South Australia

Health Care (Miscellaneous) Amendment Act 2016

An Act to amend the Health Care Act 2008.

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the Health Care (Miscellaneous) Amendment Act 2016.
2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

3—Amendment provisions

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 Health Care Act 2008

4—Amendment of section 3—Interpretation

Section 3(1)—after the definition of non-emergency ambulance service insert:

private day procedure centre means premises in respect of which a day procedure centre licence is in force under Part 10A;

private day procedure centre licence—see section 89C;

5—Amendment of section 63—Preliminary

Section 63(1), definition of prescribed health-sector body—after paragraph (e) insert:

(ea) an entity that provides health services at a private day procedure centre; or

6—Amendment of section 68—Preliminary

Section 68(1), definition of health services entity—after paragraph (a) insert:

(ab) an entity that provides health services at a private day procedure centre; or

7—Amendment of section 79—Prohibition of operating private hospitals unless licensed

Section 79(3)—delete subsection (3) and substitute:

(3) This section does not apply in relation to—

(a) premises at which the holder of a licence under this Part (being a licence relating to other premises) provides health services with the written approval of the Minister; or

(b) premises licensed under the Supported Residential Facilities Act 1992.

8—Amendment of section 81—Grant of licence

(1) Section 81(1)(g)—delete paragraph (g)

(2) Section 81(2)—delete subsection (2) and substitute:

(2) The Minister may, by notice in the Gazette, establish standards of construction, facilities and equipment for the premises of private hospitals for the purposes of this Part.
(2a) A notice published by the Minister under subsection (2)—
   (a) may adopt, wholly or partially and with or without
       modification a code, standard, guideline or other document
       prepared or published by a body referred to in the notice (as
       in force at a particular time or from time to time); and
   (b) may be of general or limited application.

(2b) Standards established under subsection (2) do not apply to premises
      in respect of which a license under this Part was in force immediately
      before the commencement of subsection (2) except—
      (a) in relation to any alteration or extension of the premises; or
      (b) where there is a change in the health services provided.

9—Amendment of section 82—Conditions of licence

Section 82(3), (4) and (5)—delete subsections (3), (4) and (5) and substitute:

(3) The holder of a licence may apply to the Minister for the variation of
     the licence or a condition of the licence.

(4) An application under subsection (3) must—
     (a) conform to the requirements of the Minister about its form,
         contents and the manner in which it is made; and
     (b) be accompanied by the fee fixed by the Minister.

(5) The Minister may, on application under subsection (3) or the
     Minister's own motion, vary or revoke a condition of a licence or
     impose a further condition by notice in writing given to the holder
     of the licence.

(6) If the Minister imposes a condition under subsection (5) on the
     Minister's own motion, the condition will not, except with the
     agreement of the licensee, take effect until the expiration of the
     period of 30 days after service of the notice imposing the condition.

10—Insertion of Part 10A

After section 88 insert:

Part 10A—Private day procedure centres

89—Preliminary

(1) In this Part—

conscious sedation means the sedation of a person by the
intravenous administration of one or more drugs such that
communication with the person may be maintained during the
sedation;

declared day hospital means a hospital within the meaning of the
Private Health Insurance Act 2007 of the Commonwealth as at the
prescribed date but does not include—
   (a) an incorporated hospital; or
(b) premises in respect of which a licence is in force under Part 10 at the prescribed date;

*prescribed date* means the date of commencement of section 10 of the *Health Care (Miscellaneous) Amendment Act 2016*;

*prescribed health service* means—

(a) a health service that involves the administration of general, spinal, epidural or major regional block anaesthetic; or

(b) a health service that involves intravenous sedation (other than conscious sedation); or

(c) a health service that involves the administration of local anaesthetic; or

(d) a health service, or health service of a class, prescribed by the regulations for the purposes of this definition.

(2) Paragraph (c) of the definition of *prescribed health service* does not apply in relation to the following health services involving the administration of local anaesthetic:

(a) a health service provided by a medical practitioner in the course of practice as a general practitioner;

(b) a health service provided by a dentist in the course of general dentistry practice;

(c) a health service, or health service of a kind, prescribed by the regulations.

89A—*Standards of construction, facilities and equipment*

(1) The Minister may, by notice in the Gazette, establish standards of construction, facilities and equipment for premises for the purposes of this Part.

(2) In establishing standards under subsection (1) the Minister should consider any relevant codes, standards and guidelines.

