

Legislative Council—No 262A

As reported with an amendment, report adopted, Standing Orders suspended and passed remaining stages, 28 November 2017

South Australia

**Health Practitioner Regulation National Law
(South Australia) (Remote Area Attendance)
Amendment Bill 2017**

A BILL FOR

An Act to amend the *Health Practitioner Regulation National Law (South Australia) Act 2010*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

- 5 This Act may be cited as the *Health Practitioner Regulation National Law (South Australia) (Remote Area Attendance) Amendment Act 2017*.

2—Commencement

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

3—Amendment provisions

- 10 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 Practitioner Regulation National Law (South Australia) Act 2010*

4—Insertion of Part 5A

After section 77 insert:

Part 5A—Restrictions on single person attendances in remote areas

Division 1—Preliminary

77A—Interpretation

(1) In this Part—

callout to which Division 2 applies—see section 77C(2);

health practitioner means—

- (a) a health practitioner within the meaning of the *Health Practitioner Regulation National Law (South Australia)*; and
- (b) any other person declared by the regulations to be included in the ambit of this definition for the purposes of this Act;

health service means—

- (a) a health service within the meaning of the *Health Practitioner Regulation National Law (South Australia)*; and
- (b) any other service or activity declared by the regulations to be included in the ambit of this definition for the purposes of this Act;

out of hours callout means a request for the attendance of a health practitioner at a specified place made by or on behalf of a person where—

- (a) the attendance occurs, or is to occur—
 - (i) between the hours of 5 pm on one day and 8 am on the next day; or
 - (ii) on a Saturday or Sunday; or
 - (iii) on a public holiday; and
- (b) the place at which a health practitioner is to attend pursuant to the request is in a remote area,

but does not include a request of a kind declared by the regulations not to be included in the ambit of this definition;

remote area—see subsection (2);

second responder means a person engaged as a second responder in accordance with section 77D;

State authority means—

- (a) a public sector agency; or

Note—

This includes, for example, entities such as incorporated hospitals under the *Health Care Act 2008*.

- (b) a local council constituted under the *Local Government Act 1999*; or

- (c) any other person or body declared by the regulations to be a State authority for the purposes of this Part,

but does not include a person or body declared by the regulations to be excluded from the ambit of this definition;

unscheduled callout means a request for the attendance of a health practitioner made by or on behalf of a person where—

- (a) the attendance is, or is requested, to occur within 24 hours of the making of the request; and

- (b) the place at which a health practitioner is to attend pursuant to the request is in a remote area,

but does not include a request for attendance of a kind declared by the regulations not to be included in the ambit of this definition.

- (2) For the purposes of this Part, a reference to a **remote area** will be taken to be a reference to the following areas of the State:

- (a) the lands within the meaning of the *Anangu Pitjantjatjara Yankunytjatjara Land Rights Act 1981*;

- (b) the lands within the meaning of the *Maralinga Tjarutja Land Rights Act 1984*;

- (c) an area outside of a council area under the *Local Government Act 1999*;

- (d) any other area declared by the regulations to be included in the ambit of this definition,

but does not include an area declared by the regulations to be excluded from the ambit of this definition.

- (3) For the purposes of this Part, a reference to **attending a callout** will be taken to be a reference to attending a specified place in response to a callout to which Division 2 applies.

77B—Interaction with other Acts

This Part is in addition to, and does not derogate from, the provisions of any other Act or law.

Division 2—Restrictions on single person attendances in remote areas

77C—Application of Division

(1) This Division applies to the following health practitioners:

- 5
- (a) a health practitioner employed by a State authority;
 - (b) a health practitioner who provides health services for, or on behalf of, a State authority pursuant to a contract for services or other agreement;
 - 10 (c) a health practitioner who provides health services in a remote area (being health services that are wholly or partly funded under a law of the State);
 - (d) a health practitioner, or health practitioner of a class, prescribed by the regulations for the purposes of this subsection,

15 but does not apply to a health practitioner, or health practitioner of a class, declared by the regulations not to be included in the ambit of this subsection.

