

House of Assembly—No 34A

As reported with amendments, report agreed to and passed remaining stages,
26 July 2018

South Australia

Health Care (Governance) Amendment Bill 2018

A BILL FOR

An Act to amend the *Health Care Act 2008*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Health Care (Governance) Amendment Act 2018*.

2—Commencement

5 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

(1) Section 3(1), definition of *Department*—delete the definition and substitute:

Department means the administrative unit of the Public Service that is responsible for assisting a Minister in the administration of this Act;

(2) Section 3(1)—after the definition of *employing authority* insert:

15 *governing board*—see section 33;

5—Amendment of section 4—Objects of Act

Section 4—after paragraph (c) insert:

and

20 (d) to facilitate the efficient and effective governance and oversight of incorporated hospitals through the establishment of governing boards.

6—Amendment of section 5—Principles

Section 5(f)—after subparagraph (vii) insert:

and

25 (viii) that achieves an effective balance between local decision-making in relation to incorporated hospitals and health system planning, integration and management;

7—Amendment of section 7—Chief Executive

30 (1) Section 7(1)(b)—delete ", to assume direct responsibility for the administration of incorporated hospitals"

(2) Section 7(1)—after paragraph (d) insert:

(da) to contribute to and implement statewide service plans that apply to incorporated hospitals;

8—Amendment of section 11—Functions of HPC

- (1) Section 11(2)—after paragraph (a) insert:
- (ab) governing boards of incorporated hospitals; and
- (2) Section 11(6)—after "the Department," insert:
- 5 the governing board for an incorporated hospital,

9—Amendment of section 18—Functions

- Section 18(1)—after paragraph (h) insert:
- (ha) to provide advice to the governing board for an incorporated hospital about any matter referred to it by the board;

10—Amendment of section 30—Hospital to serve the community

- Section 30—delete "or the Chief Executive" and substitute:
- 10 , the Chief Executive or the governing board for the hospital

11—Substitution of section 33

- Section 33—delete the section and substitute:

33—Governance and management arrangements

- 15 (1) Each incorporated hospital is to be governed by a board (a *governing board*).
- (2) The functions of a governing board for an incorporated hospital include the following:
- 20 (a) to ensure effective clinical and corporate governance frameworks are established to support the maintenance and improvement of standards of patient care and services by the incorporated hospital and to approve those frameworks;
- (b) to ensure—
- 25 (i) the operations of the incorporated hospital are carried out efficiently, effectively and economically; and
- (ii) the incorporated hospital manages its budget so that performance targets are met; and
- 30 (iii) that hospital resources are applied equitably to meet the needs of the community served by the incorporated hospital;
- (c) to ensure strategic plans to guide the delivery of services are developed for the incorporated hospital and to approve those plans;
- 35 (d) to provide strategic oversight of and monitor the incorporated hospital's financial and operational performance;
- (e) to prepare and keep under review strategies—

- 5
- (i) for the provision of health services by the incorporated hospital; and
- (ii) to promote consultation with health professionals working in the incorporated hospital; and
- 10
- (iii) to promote consultation with health consumers and community members about the provision of health services by the incorporated hospital;
- (f) to advise providers and consumers of health services, and other members of the community served by the incorporated hospital, as to the hospital's policies, plans and initiatives for the provision of health services;
- 15
- (g) to manage performance against the performance measures in the service agreement between the incorporated hospital and the Chief Executive;
- (h) to cooperate with other providers of health services, including providers of primary health care, in planning for, and providing, health services;
- (i) to endorse the incorporated hospital's annual report;
- 20
- (j) to liaise with the boards of other incorporated hospitals and the Chief Executive in relation to both local and statewide initiatives for the provision of health services.
- (3) A governing board is also to carry out other functions assigned to the board by or under this or any other Act, or by the Minister.
- (4) The governing board for an incorporated hospital—
- 25
- (a) must comply with any directions of the Minister and any directions of the Chief Executive; and
- (b) must comply with any policies of the Department specified by the Minister or the Chief Executive to apply to a governing board in the performance of its functions; and
- 30
- (c) must not exercise a function in a way that is inconsistent with the exercise of a function by the Chief Executive (including a function that has been delegated to the Chief Executive).
- (5) An act done or decision made by the governing board for an incorporated hospital in the course of official functions and duties is an act or decision of the incorporated hospital.
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33A—Engagement strategies

- (1) The governing board for an incorporated hospital must develop and publish the following strategies:
- 40
- (a) a strategy to promote consultation with health professionals working in the incorporated hospital (a *clinician engagement strategy*);

(b) a strategy to promote consultation with health consumers and members of the community about the provision of health services by the incorporated hospital (a *consumer and community engagement strategy*).