(3) A notice published by the Minister under subsection (1)—

(a) may adopt, wholly or partially and with or without modification a code, standard, guideline or other document prepared or published by a body referred to in the notice (as in force at a particular time or from time to time); and

(b) may be of general or limited application.

(4) Standards established under subsection (1) do not apply to a declared day hospital except—

(a) in relation to the alteration or extension of the premises of the declared day hospital after the prescribed date; or

(b) where there is a change in the health services provided at the declared day hospital after the prescribed date.
89B—Prohibition on providing prescribed health services unless licensed

(1) A person must not provide a prescribed health service except at premises in respect of which a licence is in force under this Part.

Maximum penalty: $60 000.

(2) This section does not apply in relation to the provision of prescribed health services—

(a) at an incorporated hospital; or

(b) at premises authorised under Part 10 in respect of such services.

89C—Private day procedure centre licence

(1) A person may apply to the Minister for a licence authorising the provision of prescribed health services at specified premises (aprivate day procedure centre licence).

(2) An application for a private day procedure centre licence must—

(a) conform to the requirements of the Minister about its form, contents and the manner in which it is made; and

(b) contain the information required by the Minister and conform with such other requirements determined by the Minister; and

(c) be accompanied by the fee fixed by the Minister.

(3) If the Minister determines under this section that the private day procedure centre licence should be granted and, in the case of an application in respect of proposed premises, subsequently is satisfied that the premises have been established substantially in accordance with proposals approved by the Minister, the Minister will, on payment of a fee fixed by the Minister, grant the licence to the applicant.

(4) An entity with responsibility for a declared day hospital is, at the date of commencement of this Part, taken to hold a private day procedure centre licence in respect of the declared hospital (the deemed licence) and a provision of this Act that applies in relation to a day procedure licence applies in relation to the deemed licence.

89D—Conditions of licence

(1) Each private day procedure centre licence will be taken to be subject to the conditions prescribed by the regulations.

(2) The Minister may impose such other conditions on a private day procedure centre licence as the Minister thinks fit.

(3) The Minister may, on application or the Minister's own motion, vary or revoke a condition of a private day procedure licence imposed under subsection (2), or impose a further condition on such a licence, by notice in writing given to the holder of the licence.
(4) If the Minister imposes a further condition under subsection (3) on the Minister's own motion, the condition will not, except with the agreement of the licensee, take effect until the expiration of the period of 30 days after service of the notice imposing the condition.

89E—Offence for licence holder to contravene Act or licence condition

The holder of a private day procedure centre licence must not contravene, or fail to comply with, a provision of this Act or a condition of the licence.

Maximum penalty: $60 000.

89F—Duration of licences

(1) Subject to this Part, a private day procedure centre licence remains in force until—

(a) the licence is surrendered; or

(b) the holder of the licence dies or, in the case of a body corporate, is dissolved.

(2) The holder of a private day procedure centre licence must, not later than the prescribed day in each year—

(a) pay to the Minister the annual licence fee fixed by the Minister; and

(b) lodge with the Minister an annual return containing the prescribed information.

(3) If the holder of a private day procedure centre licence fails to pay the annual licence fee or lodge the annual return in accordance with subsection (2), the Minister may, by notice in writing, require the holder to make good the default.

(4) If the holder of a private day procedure centre licence fails to comply with a notice under subsection (3) within 14 days after service of the notice, the licence is, by force of this subsection, suspended until the holder complies with the notice.

(5) If a private day procedure centre licence has been suspended by virtue of subsection (4) for a continuous period of 6 months, the licence is, by force of this subsection, cancelled.

89G—Transfer of licence

(1) An application may be made to the Minister for the transfer of a private day procedure centre licence.

(2) An application for the transfer of a private day procedure centre licence must—

(a) conform to the requirements of the Minister about its form, contents and the manner in which it is made; and
(b) contain the information required by the Minister and conform with such other requirements determined by the Minister; and

(c) be accompanied by the fee fixed by the Minister.

(3) An applicant must furnish the Minister with such further information as the Minister may require to determine the application.

(4) The Minister will, on application under this section and payment of the fee fixed by the Minister, transfer the licence to the proposed transferee if the Minister is satisfied as to the suitability of the person to hold a licence under this Part.

89H—Surrender, suspension and cancellation of licences

(1) The holder of a private day procedure centre licence may, at any time, surrender the licence (and the licence then ceases to be of force or effect).

