

South Australia

Health Practitioner Regulation National Law (South Australia) Bill 2010

A BILL FOR

An Act to make provision for a national legislative scheme for the regulation of health practitioners; to make provision for local matters associated with the regulation of health practitioners, the registration of pharmacy premises and pharmacy depots and the supply of optical appliances; to make related amendments to other Acts; to repeal certain Acts associated with the regulation of health professions; and for other purposes.

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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 Practitioner Regulation National Law (South Australia) Act 2010*.

2—Commencement

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

3—Definitions

(1) In this Act—

10 *Chief Executive* means the Chief Executive of the Department and includes a person for the time being acting in that position;

the Department means the administrative unit of the Public Service that is, under the Minister, responsible for the administration of this Act;

District Court means the Administrative and Disciplinary Division of the District Court;

15 *Health Practitioner Regulation National Law (South Australia)* means the provisions applying in this jurisdiction because of section 4;

representative body means a body that is declared by the regulations to be a representative body for the purposes of this Act;

20 *Tribunal* means the South Australian Health Practitioners Tribunal constituted under this Act.

(2) Terms used in this Act and also in the *Health Practitioner Regulation National Law* set out in the schedule to the *Health Practitioner Regulation National Law Act 2009* of Queensland have the same meanings in this Act as they have in that Law.

Part 2—Adoption of Health Practitioner Regulation National Law

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4—Application of Health Practitioner Regulation National Law

The *Health Practitioner Regulation National Law*, as in force from time to time, set out in the schedule to the *Health Practitioner Regulation National Law Act 2009* of Queensland—

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- (a) applies as a law of this jurisdiction; and
- (b) as so applying may be referred to as the *Health Practitioner Regulation National Law (South Australia)*; and
- (c) so applies as if it were a part of this Act.

5—Meaning of generic terms in Health Practitioner Regulation National Law for the purposes of this jurisdiction

In the *Health Practitioner Regulation National Law (South Australia)*—

magistrate means a person holding office as a magistrate under the *Magistrates Act 1983*;

magistrates court means the Magistrates Court of South Australia;

this jurisdiction means South Australia.

6—Responsible tribunal for Health Practitioner Regulation National Law

The South Australian Health Practitioners Tribunal is declared to be the responsible tribunal of this jurisdiction for the purposes of the *Health Practitioner Regulation National Law (South Australia)*.

7—Exclusion of legislation of this jurisdiction

The following Acts of this jurisdiction do not apply to the *Health Practitioner Regulation National Law (South Australia)* or to instruments made under that Law:

- (a) the *Acts Interpretation Act 1915*;
- (b) the *Freedom of Information Act 1991*;
- (c) the *Ombudsman Act 1972*;
- (d) the *Public Finance and Audit Act 1987*;
- (e) the *Public Sector Act 2009*;
- (f) the *Public Sector (Honesty and Accountability) Act 1995*;
- (g) the *Subordinate Legislation Act 1978*.

Part 3—South Australian Health Practitioners Tribunal

Division 1—Establishment of Tribunal

8—Establishment of Tribunal

The *South Australian Health Practitioners Tribunal* is established.

Division 2—Members of Tribunal

9—President and Deputy Presidents

- (1) There will be—
 - (a) a President of the Tribunal; and
 - (b) 1 or more Deputy Presidents of the Tribunal.
- (2) The President and any Deputy President will be appointed by the Governor on the recommendation of the Minister.

- (3) A person is not eligible for appointment as President or Deputy President unless he or she is—
- (a) a legal practitioner of not less than 7 years standing; or
 - (b) a magistrate designated under subsection (4).
- 5 (4) A magistrate may, after consultation between the Attorney-General, the Minister and the Chief Magistrate, be designated by the Attorney-General as being eligible for appointment under this section.
- (5) A President or Deputy President will be appointed—
- 10 (a) unless paragraph (b) applies—for a term of office not exceeding 5 years, specified in the instrument of appointment;
 - (b) in the case of a magistrate appointed under subsection (3)(b)—for 7 years, and will be eligible for reappointment on the expiry of a term of office.
- (6) A President or Deputy President is appointed on conditions specified in the instrument of appointment.
- 15 (7) Subject to the conditions of appointment, the office of President or Deputy President may be held in conjunction with another office or position.
- (8) A magistrate is not precluded by appointment under this section from performing other judicial functions.
- (9) The Governor may remove the President or a Deputy President from office for—
- 20 (a) mental or physical incapacity to carry out official duties satisfactorily; or
 - (b) neglect of duty; or
 - (c) dishonourable conduct.
- (10) A person ceases to hold office as President or Deputy President if the person—
- 25 (a) dies; or
 - (b) completes a term of office and is not reappointed; or
 - (c) resigns by written notice to the Minister; or
 - (d) is removed from office under subsection (9); or
 - (e) in the case of a person appointed under subsection (3)(b)—ceases to hold office as a magistrate.

