Chief Psychiatrist

Complaints Investigation Protocol

Version No.: 02
Approval date: 03.09.19

Government of South Australia
SA Health

Contents

Chief Psychiatrist Complaints Investigation Protocol

1. Introduction / Policy Statement

This protocol describes the role and functions for the Office of the Chief Psychiatrist (the Office) in the investigation of complaints regarding mental health care in South Australia.

The Chief Psychiatrist is a statutory officer who leads the Office of the Chief Psychiatrist, an administrative unit of the Department for Health and Wellbeing.

The office will receive complaints or become aware of complaints investigations that it will have an interest in the outcome.

This protocol describes how the Office will manage complaint investigations, with respect to its statutory role. It is expected that health units will comply with the Department for Health and Wellbeing policy and processes for complaints handling. The **Consumer Feedback Management Guideline**, with associated appendices provides a strategy for receiving, assessing, investigating and providing feedback on complaints.

Wherever possible, the Office will align its own complaints handling procedure to this recognised departmental procedure, noting that the office has additional powers to obtain information, beyond those available to Departmental officials.

2. Roles and Responsibilities

Chief Psychiatrist

- Establish, maintain and review the effectiveness of this Protocol
- Ensure allocated Office of the Chief Psychiatrist systems and resources are available for the implementation of this Protocol.
- Support the implementation of this Protocol through the provision of resource materials.
- Provide advice to health services in response to specific matters arising from investigations.
- Participate in and provide advice for the local, regional and statewide implementation of recommendations.

3. Complaints Investigation Protocol

The protocols for the conduct of Complaints Investigation under the *Mental Health Act 2009* are described below.

3.1 Legislative Framework

The Chief Psychiatrist of South Australia is a statutory position established by section 89 of the *Mental Health Act 2009* (the Act). Broadly, the powers and functions of the Chief Psychiatrist, and through them the Office of the Chief Psychiatrist, are:

- Administering and monitoring the use of the Act
- Monitoring and improving the delivery and standard of mental health care
- Monitoring the treatment and care of patients

- Conducting inspections and investigations
- Administering the Prescribed Psychiatric Treatment Panel
- Determining and documenting the facilities and officers required by the Act
- Determining the forms, statements of rights and other instruments required by the Act
- Publishing Chief Psychiatrist Standards
- Publishing an Annual Report
- Advising the Minister and reporting on matters of concern

The Chief Psychiatrist powers and functions for monitoring, service improvement, inspections and delegations that govern this Inspection Protocol are described below.

3.1.1 Monitoring and Service Improvement Powers

The Chief Psychiatrist has specific powers and functions, described in subsection 90(1), to monitor the treatment of patients, the use of restrictive practice, the administration of the Act and the standard of mental health care. In addition to monitoring complaints, safety and quality activity, best practice and the use of the Act through established reporting mechanisms, a core component of active monitoring is the use of inspections to examine clinical practice, and supporting processes, in a live environment.

The Chief Psychiatrist also has specific powers and functions to improve the delivery, and organisation, of mental health services. The recommendations made from Chief Psychiatrist inspections will become part of the service improvement regime of the Local Health Networks and the Department for Health and Wellbeing to inform improvement at the local and state level.

90 – Chief Psychiatrist's functions

(1) The Chief Psychiatrist has the following functions:

(a) to promote the continuous improvement in the organisation and delivery of mental health services in South Australia;

(b) to monitor the treatment of voluntary and involuntary patients, and the use of restrictive practices in relation to such patients;

(c) to monitor the administration of the Act and the standard of mental health care provided in South Australia;

(d) to advise the Minister on issues relating to mental health and to report to the Minister any matters of concern relating to the care or treatment of patients;

(e) any other functions assigned to the Chief Psychiatrist by this Act or any other Act or by the Minister.

