Index

abortion and Australian law 222-4 current legislation 227-8, 250 history of Australian laws 224 lawful vs unlawful 223-4 methods of 223 moral issues 225-6 nurses' professional role and responsibilities 226-8 Abortion Law Reform Act 2008 (Vic) 223 active euthanasia 230 Acts of parliament, process of passing 56 advance care directives 108-9, 181, 229, 240 advocacy 101-3 Age Discrimination Act 2004 (Cth) 141 Aged Care Act 1997 (Cth) 167 Aged Care Amendment (Security and Protection) Act 2007 (Cth) 167 agency model, professional-client relationship 76 alternative therapies, administering 191 anti-discrimination legislation 140-1, 237 Aristotle 25 assault 69, 103 assessing patients, breach of duty of care 126-7 Australian Commission on Safety and Quality in Health Care on failure to act on warning signs 126 Open Disclosure Framework 215-16 patient identification standards 124 Australian Constitution powers of government 53-5 rights of citizens 36 separation of powers 69-70 Australian court hierarchy and jurisdiction 60-3 Australian Health Practitioners Regulation Agency 131, 132, 169 Australian Information Commissioner 153 Australian legal system common law 58–9 divisions of law 63-9

doctrine of precedent 59-60 jurisdiction and court hierarchy 60-3 law and religion 69-70 overview 52-3 procedural law 63-4 relationship between classifications of law 54 rules of evidence 64 sources of law 53-63 statutory interpretation 57-8 statutory law 53-8 substantive law 64-5 Australian Nursing Federation 132 Australian Nursing and Midwifery Council (ANMC) Code of Ethics for Nurses in Australia 9-10, 34, 73, 90, 136, 151-2, 154, 155, 178, 194-5 Code of Professional Conduct for Nurses 9-10, 90, 124, 136, 150, 177, 184, 194 Australian Practice Nurses Association 132 autonomy and abortion 222 and euthanasia 222, 232 expression in Western cultures 146-7

Baier, Annette 178 beneficence, principle of 83-4 Between the Flags program 200 bioethics, four principles of 81-8 births, registration of 12, 29 blood products, administration to children 99-100, 239 'Bolam principle' 114-15, 116-17 Bolam v Friern Hospital Management Committee 114 breaches of duty of care failure to assess and monitor 126-7 failure to communicate 125-6 failure to document 126 failure to follow standards of care 124-5 failure to use equipment safely 125 in negligence actions 119,

respect for 84-6

Rossiter 50, 59-60, 93, 95 capabilities approach 47-9, 93 Care and Protection of Children Act (NT) 166 caring, for others and for oneself 22-4 Ces v Superclinics Australia Pty Ltd 223 child abuse and neglect, mandatory reporting 165-6 children administration of blood products 99-100, 239 and consent 98-101 detention of 239 distinguished from criminal law 65-6, 68 and negligence 66-7 Civil Liability Act 2002 (NSW) 117 clinical errors/incidents causes 195 cognitive errors 196 definition 195 factors leading to 195-7 human factors 196-7 and lack of self-respect 203-5 management 214-19 prevalence in NSW public health system 199-200 professional and ethical response to 201-5 reporting 205-14 respect and self-respect 201 - 3rule violations 196 and safe conduct 194-5 services and principal incident types 199 severity assessment codes 199-200 skill-based errors 196 strategies to increase patient safety 200-1 system factors 195, 196-7 tracking and managing 198types 195, 198-9 clinical errors/incidents management complaints management and open disclosure 214-15

Brightwater Care Group (Inc) v

INDEX **261**

higher-level response 217 lower-level response 218 nature of open disclosure 215-16 open disclosure process 216-19 processes for 214 clinical errors/incidents reporting admitting to 205-7 and articulating your broader purpose in workplace 211 and communication skills 213-14 contextualising situation 212 normalising conflict 211-12 recognising rationalisations 212-13 reporting mistakes of others 207-10 speaking out 211 and workplace loyalty 208-10 clinical terms, confusion with common expressions 176 Code of Ethics for Nurses in Australia (ANMC) on caring for persons 9-10 on confidentiality 155 on dealing with patients and their families 90 on diversity 136 on ethical management of patient information 151-2, 154 on nurse's power 73 recognition of human rights 34 on respect and self-respect 201 on safe conduct 194-5 on trust 178 Code of Professional Conduct for Nurses (ANMC) on accepting gifts or benefits from patients 184 on dealing with patients and their families 90 on diversity 136 on ethical management of patient information 150 guidelines for caring for persons 9-10 on safe conduct 194 standards of care 124 on trust 177 codes of ethics Australian Nursing and Midwifery Council 9-10,