30 **10—Panel members**

- (1) The Governor may, for the purposes of the Tribunal, establish a panel consisting of persons from the health professions under the *Health Practitioner Regulation National Law*.
- 35 (2) The Governor may, for the purposes of the Tribunal, establish a panel consisting of persons who are not members of the health professions under the *Health Practitioner Regulation National Law* and who, in the opinion of the Governor, are qualified, by reason of their knowledge, expertise and experience, to represent the interests of a broad range of consumers of health services.

- (3) A member of a panel will be appointed on the recommendation of the Minister for a term of office, not exceeding 3 years, specified in the instrument of appointment and will be eligible for reappointment on the expiry of any such term.
- (4) The Minister must, before making a recommendation under subsection (3) for the appointment of a person, consult with 1 or more representative bodies determined by the Minister to have a relevant interest in the particular appointment.
- (5) A member of a panel is appointed on conditions specified in the instrument of appointment.
- (6) The Governor may make appointments from time to time for the purpose of maintaining or increasing the membership of the panels established under this section.
- (7) The Governor may remove a member of the panel from office for—
- (a) mental or physical incapacity to carry out official duties satisfactorily; or
 - (b) neglect of duty; or
 - (c) dishonourable conduct.
- (8) A person ceases to be a member of a panel if the person—
- (a) dies; or
 - (b) completes a term of office and is not reappointed; or
 - (c) resigns by written notice to the Minister; or
 - (d) ceases to satisfy any qualification by virtue of which the person was eligible for appointment to the Tribunal; or
 - (e) is removed from office under subsection (7).

11—Allowances and expenses

A member of the Tribunal is entitled to such remuneration, allowances and expenses as the Governor may from time to time determine.

12—Validity of acts of Tribunal

An act or proceeding of the Tribunal is not invalid by reason only of a vacancy in the membership of, or a defect in the appointment of a person to, the Tribunal or a panel from which members of the Tribunal are drawn.

13—Registrar of Tribunal

- (1) The Governor may appoint a person to be the Registrar or a Deputy Registrar of the Tribunal.
- (2) The office of Registrar or Deputy Registrar may be held in conjunction with another office or position.
- (3) A registrar will be appointed on terms and conditions specified in the instrument of appointment.

14—Immunities

- (1) A member of the Tribunal has the same immunities from civil liability as a Judge of the District Court.

- (2) A Registrar, Deputy Registrar or other member of the staff of the Tribunal incurs no civil or criminal liability for an honest act or omission in carrying out or purportedly carrying out official functions.

Division 3—Constitution of Tribunal

15—Constitution of Tribunal

- (1) Subject to this section, the Tribunal will be constituted in relation to the hearing of any proceedings or the conduct of any other business of the following members:
- (a) the President or a Deputy President, as determined by the President (who will preside over the proceedings);
 - (b) 2 members of the panel constituted under section 10(1) and selected by the person presiding over the proceedings to be a member of the Tribunal for the purpose of the hearing of those proceedings or the conduct of that business;
 - (c) 1 member of the panel constituted under section 10(2) and selected by the person presiding over the proceedings to be a member of the Tribunal for the purpose of the hearing of those proceedings or the conduct of that business.
- (2) In selecting members from the panel constituted under section 10(1), the person presiding over the proceedings must—
- (a) unless paragraph (b) applies—select persons who are members of the same health profession under the *Health Practitioner Regulation National Law* as the person in relation to whom the relevant matter relates;
 - (b) in a case where the matter relates to a person who is (or has been) a dental therapist, dental hygienist, dental prosthetist or oral health therapist—select 1 person who is a dentist and 1 person who is a member of the same division of the health profession as the person in relation to whom the relevant matter relates.
- (3) The Tribunal, separately constituted in accordance with this section, may sit simultaneously for the purpose of hearing and determining separate proceedings.
- (4) The Tribunal constituted of the person presiding over the proceedings may, sitting alone—
- (a) deal with—
 - (i) preliminary, interlocutory or procedural matters; or
 - (ii) questions of costs; or
 - (iii) questions of law; or
 - (b) enter consent orders; or
 - (c) perform any other function or exercise any other power of a prescribed kind, and may, for that purpose or as a consequence, while sitting alone, make any determination or order (including a final order) that the person considers appropriate.
- (5) A member of the Tribunal who has a personal interest or a direct or indirect pecuniary interest in a matter before the Tribunal is disqualified from participating in the hearing of the matter.

(6) If a member of the Tribunal is participating in proceedings before the Tribunal at the time that the member's term of office expires or at the time that his or her membership of the Tribunal otherwise ends, the member may, for the purpose of continuing and completing those proceedings, continue to act as a member of the Tribunal.

