

Legislative Council—No 94A

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South Australia

Health Care (Governance) Amendment Bill 2019

A BILL FOR

An Act to amend the *Health Care Act 2008* and to make related amendments to the *Mental Health Act 2009*.

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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 2019*.

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 5—Principles

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

- (iva) that is inclusive of primary health care networks, Aboriginal and Torres strait Islander health services and public health services provided in local government, aged care and disability sectors; and

5—Amendment of section 7—Chief Executive

(1) Section 7(1)(b) to (i)—delete paragraphs (b) to (i) (inclusive) and substitute:

- (b) to assist and advise the Minister in relation to—
 - (i) the provision of health services within the State; and
 - (ii) the protection or promotion of public health within the State;
- (c) to assist and advise the Minister in the development and implementation of planning for the health system statewide;
- (d) to provide strategic leadership and direction for the provision of public health services in the State;
- (e) to promote the effective and efficient use of available resources in the provision of public health services in the State;
- (f) to establish and maintain a body that independently represents the interests of consumers and patients;
- (g) to engage with consumer representatives and other interested parties in the development of health care policy, planning and service delivery;
- (h) to contribute to and implement statewide service plans that apply to incorporated hospitals and SAAS;
- (i) to undertake workforce planning for the health system statewide;

- 5
- (j) to ensure that a highly trained workforce is valued within the health system;
- (k) to oversee, monitor and promote improvements in the safety and quality of health services provided by incorporated hospitals and SAAS;
- (l) to develop and issue policies and directives to apply to the Department, incorporated hospitals and SAAS;
- 10 (m) to monitor the performance of incorporated hospitals and SAAS, and to take remedial action if agreed performance measures and operational targets are not met;
- (n) to receive and evaluate performance data and other data provided by incorporated hospitals and SAAS;
- 15 (o) at the request of the Minister, to provide advice on any other matter in relation to which the Minister considers that the advice of the Chief Executive should be available;
- (p) to facilitate the provision of laboratory, research or other similar facilities, including on account of a request by a Minister under section 6(1)(ka);
- 20 (q) such other functions assigned to the Chief Executive by or under this or any other Act, or assigned to the Chief Executive by the Minister in connection with the operation of this or any other Act.

(2) Section 7—after subsection (1) insert:

- (1a) The Chief Executive may issue policies and directives that are to be complied with by the Department, incorporated hospitals and SAAS.

6—Insertion of Part 3

Before Part 4 insert:

Part 3—Mental Health Commissioner

9—Appointment

- 30 (1) There is to be a *Mental Health Commissioner*.
- (2) The Commissioner is appointed by the Governor.

10—Terms and conditions of appointment

- 35 (1) The Commissioner will be appointed for a term not exceeding 5 years and on conditions determined by the Governor and, at the end of a term of appointment, will be eligible for reappointment.
- (2) The appointment of the Commissioner may be terminated by the Governor on the ground that the Commissioner—
- (a) has been guilty of misconduct; or
- (b) has been convicted of an offence punishable by imprisonment; or

- (c) has become bankrupt or has applied to take the benefit of a law for the relief of insolvent debtors; or
- (d) has, because of mental or physical incapacity, failed to carry out duties of the position satisfactorily; or
- 5 (e) is incompetent or has neglected the duties of the position.
- (3) The appointment of the Commissioner is terminated if the Commissioner—
- (a) becomes a member, or a candidate for election as a member, of the Parliament of a State or the Commonwealth or a
10 Legislative Assembly of a Territory of the Commonwealth; or
- (b) is sentenced to imprisonment for an offence.
- (4) The Commissioner may resign by notice in writing to the Minister of not less than 3 months (or such shorter period as is accepted by the
15 Minister).

11—Temporary appointments

The Minister may appoint a person (who may but need not be an employee in the Public Service) to act as the Commissioner—

- (a) during a vacancy in the office of Commissioner; or
- 20 (b) when the Commissioner is absent from, or unable to discharge, official duties; or
- (c) if the Commissioner is suspended from office under this Act.