34, 73, 90, 136, 151-2, 154, 155, 178, 194-5 International Council of Nurses 154 codes of professional conduct, Australian Nursing and Midwifery Council 9-10, 90, 124, 136, 150, 177, 184, 194 coercion, and consent 97-8 cognitive errors, and clinical incidents 196 common law capacity to consent 93 history of 58-9 communicable diseases legislation pertaining to 248 mandatory reporting 168 communication skills building 213-14 culturally safe communication 141-4 failure to communicate 125-6 presenting information about treatment options 96 community treatment orders 107 'complaining', 'everyday' vs clinical meanings of term 176 compulsory reporting see mandatory reporting confidentiality challenges to maintaining and computerised patient information-management systems 170-1 deliberate breaches 161 digital cameras and mobile phones 172 'duty to warn'/'duty to protect' 162-3 inadvertent breaches 159-61 individual personality and experience factors 197 mandatory reporting 163-5 meaning of 153-4 as moral concept 154 obligations and duties 154-5 permissible breaches 161-2 privacy and autonomy 155 protection of 158 reportable deaths 164-5 responding to telephone inquiries 172-3

right to 155-6 role and limits of trust 156-8 rule of 154-5 telephone consultations with patients 173 value in Western cultures 147 conflict situations building communication skills 213-14 framing your response 212 normalising of 211-12 recognising rationalisations 212-13 acting without 103-11 advance care directives 108-9 advocacy 101-3 being informed 96 and children 98-101 and coercion 97-8 competence to 93-5 conflict between minors and parents/guardians 100-1 in emergencies 103-4 guardianship 110-11 inferring from behaviour 98 and negotiation of treatment 190-1 'not for resuscitation' orders 105-6 people with mental illness 106-8 requirements for 92-4 statute law pertaining to 238-9 and truthfulness 135-6 use of restraints 104-5 voluntariness 97-8 Consent to Medical and Dental Procedures Act 1985 (SA) 100 constitution see Australian Constitution constitutional law 65 contract law 65 contract model, professionalclient relationship 76-7 contracts, between nurses and patients 181 contributory negligence 128 Coroners, role 164-5 Coroners Acts 164, 238, 248-9 Coroners Courts 62-3, 165 coronial inquiries 165 County Courts 62

262 INDEX

courts hierarchy and jurisdiction 60-3 see also names of courts e.g. District Courts Crimes Acts 223 Criminal Consolidation Act 1969 (SA) 223 criminal law 65-6, 68 criminal negligence 117-18 critical vs experiential interests 233 The Crucible [play] (Miller) 233 cultural sensitivity, and diversity 136-8 culturally safe communication 141-4 culturally safe nursing care institutional policies and practices 147-8 in practice 144-6 principles of 140, 145 reflecting on Western culture 146-7 and reflective practice 145-6 culture, definition 136-7 death, value attached to ways of dying 222 deaths, mandatory reporting 164-5 defamation 69

defences to negligence liability 127-9 democracy, Rousseau's conception 45 Department of Health, Office of Health Protection 168 depression, everyday vs clinical meanings of term 176 detention of children 239 of mentally ill people 106-7 digital cameras, and confidentiality 172 dignity therapy 27 Dillon, Robin 203 Disability Discrimination Act 1992 (Cth) 140 discretionary judgement, and trust 180-1 discrimination 139-41 District Courts 62 diversity

cultural 'checklist'