5 (7) If a member of the Tribunal dies or is for any other reason unable to continue with any proceedings before the Tribunal, the Tribunal constituted by its remaining members for those proceedings may, if the President so determines, continue and complete the proceedings.

10 (8) A member of the Tribunal who is dealing with a question of law may refer the question for the opinion of the Full Court of the Supreme Court.

(9) On a reference under subsection (8), the Full Court of the Supreme Court may determine the question and give any consequential orders or directions appropriate to the circumstances of the case.

Division 4—Jurisdiction

16—Jurisdiction

The Tribunal will have the jurisdiction conferred on it by or under this Act or the *Health Practitioners Regulation National Law (South Australia)*.

Division 5—Proceedings, related powers and orders

17—Determinations

20 Any questions of law or procedure arising before the Tribunal when constituted by more than 1 member will be determined by the person presiding over the proceedings and any other questions by unanimous or majority decision of the members (unless there is an equal division of opinion, in which case, the decision of the person presiding over the proceedings will be the decision of the Tribunal).

18—Provisions as to proceedings before Tribunal

30 (1) Subject to this Act and the *Health Practitioner Regulation National Law (South Australia)*, the Tribunal must give to all of the parties to proceedings before the Tribunal at least 14 days written notice of the time and place at which it intends to conduct the proceedings, and must afford to the parties a reasonable opportunity to call and give evidence, to examine or cross-examine witnesses, and to make submissions to the Tribunal.

(2) However—

(a) the Tribunal may, if it thinks it appropriate to do so, give a lesser period of written notice under subsection (1); and

35 (b) the Tribunal may, if of the opinion that it is desirable to do so in the public interest, and in accordance with any process or procedure determined by the Tribunal—

(i) suspend the registration of the person the subject of the proceedings;
or

40 (ii) impose conditions on the person's registration restricting the person's right to provide health services,

pending hearing and determination of the proceedings.

- (3) A suspension or condition imposed under subsection (2)(b)—
- (a) will have effect for a period, not exceeding 30 days, determined by the Tribunal; and
 - (b) may be extended from time to time for a further period or periods, not exceeding 30 days, determined by the Tribunal.
- (4) In addition, if a National Board, or a panel of a National Board, has exercised its power to suspend the registration of the person the subject of the proceedings or imposed conditions on the person's registration, the Tribunal may revoke or vary the suspension or conditions so imposed.
- (5) The requirement to give written notice under subsection (1) does not extend to adjournments.
- (6) If a party to whom notice has been given under subsection (1) does not attend at the time and place fixed by the notice, the Tribunal may proceed to hear and determine the matter in the absence of that party.
- (7) Without limiting any other provision or any other law, the person the subject of the proceedings and the relevant National Board are entitled to appear and make submissions at any proceedings under subsection (2)(b) or (3)(b).
- (8) A party to proceedings before the Tribunal is entitled to be represented at the proceedings.
- (9) The Tribunal—
- (a) is not bound by the rules of evidence and may inform itself on any matter as it thinks fit; and
 - (b) must act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms.
- (10) Without limiting any other provision or any other law, the Tribunal may adopt procedures under which a member of the Tribunal participates in the proceedings of the Tribunal by means of an audio visual link or an audio link.
- (11) Subject to this Act and the *Health Practitioner Regulation National Law (South Australia)*, the procedure at an inquiry will be as determined by the Tribunal.

19—Powers of Tribunal

- (1) For the purposes of any proceedings, the Tribunal may—
- (a) by summons signed on behalf of the Tribunal by a member of the Tribunal or the Registrar, require the attendance before the Tribunal of any person whom the Tribunal thinks fit to call before it; or
 - (b) by summons signed on behalf of the Tribunal by a member of the Tribunal or the Registrar, require the production of any relevant documents, records or equipment and, in the case of a document or record that is not in the English language, require the production of—
 - (i) a written translation of the document or record into English; and

(ii) a certificate signed by a translator approved by the Tribunal certifying that the translation accurately reproduces in English the contents of the document or record; or

5 (c) inspect any documents, records or equipment produced before it, and retain them for such reasonable period as it thinks fit, and make copies of the documents or records or their contents; or

10 (d) require any person to make an oath or affirmation (which may be administered by any member of the Tribunal) to answer truthfully questions put by any member of the Tribunal or any person appearing before the Tribunal; or

(e) require any person appearing before the Tribunal (whether summoned to appear or not) to answer any questions put by any member of the Tribunal or by any person appearing before the Tribunal.

(2) A person who—

15 (a) fails without reasonable excuse to comply with a summons issued to attend, or to produce documents, records or equipment, before the Tribunal; or

(b) having been served with a summons to produce—

(i) a written translation of the document or record into English; and

20 (ii) a certificate signed by a translator approved by the Tribunal certifying that the translation accurately reproduces in English the contents of the document or record,

fails, without reasonable excuse, to comply with the summons; or

25 (c) misbehaves before the Tribunal, wilfully insults the Tribunal or 1 or more of the members in the exercise of the members' official duties, or wilfully interrupts the proceedings of the Tribunal; or

(d) refuses to be sworn or to affirm, or refuses or fails to answer truthfully a relevant question when required to do so by the Tribunal,

is guilty of an offence.