3.1.2 Inspection Powers

The Chief Psychiatrist has powers and functions to conduct inspections of public and private hospitals, and community health services that provide treatment and care for people with mental illness. Those powers are described in subsections 90(4) and 90(5) of the *Mental Health Act 2009* and subsection 88(2) of the *Health Care Act 2008.* Subsections 90(4)(a) and 90(5) of the *Mental Health Act 2009* describe how inspections of public inpatient and community mental health services can be conducted. Subsection 90(4)(b) of the *Mental Health Act 2009* and subsection 88(2) of the *Health Care Act 2008* describe how inspections of private inpatient and community mental health services can be conducted.

Inspection powers are used to support complaint investigation.

Complaints and care concerns, in general, may help inform the Chief Psychiatrist in his or her role monitoring the treatment of voluntary inpatients and involuntary inpatients, monitoring the administration of the Act and reporting any matters of concern to the Minister regarding the care and treatment of patients.

Mental Health Act 2009, Part 12

90—Chief Psychiatrist's functions

(4) The Chief Psychiatrist will—

(a) have the authority to conduct inspections of the premises and operations of any hospital that is an incorporated hospital under the *Health Care Act 2008*; and

(b) be taken to be an inspector under Part 10 of the *Health Care Act 2008*.

(5) For the purposes of subsection (4)(a), the Chief Psychiatrist may, at any reasonable time, enter the premises of an incorporated hospital and, while on the premises, may—

(a) inspect the premises or any equipment or other thing on the premises; and

(b) require any person to produce any documents or records; and

(c) examine any documents or records and take extracts from, or make copies of, any of them.

Health Care Act 2008, Part 10

88—Inspectors

(1) The Minister may appoint suitable persons to be inspectors for the purposes of this section.

(2) An inspector appointed under subsection (1) may, at any reasonable time, enter the premises of a private hospital and, while on the premises, may—

(a) inspect the premises or any equipment or other thing on the premises; and

(b) require any person to produce any documents or records; and

(c) examine any documents or records and take extracts from, or make copies of, any of them.

3.1.3 Delegation Powers

The Chief Psychiatrist can delegate a power or function of the Act, under section 91 of the Act, to another person. For the purpose of complaints investigations the Chief Psychiatrist will delegate these powers to staff of the Office.

3.2 Complaints Matters Triage System

The Office may receive complaints directly, or become aware of complaint investigations into mental health services undertaken by services and other agencies, and wish to monitor the outcome.

The Office may receive complaints that should be better investigated locally by service, or by another statutory officer who has more relevant powers.

Because of the continuous improvement and monitoring roles of the Office, it will have an interest in the outcomes of complaint investigations, even when those investigations have been undertaken externally.

In determining whether or not to undertake an investigation, the following factors will be considered:

1. Resolution of matters at a Local Health Network level shall be sought first.

As a general practice, complaints should in the first instance, be addressed locally, unless there are extenuating factors that mean an investigation by the Office is indicated.

Extenuating factors may include matters of a high severity assessment code (see item 3 below) that are systemic in nature, in that they reflect the practice of a unit or service, rather than an individual.

2. Complaint matters should be pursued by the investigator or official with the most appropriate powers to obtain evidence and draw a conclusion.

It is not uncommon for a matter to be investigated locally, and then if not resolved to be escalated to either the Office of the Chief Psychiatrist or the Health and Community Services Complaints Commission's (HCSCC) office.

The HCSCC has powers to take evidence under oath and/or affirmation and require a person to provide information, attend an interview and produce documents.

In comparison, this Office is better suited to matters that can be resolved with inspection powers, reviews of documents and the early involvement of a professional with mental health expertise.

This Office will refer matters to the HCSCC when it is considered that the Commissioner's powers will be more suited to the conduct of that investigation.

The Office on most occasions would refer a complaint related to the practice of individual practitioners to the HCSCC which in turn has links with the Australian Health Practitioner Regulatory Authority.

3. The complaints severity assessment code index

Matters that are rated as extreme risk or high risk will take precedent over lower risk matters. A copy of the severity code matrix which has been developed as part of the Department's complaint handling procedures are available in the Department of Health and Wellbeing Complaint Policy.

For extreme and high risk matters, local health networks will be following critical incident and sentinel event policies and are likely to have commissioned either root cause analysis or incident reviews. The Office will seek the outcomes of such reviews but will not, as a matter of practice, replicate those reviews unless it is considered that these reviews have not resolved the matters at hand.