approach 138-9

and culturally safe communication 141-4 definition 137 and discrimination 139-41 doctrine of double effect 232 doctrine of emergency 103 doctrine of precedent 59-60 documentation, and breach of duty of care 126 Donoghue v Stevenson 114 double effect, doctrine of 232 driving ability, impairment of 168-9 drug-related legislation 240-1 duty of care 80-1, 113-17, 118-19 duty to warn/duty to protect 162-3 Dworkin, Gerald 233 elder abuse, mandatory reporting 166-7 electronic health records, confidentiality issues 170-1 emergencies, acting without consent 103-4 emergency, doctrine of 103 empathy, vs sympathy 88-9 employers' policy frameworks 123 Enlightenment 40 equipment use, breach of duty of care 124-5 errors see clinical errors/incidents ethical capacity building 210 ethics application to actual lives 25 definition 24 distinguished from morals 26 and mutual vulnerability 24-8 euthanasia active euthanasia 230 and Australian law 228 and autonomy 232-3 doctrine of double effect 232 and experiential vs critical interests 233 involuntary euthanasia 230 justifications for 231-3 legislation 55, 250 meaning of 229 non-voluntary euthanasia 230 nurses' professional role and

responsibilities 235

and cultural sensitivity 136-8

objections to 234-5 passive euthanasia 230 and refusal of life-sustaining treatment 229 types 230-1 voluntary euthanasia 230 vs suicide 231 Euthanasia Laws Act 1996 (Cth) 55 Exit International (EI) 229 experiential vs critical interests 233 'expert client' approach, professional-client relationship 79 Fair Work Australia Tribunal 63

false imprisonment 68-9, 104 Family Court 61 Federal Court of Australia 61 Federal Parliament of the Northern Territory (Self-Government) Act 1978 (Cth) 229 fiduciary model, professionalclient relationship 79-80 fiduciary relationship, moral rights and duties 81-8, 189 firearms, mandatory reporting 168 Firearms Act (NT) 168 Firearms (Firearms Prohibition Orders) Amendment Act (SA) 168 Franklin, Jay 228-9 French Revolution 40-1 friendship model, professionalclient relationship 77-8

Gillick v West Norfolk AHA 100
Giving Voice to Values
(GVV) 210
Golden Rule 57–8
'good life'
concept of 24
differing forms 27
theories of 24–5
government, moral justification
of 39
guardianship, and consent 110–11
Guardianship Boards/
Tribunals 110

Gillett, Grant 235

harm principle 38–9, 222 Health Acts 68 More information

Cambridge University Press 978-1-107-68782-0 - Ethics and Law for Australian Nurses: second edition Kim Atkins, Sheryl de Lacey and Bonnie Britton Index

INDEX 263

moral responsibilities, of

nurses 81-8

moral rights, nature of 31-4

morality, and reason 41-2

health care government responsibility for 55 as a right 31-2, 33 Health Practitioner Regulation Acts 179 Health Practitioner Regulation National Law Act 2009 (Cth) 53 Health Practitioners Regulation National Law 131 health reform legislation 238 High Court of Australia jurisdiction and role 60-2 on minors and consent 99 Hobbes, Thomas 42-4, 46, 47 human rights 34-5, 141 Human Rights Commission 34 human rights legislation 237 incidents see clinical errors/ incidents Indigenous Australians access to health care 143-4 health status 142-3 individual patient care, goals 188-9 industrial law 64-5 infant-carer relationship, and development of selfawareness 16-17 information see patient information informed consent, and truthfulness 135-6 interests, distinguished from rights 37 International Council of Nurses (ICN), Code of Ethics for Nurses 154 Interpretation Acts 57, 237–8 involuntary detention, of mentally ill people 106-7 involuntary euthanasia 230 Ipp Review (of the Law of Negligence) 115, 116-17 iSoBar program 200

Jehovah Witnesses, and blood products 99–100 jurisdiction and court hierarchy 60–3 justice, bioethical principle of 86–7 Kantian philosophy 41–2
laws, moral justification 39, 45–6, 48
legal rights, nature of 31
legal system see Australian legal system
legislation, governing actions of nurses 122–3
Leininger, Madeleine 138
Literal Rule 57

