

**Legislative Council—No 49**

As introduced and read a first time, 17 June 2020

South Australia

**Health Care (Governance) Amendment Bill 2020**

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 2020*.

### **2—Commencement**

5 This Act comes 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 Long title**

10 Long title—delete "the Health Performance Council and"

### **5—Amendment of section 3—Interpretation**

Section 3(1), definition of *HPC*—delete the definition

### **6—Amendment of section 5—Principles**

15 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

### **7—Amendment of section 7—Chief Executive**

20 (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  
25 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;
- 30 (f) to engage with consumer representatives and other interested parties in the development of health care policy, planning and service delivery;

- 5
- (g) to contribute to and implement statewide service plans that apply to incorporated hospitals and SAAS;
- (h) to undertake workforce planning for the health system statewide;
- (i) to ensure that a highly trained workforce is valued within the health system;
- (j) to oversee, monitor and promote improvements in the safety and quality of health services provided by incorporated hospitals and SAAS;
- 10 (k) to develop and issue policies and directives to apply to the Department, incorporated hospitals and SAAS;
- (l) to monitor the performance of incorporated hospitals and SAAS, and to take remedial action if agreed performance measures and operational targets are not met;
- 15 (m) to receive and evaluate performance data and other data provided by incorporated hospitals and SAAS;
- (n) 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;
- 20 (o) 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);
- (p) 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.

25 (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.

## 8—Repeal of Part 3

Part 3—delete the Part

## 30 9—Insertion of Part 4A

After Part 4 insert:

### Part 4A—Service agreements

#### 28A—Preliminary

In this Part—

35 *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

- 5
- (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.
- 10
- (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
- (b) the teaching, training and research to be provided in support of the provision of health services; and
- 15
- (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
- (d) that each health service provider must operate programs that promote the provision of health care for Aboriginal and Torres Strait Islander people; and
- 20
- (e) the performance measures and operational targets for the provision of the services by the health service provider; and
- (f) how the evaluation and review of results in relation to the performance measures and operational targets are to be carried out; and
- 25
- (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
- (h) any other matter the Chief Executive considers relevant to the provision of the services by a health service provider;
- 30
- and
- (i) any other matter prescribed by the regulations.
- (3) A service agreement may—
- 35
- (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
- (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.
- 40
- (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.

- (5) A service agreement entered into under subsection (1) is binding on the Chief Executive and the relevant incorporated hospital or SAAS.

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

- 5 (1) A service agreement has effect for the term specified in the agreement.
- (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.
- 10 (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.
- 15 (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.
- 20 (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).
- 25

### **10—Amendment of section 33—Governance and management arrangements**

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

- 30 (ca) to ensure that the 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;

### **11—Amendment of section 33A—Engagement strategies**

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

and reviewing

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

- (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.

- (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.

5 **12—Amendment of section 33B—Composition of governing boards for incorporated hospitals**

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

or engaged

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

10 **13—Amendment of section 33E—Chief executive officer for incorporated hospital**

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

clinical

**14—Amendment of section 34—Employed staff**

15 Section 34—after subsection (8) insert:

(8a) If—

- (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,

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.

25 **15—Amendment of section 50—Management arrangements**

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

clinical

**16—Amendment of section 78—Testamentary gifts and trusts**

- 30 (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)

(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—

(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) —

(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 the patients or residents of the incorporated hospital or incorporated HAC.

### **17—Amendment of section 93—Confidentiality**

(1) Section 93(1)(a)—after "Department" insert:

, or an attached office attached to the Department,

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

the Department, an attached office attached to the Department,

### **18—Repeal of section 101**

Section 101—delete the section

### **19—Repeal of Schedule 1**

Schedule 1—delete the Schedule

### **20—Amendment of Schedule 2—Health Advisory Councils**

Schedule 2, clause 6(1)—delete ", or to assist HPC in the performance of its functions"

## 21—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—

- (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.

(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

(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

## 22—Insertion of Schedule 3A

After Schedule 3 insert:

### **Schedule 3A—Dissolution of Health Advisory Councils**

#### **1—Preliminary**

In this Schedule—

*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:

- (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;
- (d) the Southern Adelaide Local Health Network Health  
Advisory Council Incorporated.

### 3—HAC members

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—General provisions

- (1) Nothing done under this Schedule—
- (a) constitutes a breach of, or default under, an Act or other law; or
  - (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
  - (e) —

- (i) terminates an agreement or obligation; or
- (ii) fulfils any condition that allows a person to terminate an agreement or obligation; or
- (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.
- (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.

### **23—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 8 of the *Health Care (Governance) Amendment Act 2020*.

## **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:

- (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,