Maximum penalty: \$10 000 or imprisonment for 6 months.

30 (3) A person who appears as a witness before the Tribunal has the same protection as a witness in proceedings before the Supreme Court.

35 (4) If a person summoned under subsection (1) fails to produce any books or equipment or to appear before the Tribunal as required by the summons or, having appeared, refuses to be sworn or to affirm, or to answer a relevant question when required to do so by the Tribunal, a certificate of the failure or refusal, signed by a member of the Tribunal or by the Registrar, may be filed in the Supreme Court.

40 (5) If a certificate has been filed under subsection (4), a party requiring the production of books or equipment or the appearance of a person before the Tribunal may apply to the Supreme Court for an order directing the production of the books or equipment or that the person attend, or be sworn or affirm, or answer questions (as the case may require) and on that application the Court may make such orders as it thinks fit (including orders for costs).

(6) The Court may require that notice be given of an application under subsection (5) to the person against whom the order is sought or any other person (but an order may be made, if the Court thinks fit, although no notice has been given of the application).

(7) In the course of any proceedings, the Tribunal may—

5 (a) receive in evidence a transcript of evidence taken in proceedings before a court, tribunal or other body constituted under the law of South Australia or of any other State or a Territory of Australia, of the Commonwealth or of another country, and draw any conclusions of fact from the evidence that it considers proper;

10 (b) adopt, as in its discretion it considers proper, any findings, decision, judgment, or reasons for judgment, of any such court, tribunal or body that may be relevant to the proceedings.

20—Enforcement of decisions of Tribunal

15 (1) Without limiting the operation of the *Health Practitioner Regulation National Law (South Australia)*, a person who, without reasonable excuse—

(a) contravenes or fails to comply with a condition imposed by the Tribunal under Part 8 Division 12 of the *Health Practitioner Regulation National Law (South Australia)*; or

20 (b) fails to pay a fine imposed by the Tribunal under Part 8 Division 12 of the *Health Practitioner Regulation National Law (South Australia)*,

is guilty of an offence.

Maximum penalty: \$30 000.

25 (2) A fine payable to a National Board under Part 8 Division 12 of the *Health Practitioner Regulation National Law (South Australia)* may be recovered as a debt due to that National Board.

21—Costs

Any costs awarded by the Tribunal under the *Health Practitioner Regulation National Law (South Australia)* may be recovered as a debt.

22—Power of Tribunal to make rules

30 The Tribunal constituted of the President and 2 other members selected by the President may make rules—

(a) regulating the practice and procedure of the Tribunal; or

(b) making any other provision that is necessary or expedient for carrying into effect the provisions of any law relating to the Tribunal.

35 Division 6—Appeals

23—Right of appeal

(1) An appeal lies to the District Court against a decision made by the Tribunal.

(2) An appeal against a decision of the Tribunal may be instituted by a party to the proceedings before the Tribunal.

- (3) An appeal must be instituted within 1 month of the date of the decision appealed against.

24—Operation of order may be suspended

- (1) Where an order has been made by the Tribunal, and the Tribunal or the District Court is satisfied that an appeal against the order has been instituted, or is intended, it may suspend the operation of the order until the determination of the appeal.
- (2) Where the Tribunal has suspended the operation of an order under subsection (1), the Tribunal may terminate the suspension, and where the District Court has done so, the Court may terminate the suspension.

25—Variation or revocation of conditions imposed by Court

- (1) The District Court may, at any time, on application by a registered health practitioner, vary or revoke a condition imposed by the Court in relation to the person's registration under the *Health Practitioner Regulation National Law (South Australia)*.
- (2) A National Board, a panel or the Minister are entitled to appear and be heard on an application under this section.

Part 4—Pharmacy practice

Division 1—Interpretation

26—Interpretation

- (1) In this Part, unless the contrary intention appears—

authorised officer means a person appointed to be an authorised officer under Division 7;

Authority means the Pharmacy Regulation Authority SA constituted under this Part;

dentist means a person registered under the *Health Practitioner Regulation National Law*—

- (a) to practise in the dental profession as a dentist (other than as a student); and
(b) in the dentists division of that profession;

director of a body corporate means a member of the board or committee of management of the body corporate, whether validly appointed or not;

domestic partner means a person who is a domestic partner within the meaning of the *Family Relationships Act 1975*, whether declared as such under that Act or not;

Friendly Society Medical Association Limited means the friendly society registered under the *Corporations Act 2001* of the Commonwealth as a public company under the name Friendly Society Medical Association Limited (ACN 088 347 602);