Magistrates Courts 62 Malette v Shulman 104 mandatory reporting and breach of confidentiality 163-5 child abuse and neglect 165-6 communicable diseases 168 conflicts for nurses 167 elder abuse 166-7 firearms 168 legal requirements 244-8 medical conditions causing public risk 168-9 'notifiable conduct' by healthcare professionals 169-70 reportable deaths 164-5 Marx, Karl 50 medical conditions causing public risk 168-9 Menhennitt ruling 223-4 Mental Health Acts 68, 106-8, 122, 239-40 Mental Health Tribunal 107 mental illness community treatment orders 107 and consent 106-8 definition 106 involuntary detention 106-7 Mill, John Stuart 38 Miller, Arthur 233 minors, and consent 98-101 mistakes see clinical errors/ incidents mobile phones, and confidentiality 172 monitoring patients, breach of duty of care 126-7

moral obligations, nature of 26

and human rights 35

moral principles

defined 26

morals, distinguished from ethics 26 National Consensus Statement 126 national health reform legislation 238 natural rights 31, 34, 42-3, 44 negligence and civil law 66-7, 69 elements 127 legislation 241 and scope of practice 121-4 of staff by employers 133 tips for avoiding 132 types 124-7 negligence actions breach of duty of care 119 civil cases 69, 118 conditions for 117-21 contributory negligence 128 criminal cases 117-18 damages 129-31 defences to liability 127-9 duty of care 118-19 harm incurred 119 harm is foreseeable 119-21 involving employers 133 involving nurses 118 limitations on commencement of 128-9 proof of negligence 127 types of negligence 124-7 vicarious liability 129-31

voluntary assumption of

risk 128

scope of 190-1 of treatment 187-91

Nitschke, Philip 229

'neighbour principle' 114

Nightingale, Florence 33

non-maleficence, principle

negotiation

open disclosure

264 INDEX

NSW Clinical Excellence Commission data on clinical incidents 198-200, 214 resolution of complaints 215 nurse-patient relationship basic features 73-5 difficulties in small communities 89-90 as fiduciary relationship 81-8, legal responsibilities of nurses 80-1 maintaining professional distance 88-9 misunderstandings 89, 175-6, models of professional-client relationship 76-80 moral responsibilities of nurses 81-8 negotiating treatment 187-91 patient expectations 176-7 power and vulnerability in therapeutic relationship 73 - 5risks of 88-90 as therapeutic relationship 73-5, 189 trust and trustworthiness 177-9 employer's policy framework 123 legislation governing actions 122-3, 222 level of training 121 moral responsibilities 81-8 power of 73-5, 176 scope of practice 121-4, 184 nursing, social context of development of 31-4 Nursing and Midwifery Board of Australia (NMBA), Guidelines for Mandatory Notifications 169 nursing practice context of 121-2 legislation regulating 122-3, 222, 249 as a philanthropic practice 33

obiter dicta 59 Office of Aged Care Quality and Compliance 167

Nussbaum, Martha 47

and complaints management 214-15 framework 215-16 nature of 215-16 process 216-19 Open Disclosure Standard 123 palliative care 232 passive euthanasia 230 Patel, Jayant (Dr) 51–2, 67, 118 Patel v The Queen 51-2 paternalism, in professionalclient relationship 78-9 patient identification standards 124 patient information data and privacy 150-3 disclosure over telephone 172-3 electronic records 170-1 ethical management 151-2, 154 sensitivity of 152 see also confidentiality patient-centred approach 189 patients, distinguished from clients 1 personal freedom and constraints of law 44-5 and rights 38-9 personal identity, formation of 8-9 personhood and reflective selfawareness 14-17 value attached to 222 persons basic features presumed in Australian law and social institutions 12 concept of 10-12, 17-18 embodiment 12-14 Poisons Act (Vic) 122 poisons legislation 240-1 police forces, origins of 33 positive transference 183-4 power, of nurses 73-5 Power Balance wristbands and bracelets 193 precedent, doctrine of 59-60 privacy invasions of 152 legislation 153, 241-4 principle of 152 value in Western cultures 147