- 5 (2) The governing board must consult with the following persons in developing the strategies:
- (a) for the clinician engagement strategy—health professionals working in the incorporated hospital;
- 10 (b) for the consumer and community engagement strategy—health consumers and members of the community.
- (3) A strategy developed and published under this section must—
- (a) satisfy any requirements prescribed by regulation for that strategy; and
- 15 (b) be published in a way that allows the strategy to be accessed by members of the public, including, for example, on the Internet.
- (4) The governing board and the incorporated hospital must give effect to the strategies developed and published under this section in performing functions under this Act.

20 **33B—Composition of governing boards for incorporated hospitals**

- (1) A governing board for an incorporated hospital consists of 6 or more members (but not more than 8) appointed by the Minister, being
- 25 persons who collectively have, in the opinion of the Minister, knowledge, skills and experience necessary to enable the board to carry out its functions effectively.
- (2) As far as is practicable, the membership of a governing board for an incorporated hospital must comprise persons who between them have knowledge of, and experience and expertise in, the following fields:
- 30 (a) health management;
- (b) clinical governance;
- (c) commercial management;
- (d) financial management;
- (e) the practice of the law;
- 35 (f) the provision of health services;
- (g) Aboriginal health or other fields that, in the opinion of the Minister, will enable the effective performance of the board's functions.
- (3) At least 2 members of a governing board must be health
- 40 professionals.

- (5) A person is not eligible for appointment to the governing board for an incorporated hospital if—
- (a) the person is employed to work at the incorporated hospital; or
 - (b) the person provides a service to the incorporated hospital; or
 - (c) the person is an employee of the Department.
- (6) A governing board must, as far as practicable, be comprised of equal numbers of women and men.
- (7) On the office of a member of a governing board becoming vacant, a person may be appointed in accordance with this Act to the vacant office.
- (8) The Minister may appoint a suitable person to be the deputy of a member of a governing board during any period of absence of the member (and any reference to a member in this Act will be taken to include, unless the contrary intention appears, a reference to a deputy while acting as a member of the board).
- (9) In this section—
- health professional* means—
- (a) an individual who holds, or has previously held, general registration in a health profession under the *Health Practitioner Regulation National Law (South Australia)*; or
 - (b) an individual who practises, or has previously practised, a profession providing health services involving the provision of care or treatment to other persons (directly or indirectly).

33C—Members of governing boards for incorporated hospitals to act in public interest

A member of a governing board for an incorporated hospital is to act impartially and in the public interest in performing the member's duties.

33D—Disclosure of pecuniary or personal interest

- (1) A member of a governing board who has a pecuniary or personal interest in a matter being considered or about to be considered by the board must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the board.

Maximum penalty: \$25 000.

- (2) A member of a committee who has a pecuniary or personal interest in a matter being considered or about to be considered by the committee must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a committee meeting.

Maximum penalty: \$25 000.

- 5
- (3) A member of a governing board or a committee who has a pecuniary or personal interest in a matter being considered or about to be considered by the board or the committee—
- (a) must not vote, whether at a meeting or otherwise, on the matter; and
- (b) must not be present while the matter is being considered at the meeting.
- (4) Subsection (3) does not apply if—
- 10 (a) a member of a governing board or committee has disclosed an interest in a matter under subsection (1) or (2); and
- (b) the board or committee (as the case requires) has at any time passed a resolution that—
- 15 (i) specifies the member, the interest and the matter; and
- (ii) states that the members voting for the resolution are satisfied that the interest is so trivial or insignificant as to be unlikely to influence the disclosing member's conduct and should not disqualify the member from considering or voting on the matter.
- 20 (5) Despite a provision of Schedule 3, if a member of a governing board is disqualified under subsection (3) in relation to a matter, a quorum is present during the consideration of the matter if at least half the number of members who are entitled to vote on any motion that may be moved at the meeting in relation to the matter are present.
- 25 (6) The Minister may by instrument in writing declare that subsection (3) or subsection (5), or both, do not apply in relation to a specified matter either generally or in voting on particular resolutions.
- 30 (7) The Minister must cause a copy of a declaration under subsection (6) to be laid before both Houses of Parliament within 14 sitting days after the declaration is made.
- (8) Particulars of a disclosure made under subsection (1) or (2) at a meeting of a governing board or committee of a governing board must be recorded—
- 35 (a) in the minutes of the meeting; and
- (b) in a register kept by the board which must be reasonably available for inspection by any person.
- (9) A reference in subsection (3) to a matter includes a reference to a proposed resolution under subsection (4) in respect of the matter, whether relating to that member or a different member.
- 40 (10) Subsection (2) applies to a person who is a member of a committee and also a member of a governing board even though the person has already disclosed the nature of the interest at a board meeting.