General Manager means the General Manager of the Authority and includes a person for the time being acting in that position;

medical practitioner means a person registered under the *Health Practitioner Regulation National Law* to practise in the medical profession (other than as a student);

Metropolitan Adelaide has the same meaning as in the *Development Act 1993*;

pharmacist means a person registered under the *Health Practitioner Regulation National Law* to practise in the pharmacy profession (other than as a student);

5 *pharmacy*, in relation to premises, means premises registered on the register of pharmacies kept under this Part;

pharmacy business means a business consisting of or involving the provision of pharmacy services;

pharmacy depot means premises (other than a pharmacy) at which—

- 10 (a) prescriptions for drugs or medicines are left for dispensing by a pharmacist;
or
(b) drugs or medicines dispensed by a pharmacist on prescription are left for collection by or on behalf of the person for whom the drugs or medicines are prescribed;

pharmacy services or *pharmacy* means—

- 15 (a) restricted pharmacy services; or
(b) other health services (including the supply of goods and the provision of advice) provided in the course of practice by a pharmacist or a person who holds himself or herself out, or is held out by another, as a pharmacist;

pharmacy services provider includes a person referred to in section 51(2);

20 *prescribed relative*, in relation to a person, means a parent, spouse, domestic partner, child, grandchild, brother or sister of the person;

provide, in relation to pharmacy services, means provide services personally or through the instrumentality of another, and includes offer to provide;

25 *related body corporate* has the same meaning as in the *Corporations Act 2001* of the Commonwealth;

repealed Act means the *Pharmacy Practice Act 2007*;

restricted pharmacy services means—

- 30 (a) dispensing drugs or medicines on the prescription of a medical practitioner, dentist, veterinary surgeon or other person authorised to prescribe the drugs or medicines; or
(b) other services declared by the regulations to be restricted pharmacy services;

spouse—a person is a spouse of another if they are legally married;

unprofessional conduct includes—

- 35 (a) improper or unethical conduct in relation to professional practice; and
(b) incompetence or negligence in relation to the provision of pharmacy services; and
(c) a contravention of or failure to comply with—
(i) a provision of this Act or the *Health Practitioner Regulation National Law*; or

(ii) a code of conduct prepared or endorsed by the Authority under this Act; and

(d) conduct that constitutes an offence punishable by imprisonment for 1 year or more under some other Act or law;

5 **veterinary surgeon** means a person who is registered as a veterinary surgeon under the law of this State.

(2) Without limiting the generality of the expression, a person will be taken to **provide restricted pharmacy services** or **provide pharmacy services** if—

10 (a) the person is a party to an arrangement of a kind prescribed by the regulations; or

(b) the person, in the course of carrying on a business, provides a benefit to another for which the person is entitled to receive the profits or income, or a share in the profits or income, of a pharmacy business; or

15 (c) the person has, under a franchise or other commercial arrangement, a right to receive consideration that varies according to the profits or income of a pharmacy business.

(3) For the purposes of this Part, each of the following is a **corporate pharmacy services provider**:

(a) a company that conforms with each of the following:

20 (i) it is a company limited by shares;

(ii) the sole object of the company is to provide pharmacy services;

(iii) all the directors of the company are pharmacists (or if there are only 2 directors, 1 director is a pharmacist and the other is a prescribed relative of that pharmacist);

25 (iv) no share issued by the company, and no right to participate in the distribution of the profits of the company, is owned beneficially otherwise than by a pharmacist who is a director or employee of the company, or by a prescribed relative of that pharmacist;

30 (v) the total voting rights exercisable at a meeting of the members of the company are held by pharmacists who are directors or employees of the company;

35 (vi) if the right of a pharmacist and of his or her prescribed relatives to hold shares in the company ceases by virtue of that person ceasing to be a director or employee of the company, his or her shares and those of his prescribed relatives will be redeemed by the company, distributed among the remaining members of the company, or transferred to a pharmacist who is to become a director or employee of the company, in accordance with the constitution of the company;

40 (vii) the shares of a person who is a shareholder by virtue of being the spouse or domestic partner of a pharmacist of the relevant class will—

(A) on dissolution or annulment of his or her marriage with that person; or

(B) in the case of a domestic partner—on the cessation of that relationship,

be redeemed by the company, or distributed among the remaining members of the company, in accordance with the constitution of the company;

(b) a friendly society that conforms with each of the following:

(i) it is a company limited by guarantee or shares or by guarantee and shares;

(ii) it has at least 100 members;

(iii) its members have equal voting rights on a poll or at a meeting or equal voting rights to elect a representative to vote on their behalf;

(iv) its objects include the provision of health or welfare facilities or services for its members or their dependants;

(v) it provides pharmacy services;

(vi) the undistributed surplus of the friendly society would, in the event of the company being wound up, be distributed among its members at the time of winding up or transferred to another person or body with a similar structure and objects;

(vii) it is not carrying on business for the dominant purpose of securing a profit or pecuniary gain for its members;

(viii) any object or intention of the friendly society to provide a dividend to its shareholders or members is a limited and not dominant purpose of the friendly society;

(ix) the property and income of the friendly society are applied towards the objects of the friendly society;

(c) a company other than—

(i) Friendly Society Medical Association Limited; or

(ii) The Mount Gambier United Friendly Societies Dispensary Limited,

that carried on a pharmacy business on 1 August 1942 and has continued to do so since that date.