12—Honesty and accountability

25 The Commissioner and any other person appointed to act as the Commissioner are senior officials for the purposes of the *Public Sector (Honesty and Accountability) Act 1995*.

13—Functions

- (1) The Commissioner has the following functions:
- 30 (a) to identify and review issues about—
- (i) mental illness in South Australian communities, including within aged care, disability and Aboriginal and Torres Strait Islander communities; and
- 35 (ii) the provision of mental health services in South Australia;
- (b) to inquire into and report on any matter relating to mental illness and mental health services on the Commissioner's own motion, at the request of the Minister, the Chief
40 Executive, a patient or a body or person representing the interests of consumers or patients;

- (c) to review and identify any causes of concern with—
- (i) the provision of mental health services; and
 - (ii) trends in the delivery of mental health services and the mental health of the population;
- (d) to advise, and report to, the Minister on any matter relating to mental health services and issues or trends in the area of mental illness; and
- (e) to maintain links with—
- (i) mental health service providers; and
 - (ii) organisations that have an interest in the provision of mental health services; and
 - (iii) organisations that represent the interests of patients and consumers of mental health services; and
- (f) to perform other functions conferred on the Commissioner by or under this or any other Act.

14—Annual report

- (1) The Commissioner must, on or before 30 September in every year, forward a report to the Minister on the work of the Commissioner under this Act during the financial year ending on the preceding 30 June.
- (2) The Minister must, within 6 sitting days after receiving a report under this section, have copies of the report laid before both Houses of Parliament.

7—Insertion of Part 4A

After Part 4 insert:

Part 4A—Service agreements

28A—Preliminary

In this Part—

health service provider means a party to a service agreement (other than the Chief Executive);

service agreement—see section 28B(1).

28B—Service agreement with Chief Executive

- (1) The Chief Executive must enter into an agreement (a *service agreement*) relating to the provision of health services with the following:
- (a) each incorporated hospital;
 - (b) SAAS.

- (2) A service agreement must specify—
- (a) the health services to be provided to the State by the health service provider, including particulars relating to the volume, scope and standard of services; and
 - 5 (b) the teaching, training and research to be provided in support of the provision of health services; and
 - (c) the funding to be provided to the health service provider for the provision of the services, including the way in which the funding is to be provided; and
 - 10 (d) that each health service provider must operate programs that promote the provision of health care for Aboriginal and Torres Strait Islander people; and
 - (e) the performance measures and operational targets for the provision of the services by the health service provider; and
 - 15 (f) how the evaluation and review of results in relation to the performance measures and operational targets are to be carried out; and
 - (g) the performance data and other information to be provided by the health service provider to the Chief Executive, including how, and how often, the data is to be provided; and
 - 20 (h) any other matter the Chief Executive considers relevant to the provision of the services by a health service provider; and
 - 25 (i) any other matter prescribed by the regulations.
- (3) A service agreement may—
- (a) deal with matters relating to funding provided by the Commonwealth (despite the fact that the Commonwealth is not a party to the agreement); and
 - 30 (b) state the circumstances in which the health service provider (the *first provider*) may agree with another health service provider to provide services for the first provider.
- (4) Negotiations relating to a service agreement must be conducted in accordance with a policy established by the Chief Executive and any requirements prescribed by the regulations.
- 35 (5) Health consumer and community representatives should be consulted as part of the development of a service agreement.
- (6) A service agreement entered into under subsection (1) is binding on the Chief Executive and the relevant incorporated hospital or SAAS.

40 **28C—General provisions about service agreements**

- (1) A service agreement has effect for the term specified in the agreement.