(2) This Division applies to callouts of the following kinds:

- 20
- (a) out of hours callouts;
 - (b) unscheduled callouts;
 - (c) any other callout of a class prescribed by the regulations for the purposes of this subsection.

77D—Second responders

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- (1) A health practitioner engages a second responder by taking such action as may be required by the regulations.
 - (2) Before engaging a second responder, a health practitioner must be satisfied on reasonable grounds that the second responder satisfies any requirements set out in the regulations for the purposes of this subsection.
 - 30 (3) A person will be taken to be a second responder in respect of a particular callout—
 - (a) from the time that the person is engaged to act as second responder in respect of the callout; and
 - (b) until the time that the callout is completed,
 - 35 (both determined in accordance with the regulations).
 - (4) The regulations may make further provision in relation to second responders.

- (5) Without limiting the generality of subsection (4), the regulations may—
- (a) prohibit a specified person, or a person of a specified class, from being engaged as a second responder;
 - (b) limit the circumstances in which a specified person, or a person of a specified class, may be engaged as a second responder;
 - (c) provide for, or limit, entitlements accrued by, and the terms and conditions of engagement of, second responders;
 - (d) limit the civil liability of second responders;
 - (e) modify the operation of a specified Act or law as it applies to second responders.

77E—Health practitioner to be accompanied by second responder

- (1) Subject to this section, a health practitioner to whom this Division applies must not attend a callout to which this Division applies unless the health practitioner is accompanied by a second responder.
- (2) A second responder need not accompany a health practitioner attending a callout to which this Division applies during the journey to the place at which health services are to be provided in relation to the callout.
- (3) Subsection (1) does not apply—
- (a) if the place at which health services are to be provided in relation to the callout is prescribed premises; or
 - (b) in any other circumstances prescribed by the regulations for the purposes of this subsection.
- (4) For the purposes of subsection (1), a second responder accompanies a health practitioner attending a callout—
- (a) by being physically present with the health practitioner at any time the health practitioner is in the proximity of the person to whom health services are to be, are being, or have been, provided in relation to the callout; or
 - (b) by taking action of a kind prescribed by the regulations for the purposes of this paragraph.
- (5) For the purposes of this section, a second responder will be taken to be accompanying a health practitioner during the provision of health services to a person despite not being physically present with the health practitioner if—
- (a) the health practitioner is of the opinion that, having regard to the nature of the health services and the privacy of the patient, it is not appropriate for the second responder to be physically present during the provision of the health services; and

- (b) the second responder remains in the same premises as, and within the hearing of, the health practitioner during the provision of the health services.

77F—Limitation of liability

- 5 (1) Despite any other Act or law, no liability attaches to the Crown for any loss or damage arising out of the operation of this Part.
- (2) A health practitioner or other person who complies with the requirements of this Part (including, to avoid doubt, a health practitioner who refuses to attend a callout to which Division 2
10 applies in the absence of a second responder)—
 - (a) cannot, by virtue of doing so, be held to have breached any code of professional etiquette or ethics, or to have departed from any accepted form of professional conduct; and
 - 15 (b) to the extent that the health practitioner or person has acted in good faith and without negligence, incurs no civil liability in respect of such compliance (including, to avoid doubt, liability arising under disciplinary or similar proceedings).
- (3) For the purposes of section 74 of the *Public Sector Act 2009*, a second responder, in relation to their role as a second responder—
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 - (a) will be taken to be a person to whom that section applies; and
 - (b) will be taken to be exercising official powers or functions.