(4) A company referred to in subsection (3)(c) ceases to be a corporate pharmacy services provider if—

(a) a person who is not a pharmacist is appointed as a director of the company; or

(b) a person who is not a pharmacist or a prescribed relative of a pharmacist is appointed as a director of a related body corporate of the company; or

(c) any shares in the company are issued or transferred to a person who is not a pharmacist; or

(d) shares in a related body corporate of the company are issued or transferred to a person who is not a pharmacist or a prescribed relative of a pharmacist; or

- (e) the company carries on the pharmacy business in the capacity of trustee of a trust and a person who is not a pharmacist or a prescribed relative of a pharmacist obtains a beneficial interest in the trust; or
- 5 (f) a person holds shares in the company, or a related body corporate of the company, in the capacity of trustee of a trust and a person who is not a pharmacist or a prescribed relative of a pharmacist obtains a beneficial interest in the trust; or
- 10 (g) a person other than a pharmacist or a prescribed relative of a pharmacist otherwise obtains a proprietary interest in the pharmacy business of the company or achieves a position in which the person may exercise control or substantial influence over the company in the conduct of its affairs.
- (5) For the purposes of this Part, a person occupies a *position of authority* in a corporate pharmacy services provider if the person—
- 15 (a) is a director of the body corporate; or
- (b) exercises, or is in a position to exercise, control or substantial influence over the body corporate in the conduct of its affairs; or
- (c) manages, or is to manage, the business of the body corporate that consists of the provision of pharmacy services; or
- 20 (d) where the body corporate is a proprietary company—is a shareholder in the body corporate.
- (6) For the purposes of this Part, a person occupies a *position of authority* in a body corporate other than a corporate pharmacy services provider if the person—
- 25 (a) is a director of the body corporate; or
- (b) exercises, or is in a position to exercise, control or substantial influence over the body corporate in the conduct of its affairs; or
- (c) where the body corporate is a proprietary company—is a shareholder in the body corporate.
- (7) For the purposes of this Part, a person who holds more than 10% of the issued share capital of a public company will be regarded as a person occupying a *position of authority* in that company.
- 30 (8) For the purposes of this Part, a *trustee pharmacy services provider* is a person acting as a pharmacy services provider in the capacity of trustee of a trust.
- (9) For the purposes of this Part, a person occupies a *position of authority* in a trust if the person is a trustee or beneficiary of the trust.
- 35 (10) However—
- (a) a minor who is a shareholder in a proprietary company, or a beneficiary under a trust, is not, for that reason, to be regarded as a person occupying a *position of authority*; and
- 40 (b) a charitable organisation that is a beneficiary of a trust is not, for that reason, to be regarded as occupying a *position of authority*.

Division 2—Pharmacy Regulation Authority SA

Subdivision 1—Establishment of Authority

27—Establishment of Authority

- (1) *Pharmacy Regulation Authority SA* is established.
- 5 (2) The Authority—
- (a) is a body corporate; and
 - (b) has perpetual succession and a common seal; and
 - (c) is capable of suing and being sued in its corporate name; and
 - 10 (d) has all the powers of a natural person that are capable of being exercised by a body corporate; and
 - (e) has the functions and powers assigned or conferred by or under this or any other Act.
- (3) If a document appears to bear the common seal of the Authority, it will be presumed, in the absence of proof to the contrary, that the common seal of the Authority was
- 15 duly affixed to the document.

Subdivision 2—Authority's membership

28—Composition of Authority

- (1) The Authority consists of 5 members appointed by the Governor on the nomination of the Minister of whom—
- 20 (a) 1 will be an officer of the Department who has responsibility in relation to the administration of pharmacy services; and
- (b) 1 will be selected from a panel of 3 pharmacists nominated by The Pharmacy Guild of Australia (SA Branch); and
- 25 (c) 1 will be selected from a panel of 3 pharmacists nominated by the Pharmaceutical Society of Australia (South Australian Branch) Incorporated; and
- (d) 1 will be selected from a panel of 3 pharmacists involved in the operation of pharmacies in South Australia, nominated by the Australian Friendly Societies Pharmacies Association; and
- 30 (e) 1 will be a person who, in the opinion of the Minister, is qualified by reason of their expertise and experience to represent the interests of the public.
- (2) At least 1 of the members of the Authority must be a woman and 1 must be a man.
- (3) The Governor may appoint a person to be a deputy of a member and a person so appointed may act as a member of the Authority in the absence of the member.
- 35 (4) The requirements of qualification and nomination (if applicable) made by this section in relation to the appointment of a member extend to the appointment of the deputy of that member.