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- (2) A service agreement is entered into by an incorporated hospital by the chief executive officer of the incorporated hospital signing the service agreement with the approval of the governing board for the incorporated hospital.
- (3) A service agreement is entered into by SAAS by the chief executive officer of SAAS signing the service agreement.
- (4) A service agreement may be varied by agreement between the parties, provided that a party that seeks to vary a service agreement gives the other party 14 days notice of the proposed variation.
- 10 (5) If the parties entering into or proposing to vary a service agreement cannot agree on a term or variation of the agreement, the Minister may make a decision about the term or proposed variation and must advise the parties of the decision in writing.
- (6) A term or variation decided under subsection (5) will be taken to be a term or variation of a service agreement.
- 15 (7) The Chief Executive must, within 14 days after a service agreement is entered into or varied, publish the service agreement, or the agreement as varied, in a way that allows the agreement to be accessed by members of the public (including, for example, on the Internet).
- 20

8—Amendment of section 29—Incorporation

Section 29—after subsection (6) insert:

- 25 (7) The Minister may, by instrument in writing, transfer any asset, right or liability acquired or assumed by the Minister under subsection (6) to—
- (a) another Minister; or
- (b) an incorporated hospital; or
- (c) the Crown, or to another agent or instrumentality of the Crown; or
- 30 (d) with the agreement of the person or body—a person or body that is not an agent or instrumentality of the Crown.
- (8) A notice under subsection (7) may make other provisions that in the opinion of the Minister are necessary or expedient in connection with the relevant transfer.

9—Amendment of section 33—Governance and management arrangements

Section 33(2)—after paragraph (c) insert:

- 40 (ca) to ensure that each incorporated hospital operates programs that promote preventative and primary health care, including the preventative and primary health care of Aboriginal and Torres Strait Islander people, within local communities;

10—Amendment of section 33A—Engagement strategies

(1) Section 33A(2)—after "developing" insert:

and reviewing

(2) Section 33A—after subsection (3) insert:

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(3a) The governing board for an incorporated hospital must complete a review of each strategy published under this section within 3 years after it is first published and thereafter within 3 years after each review.

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(3b) If an amended strategy, or new strategy, is developed as a result of a review under subsection (3a), the governing board must publish the amended strategy, or new strategy, (as the case requires) in accordance with the requirements of this section.

11—Amendment of section 33B—Composition of governing boards for incorporated hospitals

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(1) Section 33B(5)(a)—after "employed" insert:

or engaged

(2) Section 33B(5)(b)—delete paragraph (b)

12—Amendment of section 33E—Chief executive officer for incorporated hospital

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Section 33E(3)—delete "medical" and substitute:

clinical

13—Amendment of section 34—Employed staff

Section 34—after subsection (8) insert:

(8a) If—

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(a) the chief executive officer of an incorporated hospital is designated as an employing authority; or

(b) a power or function of an employing authority under this section is delegated to the chief executive officer of an incorporated hospital,

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no direction may be given by the governing board of the incorporated hospital to the chief executive officer relating to the appointment, transfer, remuneration, discipline or termination of a particular person.

14—Amendment of section 50—Management arrangements

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Section 50(4)—delete "medical" and substitute:

clinical

15—Amendment of section 78—Testamentary gifts and trusts

(1) Section 78(1)(a)—after "a prescribed entity" insert:

or a part of a prescribed entity

(2) Section 78(1)(c)(i)—after "the prescribed entity" insert:

or the relevant part of the prescribed entity (as the case requires)

(3) Section 78(1)(c)(ii)—after "the prescribed entity" insert:

or the relevant part of the prescribed entity (as the case requires)

(4) Section 78—after subsection (1) insert:

(1a) If—

(a) a testamentary disposition has been made in favour of, or a trust has been created for the benefit of, a prescribed entity that was a hospital or health centre incorporated under the repealed Act and that has been dissolved; and

(b) —

(i) all of the functions of the prescribed entity have been transferred to an incorporated hospital under this Act; or

(ii) subparagraph (i) does not apply and the Minister has, by instrument published in the Gazette, identified an incorporated hospital or an incorporated HAC under this Act that, in the Minister's opinion, is the appropriate incorporated hospital or incorporated HAC (as the case requires) to assume the benefit of the testamentary disposition, taking into account the transfer of functions of the prescribed entity on and after its dissolution,

then the disposition will be taken to be made, or the trust will be taken to be created, (as the case requires) in favour of—

(c) in a case where paragraph (b)(i) applies—

(i) subject to subparagraph (ii) of this paragraph—the relevant incorporated hospital; or

(ii) if the constitution of an incorporated HAC provides that the HAC is to assume the benefit of any testamentary disposition or trust to which this section applies in substitution for the hospital (named in the constitution) that would otherwise obtain the benefit of this section under subparagraph (i)—that HAC; or

(d) in a case where paragraph (b)(ii) applies—an incorporated hospital or an incorporated HAC, as designated by the Minister by notice in the Gazette.