4. Interface with other investigations.

The Office will monitor the outcomes of complaint investigations that it has referred to services or other statutory bodies.

Where the Office identifies particular issues that it considers should be a part of another bodies complaint investigation it will make suggestions or recommendations to the complaints officers of those bodies.

3.3 Indicators for a Chief Psychiatrist Investigation

The following criteria are not totally inclusive, but are indicative of the matters that may trigger an Office investigation.

1. **Systemic matters**. The Office will investigate matters of a systemic nature that are related to the delivery of mental health care by the unit or team, or a service. Matters involving more than one practitioner or affecting multiple consumers would also be considered.

AND

2. **Local resolution has not occurred**. This will include complaint has not been resolved by local investigation or could not reasonably be resolved by initiating such an investigation.

AND

3. **The Office has the most appropriate powers**. The powers of the Chief Psychiatrist represent the most effective way of resolving the matter, and investigating the matter aligns with the office's legislative functions

3.4 Complaints Referral Process

Any person can refer a matter to the Chief Psychiatrist for investigation. As noted, the Chief Psychiatrist has discretion as to whether or not to investigate a particular issue or refer it to another organisation or agency.

It would be expected that requests for investigations would come from:

1. Consumers
2. Carers
3. Staff members, including whistle blowers
4. Chief Executive of a Local Health Network
5. Chief Executive or Deputy Chief Executive of the Department for Health and Wellbeing
6. Minister for Health and Wellbeing
7. Members of public with knowledge and interest about an aspect of mental health care delivery who wish to make a complaint
8. An 'own motion' investigation initiated by the Chief Psychiatrist.

3.5 Complaints Management Processes

3.5.1 Complaints Management Stages

1. **Receipt**. The Office will provide a complainant with a letter of acknowledgment that a complaint has been received within 24 hours.

2. **Triage**. Allocation or referral of a complaint will occur within two weeks. This will follow an additional survey of the complaint and a decision will either be made to commence an investigation or refer the matter to another agency, with the complainant's permission.

3. **Updates.** A complainant will be provided with regular updates about the progress of their complaint. Noting that some matters may involve systemic concerns, investigations may take some time.

4. **Attention to immediate risks**. For SAC1 and SAC2 complaints, early action will be taken to resolve immediate risks, prior to the resolution of a complaint investigation.

3.5.2 Allocation of Staff to Undertake Complaints Investigations

The following staff may undertake an investigation, either alone or in combination:

1. The Chief Psychiatrist
2. Office staff with clinical training, where that training will be needed to assess and investigate the complaint matter
3. Office staff with a general administration policy background, who have knowledge in an area related to the subject of the complaint. Example of this would be the allocation to legislative and policy staff of complaints related to the use of the Mental Health Act.
4. Office staff with investigation training.
5. External staff who are invited to join a complaint investigation, as additional skills are needed or the anticipated workload of such an investigation is so extensive, that it could not reasonably be undertaken internally.

3.5.3 Complaints Register

Complaints will be registered in SLS, with a separate complaint register with links to SLS maintained on the unit. Sensitive matters and those involving whistleblowers may not be registered on SLS immediately as initial facts are gathered, but will be recorded in the Office register

3.5.4 Advice of the Outcomes of Complaints

1. Complainants will be advised of the outcome of a complaint investigation, subject to limitations on what can be provided due to patient confidentiality, if the complainant is not a consumer or carer.
2. The Chief Executive, Department for Health and Wellbeing will be advised of all systemic complaint investigation resolutions.
3. The Minister will be informed of all SAC1 and SAC2 complaint investigations using inspection powers.
4. For other complaint investigations that involving a lower severity code, but where Chief Psychiatrist inspection powers are used, such investigations will be noted in the existing three monthly report to the Minister advising of the outcomes of inspections.