29—Terms and conditions of membership

- 5
- (1) A member of the Authority will be appointed on conditions determined by the Governor and for a term, not exceeding 3 years, specified in the instrument of appointment and, at the expiration of a term of appointment, is eligible for reappointment.
- (2) The Governor may remove a member of the Authority 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.
- 10
- (3) The office of a member of the Authority 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) ceases to satisfy the qualification by virtue of which the member was eligible for appointment to the Authority; or
 - (e) is disqualified from managing corporations under Chapter 2D Part 2D.6 of the *Corporations Act 2001* of the Commonwealth; or
 - (f) is removed from office under subsection (2).
- 15
- (4) If a member of the Authority is a member constituting the Authority for the purposes of any proceedings under Division 6 and the member's term of office expires, or the member resigns, before those proceedings are completed, the member may, for the purpose of continuing and completing those proceedings, continue to act as a member of the Authority.
- 20

30—Presiding member and deputy

25 The Minister must, after consultation with the Authority, appoint a member who is a pharmacist (the *presiding member*) to preside at meetings of the Authority and another member who is a pharmacist (the *deputy presiding member*) to preside at meetings of the Authority in the absence of the presiding member.

31—Vacancies or defects in appointment of members

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

32—Remuneration of members

A member of the Authority is entitled to such remuneration, allowances and expenses as the Governor may from time to time determine.

Subdivision 3—General Manager and staff

33—General Manager and staff

- (1) There will be a General Manager of the Authority.

- (2) The General Manager will be appointed by the Authority on terms and conditions determined by the Authority.
- (3) There will be such other staff of the Authority as the Authority thinks necessary for the proper performance of its functions.
- 5 (4) A member of the staff of the Authority is not, as such, a member of the Public Service, but the Authority may employ a person who is on leave from employment in the Public Service or with an instrumentality or agency of the Crown.
- (5) The Authority may, with the approval of the Minister administering an administrative unit of the Public Service, make use of the services, facilities or officers of that unit.

10 Subdivision 4—General functions and powers

34—Functions of Authority

- (1) The functions of the Authority are:
- (a) to determine, after consultation with authorities considered appropriate by the Authority, the requirements for registration of premises under this Part;
- 15 (b) to ensure that the registers contemplated by this Part are established and maintained;
- (c) to prepare or endorse, subject to the approval of the Minister, codes of conduct for pharmacy services providers;
- 20 (d) to establish administrative processes for handling complaints received against pharmacy services providers or persons who occupy positions of authority in corporate pharmacy services providers or trustee pharmacy services providers (which may include processes under which the provider or person who occupies the position voluntarily enters into an undertaking);
- (e) to provide advice to the Minister as the Authority considers appropriate;
- 25 (f) to carry out other functions assigned to the Authority by or under this or any other Act, or by the Minister.
- (2) The Authority must perform its functions under this Act with the object of protecting the health and safety of the public by achieving and maintaining high professional standards in the provision of pharmacy services in this State.
- 30 (3) If the Minister approves a code of conduct prepared or endorsed by the Authority, the Authority must—
- (a) cause a copy of the code to be published in the Gazette; and
- (b) take reasonable steps to send a copy of the code to each pharmacy services provider to whom it applies; and
- 35 (c) ensure that a copy of the code is published on the Internet and kept available for public inspection without charge during normal office hours at the principal office of the Authority,
- (although proof of compliance with paragraphs (a), (b) and (c) is not necessary for the purpose of any proceedings that involve an alleged contravention of or failure to
- 40 comply with the code).

(4) The administrative processes established by the Authority for handling complaints received against pharmacy services providers or persons who occupy positions of authority in corporate pharmacy services providers or trustee pharmacy services providers must be designed—

- 5
- (a) to be fair to both the aggrieved person and the respondent; and
 - (b) to keep both the aggrieved person and the respondent properly informed about the steps taken by the Authority in response to the complaint; and
 - 10 (c) to provide, where appropriate, opportunities for the clarification of any misapprehension or misunderstanding between the aggrieved person and the respondent; and
 - (d) to keep both the aggrieved person and the respondent properly informed about the outcome of the processes; and
 - (e) to take into account the needs of particular classes of persons who may otherwise suffer disadvantage in the conduct of those processes.

15 **35—Delegations**

(1) The Authority may delegate a function or power conferred on the Authority—

- (a) to a specified person or body; or
- (b) to a person occupying or acting in a specified office or position.