(5) Section 78(3)(a)—after "a prescribed entity" insert:

or a part of a prescribed entity

(6) Section 78(3)(c)(i)—after "the prescribed entity" insert:

or the relevant part of the prescribed entity (as the case requires)

5 (7) Section 78(3)(c)(ii)—after "the prescribed entity" insert:

or the relevant part of the prescribed entity (as the case requires)

(8) Section 78—after subsection (3) insert:

(3a) If—

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(a) a testamentary disposition has been made in favour of, or a trust has been created for the benefit of, the patients or residents of a prescribed entity that was a hospital or health centre incorporated under the repealed Act and that has been dissolved; and

(b) —

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(i) all of the functions of the prescribed entity have been transferred to an incorporated hospital under this Act; or

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(ii) subparagraph (i) does not apply and the Minister has, by instrument published in the Gazette, identified an incorporated hospital or an incorporated HAC under this Act that, in the Minister's opinion, is the appropriate incorporated hospital or incorporated HAC (as the case requires) to assume the benefit of the testamentary disposition, taking into account the transfer of functions of the prescribed entity on and after its dissolution,

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then the disposition will be taken to be made, or the trust will be taken to be created, (as the case requires) in favour of, the patients or residents of the incorporated hospital or incorporated HAC.

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16—Amendment of section 93—Confidentiality

Section 93(3)(d)(iii)—after "administration of" insert:

the Department,

17—Repeal of section 101

35

Section 101—delete the section

18—Amendment of Schedule 3—Governing boards for incorporated hospitals

(1) Schedule 3, clause 2(1)—delete subclause (1) and substitute:

(1) Subject to this Act, a member of a governing board—

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(a) will be appointed on conditions determined by the Minister; and

- (b) holds office for such period (not exceeding 3 years) as may be specified in the member's instrument of appointment; and
- (c) is eligible for reappointment at the expiration of a term of office.

5 (2) Schedule 3, clause 5(1)—after paragraph (c) insert:

(ca) ceases to satisfy the qualification by virtue of which the member was eligible for appointment to the governing board; or

10 (3) Schedule 3, clause 8(7)—delete ", within 7 days of a meeting, publish the approved minutes of the meeting on a website accessible by the public at no charge" and substitute:

publish the approved minutes of the meeting within 7 days of the meeting at which the minutes were approved on a website accessible by the public at no charge

19—Insertion of Schedule 3A

15 After Schedule 3 insert:

Schedule 3A—Dissolution of Health Advisory Councils

1—Preliminary

In this Schedule—

20 *dissolved HAC* means a HAC that has been dissolved under clause 2.

2—Dissolution of Health Advisory Councils

The following Health Advisory Councils established by Ministerial notice under section 15(1) are dissolved:

- 25 (a) the Women's and Children's Health Network Health Advisory Council Incorporated;
- (b) the Northern Adelaide Local Health Network Health Advisory Council Incorporated;
- (c) the Central Adelaide Local Health Network Health Advisory Council Incorporated;
- 30 (d) the Southern Adelaide Local Health Network Health Advisory Council Incorporated.

3—HAC members

35 A member of a dissolved HAC holding office immediately before the commencement of this clause ceases to hold office on that commencement.