Privacy Acts 123 Privacy Amendment (Enhancing Privacy Protection) Act 2012 (Cth) 153 privacy legislation 153 procedural law 63-4 professional distance, maintaining 88-9 professional indemnity 131-2 professional-client relationship agency model 76 contract model 76-7 'expert client' approach 79 fiduciary model 79-80 friendship model 77-8 models of 76-80 paternalism 78-9 proprioception 16, 29 Public Health Acts 68 Purpose Rule 57 R v Bayliss and Cullen 223 R v Davidson 223 R v Leach and Brennan 224 R v Patel 51-2, 67, 118 Rv Wald 223 Rachels, James 231 Racial Discrimination Act 1975 (Cth) 140 ratio decidendi 59 rationalisations, responding to 212-13 Re Alex 101 reason, and morality 41-2 reasonable standard of care 80-1, 114-17 reflective practice 145-6 reflective self-awareness nature of 22 and personhood 14-17 relational approach 0.2 religion, and law 69-70 reportable deaths 164-5 respect for common humanity 201-3 in Kantian tradition 41-2 and self-respect 201-3 respect for autonomy, principle of 84-6 restraints, use of 104-5 Ricoeur, Paul 24 in Australian Constitution 36 and corresponding duties 36-7 definition 30, 37

INDEX **265**

moral justification of 33-4 nature of 34 and personal freedom 38-9 social basis of 42-6 Rights of the Terminally Ill Act 1995 (NT) 55, 229-30, 235 risk, and trust 180 Rogers vs Whitaker 94 Rousseau, Jean-Jacques 44-5, 47 rule violations, and clinical errors/incidents 196 Sacks, Oliver 14, 18 safe conduct statements in codes of ethics and professional conduct 194-5 strategies to increase patient safety 200-1 Saldanha, Jacinta 173 Same-Sex: Same Entitlements Inquiry 139-40 scope of practice context of practice 121-2 employer's policy framework 123 level of training 121 and negligence 121-4 state and Commonwealth legislation 122-3 and trustworthiness 184 self-criticism, and self-esteem 22-3 self-respect and clinical errors 201-3 lack of 203-5 Sen, Amartya 47 Sex Discrimination Act 1984 (Cth) 140 Shipman, Harold (Dr) 118 Singer, Peter 225 skill-based errors, and clinical incidents 196 social contract theory of Hobbes 43-4 problems with 46-8 of Rousseau 44-5 social goods 34 social media, privacy and confidentiality 172 speaking out articulating broader purpose in workplace 211 building communication skills 213-14

distinguished from interests 37

as a choice 211 contextualising the situation 212 normalising conflict 211-12 recognising rationalisations 212-13 standard of care determination of 'reasonable' standard 80-1, 114-17 failure to follow 124-5 and scope of practice 121-4 stare decisis 59 statutory interpretation 57-8, 237 - 8statutory law in Australia 53-5 process of passing an Act 56 rules for interpreting 237-8 substantive law 64-5 suicide, vs euthanasia 231 Supreme Courts jurisdiction and role 62 minors and consent 99 sympathy, vs empathy 88-9 Tarasoff v Regents of the University of California 162 Tasmanian Criminal Code Act 1924 (Tas) 224 telephone consultations with patients, protocols 173 telephone inquiries, disclosure of patient information 172-3 therapeutic relationship nature of 189 power and vulnerability 73-5 tort law 65, 68-9 training of nurses, and scope of practice 121 transcultural nursing 138-9 transference 183-4 treatment negotiation of 187-91 presenting information about options 96 tribunals 63 and asymmetry of power 182 and discretionary judgement 180-1 essential features 179-84 lack of 185 misplaced trust 184-5 nature of 178-9 risk and vulnerability 180

and trustworthiness 177–9, 182 - 4and truthfulness 186-7 and uncertainty 179-80 trustworthiness and confidentiality 156-8 and trust 177-9, 182-4 vs transference 183-4 truthfulness and informed consent 135-6 and trust 186-7 uncertainty, and trust 179-80 United Nations Principles for People with Mental Illness and the Improvement of Health Care 107-8 Universal Declaration of Human Rights 35 values and ethical capacity building 210 normalising conflict 211-12 and one's purpose in the workplace 211 speaking out 211 vicarious liability 'control test' 130 multiple test' 131 in negligence actions 129-31 'part and parcel of the organisation test' 130-1 voluntariness, and consent 97-8 voluntary euthanasia 230 vulnerability and ethical life 24-8 legal and moral entitlements and protections 3 meaning of 18-21 risk and trust 180 Waterman, Ian 29 welfare institutions, origins 32-3 whistleblower protection 208, 249-50 Whiteley v Chappell 57 Williams, Bernard 221 workplace culture and error reporting 208 ethical capacity building 210 workplace loyalty, and clinical errors/incidents 208-10