Division 3—Providers of health services in remote areas to have policies and procedures to ensure safety and security of health practitioners

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77G—Application of Division

This Division applies to the following persons and bodies:

- 30 (a) a State authority who provides or may provide health services in a remote area, or on whose behalf such health services are provided;
- (b) a person or body who provides, or is to provide, health services in a remote area for, or on behalf of, a State authority pursuant to a contract for services or other agreement;
- 35 (c) a person or body who provides, or is to provide, health services in a remote area that are wholly or partly funded under a law of the State;
- (d) any other person or body, or person or body of a class, prescribed by the regulations for the purposes of this section,

but does not apply to a person or body, or person or body of a class, declared by the regulations not to be included in the ambit of this section.

77H—Providers of health services in remote areas to prepare or adopt policies and procedures for the safety and security of health practitioners

- (1) Each person or body to whom this Division applies must, in accordance with any requirements set out in the regulations, prepare or adopt policies and procedures designed to ensure the safety and security of health practitioners providing health services in remote areas for or on behalf of the person or body.
- (2) Without limiting the matters that may be included in the policies and procedures required under this section, those policies and procedures must contain—
 - (a) a provision expressly preventing any person from directing or requiring (however described) a health practitioner to whom Division 2 applies to attend a callout in contravention of section 77E(1); and
 - (b) provisions ensuring the compliance of the person or body to whom this Division applies, and any person employed by or on behalf of the person or body, with the requirements of Division 2; and
 - (c) any other provision, or provision of a kind, required by the regulations.
- (3) A person or body to whom this Division applies may, in accordance with any requirements set out in the regulations, from time to time vary or substitute a policy or procedure required under this section.
- (4) A person or body to whom this Division applies must, if required to do so by the Minister, provide to the Minister a copy of each policy and procedure prepared or adopted under this section, as in force from time to time.

77I—Policies and procedures to be reviewed

A person or body to whom this Division applies must, in accordance with any requirement set out in the regulations, review the policies and procedures prepared or adopted by the person or body under section 77H at least once in every 5 year period.

77J—State authorities not to contract etc with non-compliant providers

- (1) Despite any other Act or law, a State authority must not enter a contract or agreement (however described) relating to the provision of health services in remote areas unless—
 - (a) the provider of those services has complied with this Division; and

(b) the contract or agreement contains provisions ensuring that the provision of health services pursuant to the contract or agreement will comply with any requirements under Division 2.

5 (2) Without limiting subsection (1), a term of a contract or agreement that is inconsistent with this section is, to the extent of the inconsistency, void and of no effect.

77K—Power of Minister on refusal etc to comply with Division

10 (1) If a State authority refuses or fails to comply with a requirement under this Division, the Minister may, after consultation with the State authority—

(a) report the refusal or failure to the Minister responsible for the State authority (if any); and

(b) direct the State authority to comply with the requirement.

15 (2) If after directing a State authority to comply with a requirement the Minister is not satisfied that the State authority has done so, the Minister must prepare a report to Parliament setting out—

(a) the fact of the State authority's refusal or failure to comply with the requirement; and

20 (b) the reasons (if any) given by the State authority for the refusal or failure to comply with the requirement; and

(c) any other information required by the regulations.

25 (3) The Minister must, within 6 sitting days after completing a report under subsection (2), cause a copy of the report to be laid before both Houses of Parliament.

Division 4—Miscellaneous

77L—Exemption

30 (1) The Minister may, by notice in writing, exempt a specified person, or a specified class of persons, from the operation of a provision or provisions of this Part.

(2) An exemption may be conditional or unconditional.

(3) The Minister may, by notice in writing, vary or revoke an exemption for any reason the Minister thinks fit.

77M—Review of Part

35 (1) The Minister must cause a review of the operation of this Part to be conducted and a report on the review to be prepared and submitted to the Minister.

(2) The review and the report must be completed after the second, but before the third, anniversary of the commencement of this Part.

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Part 2—Amendment of *Health Practitioner Regulation National Law (South Australia) Act 2010*

- (3) The Minister must cause a copy of the report submitted under subsection (1) to be laid before both Houses of Parliament within 6 sitting days after receiving the report.