- (11) A contravention of this clause does not invalidate any decision of the Board.
- (12) Section 8 of the *Public Sector (Honesty and Accountability) Act 1995* does not apply to a member of a governing board.
- 5 (13) In this section—
committee means a committee or subcommittee established by a governing board under Schedule 3 clause 10.

33E—Chief executive officer for incorporated hospital

- 10 (1) The governing board for an incorporated hospital may, after consultation with the Chief Executive, appoint—
- (a) a specified person; or
 - (b) a person occupying a specified office or position, as the chief executive officer of the incorporated hospital.
- (2) An appointment under subsection (1)—
- 15 (a) takes effect following confirmation of the appointment by the Chief Executive; and
 - (b) is revocable by the governing board at any time, subject to the confirmation of the Chief Executive.
- (3) The chief executive officer of an incorporated hospital is responsible for managing the operations and affairs of the hospital and is accountable to, and subject to the direction of, the governing board for the hospital in undertaking that function (although the governing board cannot give a direction concerning the medical treatment of a particular person).
- 20 (4) An act done or decision made by the chief executive officer of an incorporated hospital in the course of official functions and duties is an act or decision of the incorporated hospital.

33F—Provisions relating to members, procedures, committees and subcommittees etc

30 Schedule 3 applies in respect of governing boards for incorporated hospitals.

12—Insertion of Part 5 Division 10

Part 5—after Division 9 insert:

Division 10—Inspectors

48A—Inspectors

- 35 (1) The Minister may, by instrument in writing, appoint suitable persons to be inspectors for the purposes of inspecting, investigating and assessing the administration, operations and governance of incorporated hospitals.

(2) An inspector holds office on the conditions stated in the instrument of appointment.

(3) An inspector appointed under subsection (1) may, at any reasonable time, enter the premises of an incorporated hospital (including the premises of the governing board for 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 answer any questions, orally or in writing; and

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

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

(e) seize any documents or records that, in the opinion of the inspector, constitute evidence of a breach of a provision of this Act.

(4) An inspector must, at the request of a person in relation to whom the inspector intends to exercise powers under this section, produce for the inspection of the person the inspector's instrument of appointment, or a copy of the instrument.

(5) An inspector may, in exercising powers under this section, be assisted by such other persons as are reasonably necessary for the purpose.

(6) A person must not refuse or fail to comply with a requirement made pursuant to this section.

Maximum penalty: \$10 000.

(7) A person must not hinder or obstruct an inspector, or a person assisting an inspector, in the exercise of the powers conferred by this section.

Maximum penalty: \$10 000.

13—Amendment of section 93—Confidentiality

Section 93(1)—after paragraph (a) insert:

(ab) a member of the governing board for an incorporated hospital; or

14—Insertion of section 102

After section 101 insert:

102—Review of Act

(1) The Minister must, as soon as practicable after 1 July 2022, appoint an independent person to conduct a review of, and prepare a report on—

(a) the operation of this Act, including the extent to which—

- (i) the objects of this Act have been attained; and
- (ii) the principles of this Act have been applied; and
- (b) any other matters determined by the Minister to be relevant to a review of this Act.

- 5
- (2) A person appointed to conduct a review and prepare a report under this section must have expertise in health care administration or health service delivery.
 - (3) A review and report by a person appointed under this section must be completed within 6 months of the person's appointment.
 - 10 (4) The Minister must, within 12 sitting days after receipt of a report under this section, cause a copy of the report to be laid before both Houses of Parliament.