4—Property to be transferred

- (1) The Minister may, by notice in the Gazette—
- (a) transfer the assets, rights and liabilities of a dissolved HAC (either as a whole or in separate parcels specified in the notice)—
 - (i) to a Minister; or
 - (ii) to another Health Advisory Council; or
 - (iii) to an incorporated hospital; or
 - (iv) to SA Ambulance Service Inc; or
 - (v) to the Crown, or to another agent or instrumentality of the Crown; or
 - (vi) with the agreement of the person or body—to a person or body that is not an agent or instrumentality of the Crown; and
 - (b) make other provisions in relation to the property of the dissolved HAC that in the opinion of the Minister are necessary or expedient in the circumstances.
- (2) A Ministerial notice made under subclause (1) takes effect from a date specified in the notice (which may be earlier than the date of the notice's publication even though the HAC from which the assets are transferred was dissolved prior to the publication of the Ministerial notice).
- (3) The Minister may, by further notice in the Gazette, transfer any asset, right or liability acquired or assumed by the Minister under subclause (1) to another person or body if that other person or body consents to the transfer.

5—Annual reports

- (1) A report must, within 3 months of the commencement of this Schedule, be delivered to the Minister on the activities of each dissolved HAC for the financial year or part of the financial year in which the dissolution occurs by—
- (a) in the case of the Women's and Children's Health Network Health Advisory Council Incorporated—the chief executive officer of the Women's and Children's Health Network Incorporated; or
 - (b) in the case of the Northern Adelaide Local Health Network Health Advisory Council Incorporated—the chief executive officer of the Northern Adelaide Local Health Network Incorporated; or
 - (c) in the case of the Central Adelaide Local Health Network Health Advisory Council Incorporated—the chief executive officer of the Central Adelaide Local Health Network Incorporated; or

(d) in the case of the Southern Adelaide Local Health Network Health Advisory Council Incorporated—the chief executive officer of the Southern Adelaide Local Health Network Incorporated.

- 5 (2) A report must incorporate the audited accounts and financial statements of the dissolved HAC for the financial year in which the dissolution occurs (if relevant).
- (3) The Minister must, within 12 sitting days after receiving a report under subclause (1), have copies of the report laid before both
10 Houses of Parliament.

6—General provisions

- (1) Nothing done under this Schedule—
- (a) constitutes a breach of, or default under, an Act or other law; or
- 15 (b) constitutes a breach of, or default under, a contract, agreement, understanding or undertaking; or
- (c) constitutes a breach of a duty of confidence (whether arising by contract, in equity or by custom or in any other way); or
- (d) constitutes a civil or criminal wrong; or
- 20 (e) —
- (i) terminates an agreement or obligation; or
- (ii) fulfils any condition that allows a person to terminate an agreement or obligation; or
- 25 (iii) gives rise to, or allows any person to exercise, any other right or remedy; or
- (f) releases a surety or other obligee wholly or in part from an obligation.
- (2) The Registrar-General or another authority required or authorised under a law of the State to register or record transactions affecting assets, rights or liabilities, or documents relating to such transactions, must, on application under this subclause, register or record in an appropriate manner a transfer and vesting under this Schedule.
- (3) The Governor may, by regulation, make any other provision of a saving or transitional nature consequent on the enactment of this Act.
- 35 (4) The Minister may, by notice in the Gazette, declare that a reference in an Act, instrument, contract, agreement or other document to a dissolved HAC will have effect as if it were a reference to another person or body specified by the Minister in the notice.

20—Amendment of Schedule 4—Transitional provisions

Schedule 4—after clause 41 insert:

41A—Health Performance Council dissolution

- (1) The Health Performance Council is dissolved by force of this clause.
- (2) A person holding office as a member of the Health Performance Council immediately before the commencement of this clause ceases to hold office on that commencement.
- (3) In this clause—

Health Performance Council means the Health Performance Council established by section 9 as in force immediately before the commencement of section 7 of the *Health Care (Governance) Amendment Act 2019*.

Schedule 1—Related amendments to *Mental Health Act 2009*

1—Amendment of section 106—Confidentiality and disclosure of information

- (1) Section 106(1)—delete "the Chief Executive" and substitute:

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- (a) the Chief Executive; or
 - (b) in the case of information obtained while working at an incorporated hospital under the *Health Care Act 2008* or the SA Ambulance Service Inc (SAAS)—by the hospital or SAAS (as the case requires).

- (2) Section 106(2)(d)(iii)—after "administration of" insert:
the Department,