(2) The Minister may, after giving 30 days notice in writing to the holder of a private day procedure centre licence to show cause why the licence should not be suspended or cancelled, suspend or cancel the licence, if the Minister is satisfied—

(a) that the grant or transfer of the licence was obtained improperly; or

(b) that the holder of the licence has contravened, or failed to comply with, a provision of this Act or a condition of the licence.

(3) If the Minister suspends a private day procedure centre licence, the Minister may order that the suspension be for a specified period or until the fulfilment of stipulated conditions or until further order.

(4) If the Minister cancels a private day procedure centre licence, the Minister may order that the cancellation have effect at a specified future time and impose conditions as to the provision of health services in pursuance of the licence until that time.

(5) If a condition is imposed in relation to a private day procedure centre licence under subsection (4), the holder of the licence must not contravene, or fail to comply with, the condition.

Maximum penalty: $60 000.

(6) A private day procedure centre licence—

(a) that is suspended under subsection (2) ceases to be of force or effect for the period of the suspension; or

(b) that is cancelled under that subsection ceases to be of force or effect.

89I—Appeal against decision or order of Minister

(1) A right of appeal to the Supreme Court lies against a decision or order of the Minister under this Part.
The appeal must be instituted within 1 month of the making of the decision or order appealed against, but the Supreme Court may, if it is satisfied that it is just and reasonable in the circumstances to do so, extend that period (whether or not it has already expired).

The Supreme Court may, on the hearing of the appeal, do 1 or more of the following, according to the nature of the case:

(a) affirm, vary or quash the decision or order appealed against or substitute, or make in addition, any decision or order that should have been made in the first instance;

(b) remit the subject matter of the appeal to the Minister for further consideration;

(c) make any further or other order as to costs or any other matter that the case requires.

The Minister must, if so required by a person affected by a decision or order made by the Minister under this Part, state in writing the reasons for the decision or order.

If the reasons of the Minister are not given in writing at the time of making a decision or order and the appellant then requests the Minister to state the Minister's reasons in writing, the time for instituting the appeal runs from the time when the appellant receives the written statement of those reasons.

If the Minister or the Supreme Court is satisfied that an appeal against an order of the Minister has been instituted or is intended, the Minister or the Supreme Court may suspend the operation of the order until the determination of the appeal.

If the Minister has suspended the operation of an order under subsection (6), the Minister may terminate the suspension and, where the Supreme Court has done so, the Supreme Court may terminate the suspension.

**89J—Inspectors**

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

A person appointed as an inspector by the Minister under section 88 will be taken to be an inspector appointed under subsection (1).

An inspector appointed under subsection (1) may, at any reasonable time, enter a private day procedure centre or premises reasonably suspected of being used in contravention of this Part 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.

(4) A person must not refuse or fail to comply with a requirement made pursuant to this section.  
Maximum penalty: $10 000.

(5) A person must not hinder or obstruct an inspector in the exercise by the inspector of the powers conferred by this section.  
Maximum penalty: $10 000.

89K—Vicarious liability

(1) For the purposes of this Part, an act or omission of an employee or agent will be taken to be the act or omission of the employer or principal unless it is proved that the act or omission did not occur in the course of the employment or agency.

(2) Where an agent or employee is convicted of an offence against this Part, the principal or employer is also guilty of an offence and liable to a penalty not exceeding the maximum prescribed for the offence committed by the agent or employee, unless it is proved that the principal or employer could not, by the exercise of reasonable diligence, have prevented the commission of the offence by the agent or employee.

(3) If a body corporate is guilty of an offence against this Part, each director of the body corporate is guilty of an offence and liable to the same penalty as is prescribed for the principal offence unless the director proves that he or she could not by the exercise of due diligence have prevented the commission of the offence.

11—Insertion of section 99A

After section 99 insert:

99A—Fees

(1) The Minister may, by notice in the Gazette, set fees and charges for the purposes of this Act.

(2) The Minister may remit, reduce, waive or refund a fee (or part of a fee) payable under this Act as the Minister sees fit.

12—Amendment of section 100—Regulations

(1) Section 100(2)(b)—after "hospital" insert:  
or private day procedure centre

(2) Section 100(2)(c)—after "hospital" insert:  
or private day procedure centre

(3) Section 100(2)(l)—delete paragraph (l)

(4) Section 100(2)(m)—after "private hospitals" insert:  
and private day procedure centres
(5) Section 100(2)(n)—after "private hospitals" insert:
    and private day procedure centres

(6) Section 100(2)(o)—delete paragraph (o)