15—Substitution of Schedule 3

Schedule 3—delete the Schedule and substitute:

15

Schedule 3—Governing boards for incorporated hospitals

1—Chairperson and Deputy Chairperson

- 20
- (1) The Minister is to appoint 1 of the members of a governing board (by the member's instrument of appointment or by other instrument executed by the Minister) as Chairperson of the board.
 - (1a) The Minister may appoint 1 of the members of a governing board (by the member's instrument of appointment or by other instrument executed by the Minister) as Deputy Chairperson of the board and, if a member is so appointed, that member will, in the absence of the Chairperson, act in the office of the Chairperson.
 - 25 (2) The Minister may remove a member from the office of Chairperson or Deputy Chairperson of a governing board at any time.
 - (3) A person holding office as Chairperson or Deputy Chairperson of a governing board vacates that office if the person—
 - 30 (a) is removed from that office by the Minister; or
 - (b) resigns by written notice to the Minister; or
 - (c) ceases to be a member of the board.

2—Term of office

- 35
- (1) Subject to this Act, a member of a governing board holds office for such period (not exceeding 3 years) as may be specified in the member's instrument of appointment and is eligible for reappointment at the expiration of a term of office.
 - (2) A member of a governing board may not hold office for more than 9 consecutive years.

- (3) A member of a governing board whose term of office expires (other than by the resignation of the member or removal by the Minister) without a person having been appointed to fill the vacancy continues in office until whichever of the following occurs first:

- (a) a person is appointed to fill the vacancy;
- (b) a period of 3 months elapses after the expiry of the term of office.

3—Remuneration

- (1) A member of a governing board is entitled to remuneration, allowances and expenses determined by the Minister.
- (2) The Minister must cause the remuneration, allowances and expenses determined under this clause to be published on a website determined by the Minister that is accessible by the public at no charge.
- (3) The Chairperson of a governing board must ensure that travel or entertainment expenses incurred by the board in respect of the performance by a member of the member's functions and duties are disclosed on a website accessible to the public at no charge not more than 60 days after the day on which they are paid for by the board (whether directly or by reimbursement to the member).

4—Removal from office

The Minister may remove a member of a governing board from office—

- (a) for breach of, or non-compliance with, a condition of appointment; or
- (b) for misconduct; or
- (c) for failure or incapacity to carry out official duties satisfactorily.

5—Vacancy in office of member

- (1) The office of a member of a governing board becomes vacant if the member—
- (a) dies; or
- (b) completes a term of office and is not reappointed; or
- (c) resigns by written notice to the Minister; or
- (d) becomes an insolvent under administration within the meaning of the *Corporations Act 2001* of the Commonwealth; or
- (e) is convicted in South Australia of an offence that is punishable by imprisonment for a term of 12 months or more, or is convicted elsewhere than in South Australia of an offence that, if committed in South Australia, would be an offence so punishable; or

- (f) is removed from office under clause 4.
- (2) If the office of a member of a governing board becomes vacant, a person may, subject to this Act, be appointed to fill the vacancy.

6—Validity of acts

5 An act or proceeding of a governing board is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.

8—Public meetings

- 10 (1) A governing board must hold an annual public meeting between 1 October and 31 December in each year at which—
- (a) the annual report of the incorporated hospital for the previous financial year is presented to members of the public; and
- (b) any member of the public in attendance at the meeting is entitled to address the meeting.
- 15
- (2) The holding of the meeting under subsection (1) is to be advertised in at least 1 newspaper circulating generally in the area of the incorporated public hospital and by such other means (including on a website accessible by the public at no charge) as the governing board determines.
- 20

9—Procedures

- (1) A quorum of a governing board consists of a majority of its members for the time being.
- 25 (2) The agenda for a meeting of a governing board must, at least 7 days before the meeting is to be held, be published on a website accessible by the public at no charge.
- (3) The Chairperson or, in the absence of the Chairperson, the Deputy Chairperson (if any) or, in the absence of both, another member elected to chair the meeting by the members present, is to preside at a meeting of a governing board.
- 30 (4) A decision carried by a majority of the votes cast by the members present at a meeting of a governing board is a decision of the board.
- (5) A conference by telephone or other electronic means between the members of a governing board will, for the purposes of this section, be taken to be a meeting of the board at which the participating members are present if—
- 35 (a) notice of the conference is given to all members in the manner determined by the board for the purpose; and
- (b) each participating member is capable of communicating with every other participating member during the conference.
- 40

(6) A proposed resolution of a governing board becomes a valid decision of the board despite the fact that it is not voted on at a meeting of the board if—

- (a) notice of the proposed resolution is given to all members in accordance with procedures determined by the board; and
- (b) a majority of the members express concurrence in the proposed resolution by letter, fax, email or other written communication setting out the terms of the resolution.

