating to the use of restrictive practices in accordance with this Part (being an act or omission done or made in good faith and without negligence).

- 5
- (3) The owner, occupier or operator of premises (however described) incurs no civil or criminal liability for an act or omission relating to the use of restrictive practices at the premises in accordance with this Part (being an act or omission done or made in good faith and without negligence).

**37ZG—Offence to hinder or obstruct Senior Practitioner etc**

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- (1) A person who hinders or obstructs the Senior Practitioner or any other person in the course of performing a function or exercising a power under this Part is guilty of an offence.

Maximum penalty: \$5 000.

- (2) A person who hinders or obstructs a prescribed aged care service provider in relation to the use of restrictive practices under this Part is guilty of an offence.

Maximum penalty: \$5 000.

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- (3) Subsections (1) and (2) do not apply to a prescribed person in relation to whom the Senior Practitioner or other person is performing a function or exercising a power, or restrictive practices are to be used (as the case requires).

**37ZH—False or misleading statements**

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A person must not make a statement knowing that it is false or misleading in a material particular (whether by reason of the inclusion or omission of a particular) in information provided under this Part.

Maximum penalty: \$10 000.

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**37ZI—Evidentiary provision**

In proceedings for an offence against this Act, an allegation in an information—

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- (a) that a specified person was, or was not, the Senior Practitioner at a specified time; or
- (b) that a specified person was, or was not, a prescribed aged care service provider at a specified time; or

must be accepted as proved in the absence of evidence to the contrary.

**37ZJ—Annual report on operation of Part**

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- (1) The Chief Executive must, not later than 31 October in each year, cause a report on the operation of this Part during the preceding financial year to be prepared and provided to the Minister.
- 40
- (2) The Minister must, within 3 sitting days after receiving a report under this section, lay a copy of the report before both Houses of Parliament.

- (3) A report under this section may be combined with the annual report of the Department (in which case the Minister need not lay a copy of the report before both Houses of Parliament under subsection (2)).

**37ZK—Review of Part**

- 5 (1) The Minister must cause a review of the operation of this Part to be conducted and a report on the review to be prepared and submitted to the Minister.
- (2) The review and the report must be completed after the second but before the third anniversary of the commencement of this Part.
- 10 (3) The Minister must cause a copy of the report submitted under subsection (1) to be laid before both Houses of Parliament within 6 sitting days after receiving the report.