3.5.5 Follow up of Actions

1. Systemic recommendations from a Chief Psychiatrist complaint investigation will be referred either to a relevant service to implement, or where it involves statewide matters, to the Chief Executive.
2. It should be noted that the Office may itself be involved in implementing service redesigned and improvements, that stem from the outcomes of a complaint investigation.
3. Principles of open disclosure will be followed in dealing with complaint matters

3.5.6 Review Process for Complaints Investigation

As an administrative unit of the Department for Health and Wellbeing, the actions of the Office can be reviewed by the Chief Executive or the actions of the Chief Psychiatrist in his or her statutory role by the Minister.

If the party is dissatisfied with an Office complaint investigation, they may wish to approach the Chief Executive or the Minister, or lodge a further complaint about how the matter has been dealt with, with the HCSCC, or the Ombudsman

3.6 Quality Control

The Office will maintain a complaint register to record the nature and type of investigation, skills and staff time required to complete, and any information related to the views of key parties to complaint investigation about how it was completed.

4. Implementation and Monitoring

It is expected that after two years of operation, an independent psychiatrist will be asked to review the current implementation and use of statutory powers by the Office as they apply to both this Complaints Protocol and the Inspection Framework.

5. National Safety and Quality Health Service Standard

 National Standard 1 Clinical Governance	 National Standard 2 Partnering with Consumers	 National Standard 3 Preventing & Controlling Healthcare-Associated Infection	 National Standard 4 Medication Safety	 National Standard 5 Comprehensive Care	 National Standard 6 Communicating for Safety	 National Standard 7 Blood Management	 National Standard 8 Recognising & Responding to Acute Deterioration
☒	☒	☐	☒	☒	☒	☐	☒

This Chief Psychiatrist Protocol is relevant to National Standards 1, 2, 4, 5, 6 and 8, as described in more detail below.

Standard 1 – Clinical Governance

The clinical governance, and safety and quality systems that are required to maintain and improve the reliability, safety and quality of health care, and improve health outcomes for patients.

Standard 2 – Partnering with Consumers

The systems and strategies to create a person-centred health system by including patients in shared decision making, to ensure that patients are partners in their own care, and that consumers are involved in the development and design of quality health care.

Standard 4 – Medication Safety

The systems and strategies to ensure that clinicians safely prescribe, dispense and administer appropriate medicines to informed patients, and monitor use of the medicines.

Standard 5 – Comprehensive Care

The integrated screening, assessment and risk identification processes for developing an individualised care plan, to prevent and minimise the risks of harm in identified areas.

Standard 6 – Communicating for Safety

The systems and strategies for effective communication between patients, carers and families, multidisciplinary teams and clinicians, and across the health service organisation.

Standard 8 – Recognising and Responding to Acute Deterioration

The systems and processes to respond effectively to patients when their physical, mental health or cognitive condition deteriorates.

6. Associated Policy Directives / Policy Guidelines and Resources

- Aboriginal Cultural Respect Framework 2007.
- Accreditation Policy Directive 2013.
- Charter of Health and Community Services Rights Policy Directive 2015.
- Child Safe Environments (Child Protection) Policy Directive 2018.
- Clinical Handover Policy Directive 2013.
- Clozapine Management Clinical Guideline 2017.
- Consumer Feedback Management Policy Directive 2015.
- Electro-Convulsive Therapy Policy Guideline 2018.
- Forensic Mental Health Patient Admission to SA Health Facilities Policy Directive 2013.
- *Mental Health Act 2009.*
- Mental Health Services Pathways to Care Policy Directive 2014.
- National Safety and Quality Health Service Standards, 2nd Edition, 2017.
- Patient and Solicitor Access to Patient Records Chief Psychiatrist Standard 2012.
- Patient Incident Management and Open Disclosure Policy Directive 2017.
- Recognising and Responding to Clinical Deterioration Policy Directive 2012.
- 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 Services Policy Directive 2015.
- Whistleblowers Protection Policy Directive 2015.

7. Document Ownership and History

Document developed by: Office of the Chief Psychiatrist, Department for Health and Wellbeing
File / Objective No.:

Approval Date	Version	Who approved New / Revised Version	Reason for Change
03/09/19	V2.0	Chief Psychiatrist	Interim version for operation and further feedback and development