(7) A governing board must have accurate minutes kept of its meetings and must, within 7 days of a meeting, publish the approved minutes of the meeting on a website accessible by the public at no charge.

(8) Subject to this Act and the regulations, a governing board may determine its own procedures.

10—Committees and subcommittees

(1) A governing board may establish committees or subcommittees as the board thinks fit to advise the board on any aspect of its functions, or to assist the board in the performance of its functions.

(2) A committee or subcommittee established under subclause (1) may, but need not, consist of, or include, members of the governing board.

(3) The procedures to be observed in relation to the conduct of business of a committee or a subcommittee established by a governing board will be—

- (a) as prescribed by regulation; or
- (b) insofar as the procedure is not prescribed by regulation—as determined by the board; or
- (c) insofar as the procedure is not prescribed by regulation or determined by the board—as determined by the relevant committee or subcommittee.

(4) A member of a committee or subcommittee established under this section is entitled to remuneration, allowances and expenses determined by the governing board with the approval of the Minister.

11—Appointment of advisers

(1) The Minister may appoint a person to be an *adviser* to a governing board if the Minister considers that the adviser may assist the board to improve the performance of—

- (a) the board; or
- (b) the incorporated hospital governed by the board.

(2) The Minister must not appoint more than 2 persons to be advisers to a governing board at the same time.

(3) In deciding whether to appoint an adviser to a governing board, the Minister may have regard to the performance of the board or the incorporated hospital governed by the board in relation to the following:

- (a) the safety and quality of health services being provided by the incorporated hospital;
- (b) the compliance of the board with this Act and any service agreement applying to the board;
- (c) the financial management of the incorporated hospital.

(4) An adviser holds office for the period (not exceeding 1 year) specified in the adviser's instrument of appointment.

(5) An adviser to a governing board is entitled to remuneration, allowances and expenses determined by the Minister.

12—Functions of advisers

(1) An adviser is to provide advice to, and otherwise assist, a governing board in the performance of its functions and, for that purpose, is entitled—

- (a) to receive notice of any meeting of the board; and
- (b) to have access to papers provided to members of the board for the purposes of any meetings; and
- (c) to attend, and participate in, any meeting of the board (but has no entitlement to vote and must not be present at the time that a vote is taken).

(2) An adviser must, as required by the Minister, provide reports to the Minister and the Chief Executive on any matter relating to the operation of the governing board and the incorporated hospital under the management, administration and control of the board.

13—Dismissal of governing board

(1) The Minister may, at any time, dismiss all the members of a governing board if satisfied that—

- (a) the board has failed to perform its functions effectively; or
- (b) the board has failed to comply with a provision of this Act; or
- (c) the board has failed to comply with a direction of the Minister or the Chief Executive.

(2) If the Minister dismisses all the members of a governing board under subclause (1), the office of each member of the board becomes vacant.

(3) The Minister must, within 12 sitting days after the dismissal of a governing board under this section, cause notice of the dismissal to be laid before both Houses of Parliament.

14—Administrators

- 5
- (1) If the members of a governing board are dismissed under clause 13 or for some other reason there are no members of a governing board at any time, the Minister may appoint the Chief Executive or other qualified person to administer and perform the functions of the board subject to any conditions specified in the instrument of appointment.
- (2) An act done or decision made by an administrator in administering and performing the functions of a governing board is an act or decision of the board.
- 10
- (3) An administrator is entitled to remuneration, allowances and expenses determined by the Minister.
- (4) The Minister may revoke the appointment of an administrator for any reason before the term of appointment expires, either to appoint a different person as administrator or to appoint new members of a governing board.
- 15
- (5) In this section—
qualified person means a person the Minister considers has the necessary qualifications and experience to perform the functions of a governing board.

15—Use of facilities etc

20

A governing board may, with the approval of the responsible Minister or, if relevant, a responsible public sector instrumentality, make use of the staff, services or facilities of an administrative unit or another public sector instrumentality.