20 (2) The General Manager may delegate a function or power conferred on the General Manager under this Act—

- (a) to a specified person or body; or
- (b) to a person occupying or acting in a specified office or position.

(3) A delegation—

- 25
- (a) may be made subject to conditions or limitations specified in the instrument of delegation; and
 - (b) if the instrument of delegation so provides, may be further delegated by the delegate; and
 - (c) is revocable at will and does not prevent the delegator from acting personally in a matter.

30 **Subdivision 5—Authority's procedures**

36—Authority's procedures

(1) Subject to this Act, 3 members constitute a quorum of the Authority.

35 (2) A meeting of the Authority (other than for the purposes of hearing and determining proceedings under Division 6) will be chaired by the presiding member or, in his or her absence, by the deputy presiding member and, in the absence of both the presiding member and the deputy presiding member, the members present at a meeting of the Authority must choose 1 of their number to preside at the meeting.

(3) A decision carried by a majority of the votes cast by members of the Authority at a meeting is a decision of the Authority.

- (4) Each member present at a meeting of the Authority has 1 vote on any question arising for decision and, except in hearing and determining proceedings under Division 6, the member presiding at the meeting may exercise a casting vote if the votes are equal.
- (5) A conference by telephone or other electronic means between the members of the Authority will, for the purposes of this section, be taken to be a meeting of the Authority at which the participating members are present if—
- (a) notice of the conference is given to all members in the manner determined by the Authority for the purpose; and
 - (b) each participating member is capable of communicating with every other participating member during the conference.
- (6) A proposed resolution of the Authority becomes a valid decision of the Authority despite the fact that it is not voted on at a meeting of the Authority if—
- (a) notice of the proposed resolution is given to all members of the Authority in accordance with procedures determined by the Authority; and
 - (b) a majority of the members express concurrence in the proposed resolution by letter, telegram, telefax, fax, email or other written communication setting out the terms of the resolution.
- (7) However, subsections (5) and (6) do not apply in relation to the hearing and determination of proceedings under Division 6 by the Authority as constituted for the purposes of proceedings under that Division.
- (8) The Authority must have accurate minutes kept of its meetings.
- (9) Subject to this Act, the Authority may determine its own procedures.

37—Conflict of interest etc under Public Sector provisions

A member of the Authority will not be taken to have a direct or indirect interest in a matter for the purposes of the *Public Sector (Honesty and Accountability) Act 1995* by reason only of the fact that the member has an interest in the matter that is shared in common with pharmacists generally or a substantial section of pharmacists in this State.

Subdivision 6—Accounts, audit and annual report

38—Accounts and audit

- (1) The Authority must keep proper accounting records in relation to its financial affairs, and must have annual statements of account prepared in respect of each financial year.
- (2) The accounts must be audited at least once in every year by an auditor approved by the Auditor-General and appointed by the Authority.
- (3) The Auditor-General may at any time audit the accounts of the Authority.

39—Annual report

- (1) The Authority must, on or before 30 September in each year, deliver to the Minister a report on the administration of this Act and the work of the Authority during the financial year ending on the preceding 30 June.

- (2) The report must incorporate the audited accounts of the Authority for the relevant financial year.
- (3) The Minister must, within 12 sitting days after receiving a report under this section, have copies of the report laid before both Houses of Parliament.

5 **Division 3—Registration of pharmacies and depots**

40—Registers

- (1) The General Manager must keep the following registers on behalf of the Authority:
 - (a) a register of pharmacies;
 - (b) a register of pharmacy depots.
- 10 (2) The register of pharmacies must include, in relation to each premises on the register—
 - (a) the address of the premises; and
 - (b) the full name and nominated contact address of the person who carries on a pharmacy business at the premises; and
 - (c) information prescribed by the regulations,15 and may include such other information as the Authority thinks fit.
- (3) The register of pharmacy depots must include, in relation to each premises on the register—
 - (a) the address of the premises; and
 - (b) information prescribed by the regulations,20 and may include such other information as the Authority thinks fit.
- (4) A person must, within 1 month after ceasing to carry on a pharmacy business at a pharmacy, inform the General Manager in writing of that fact.
Maximum penalty: \$5 000.
- (5) The General Manager is responsible to the Authority for the form and maintenance of the registers.
- 25 (6) The General Manager must correct an entry in a register that is not, or has ceased to be, correct.
- (7) The registers must be kept available for inspection by any person during ordinary office hours at the principal office of the Authority and the registers or extracts from the registers may be made available to the public by electronic means.
- 30 (8) A person may, on payment of the prescribed fee, obtain a copy of any part of a register under this section.

41—Registration of premises as pharmacy

- 35 (1) A person must not provide restricted pharmacy services except at premises registered as a pharmacy under this section.
Maximum penalty: \$50 000.
- (2) The registered premises must incorporate areas used for any business carried on in association with the provision of pharmacy services.

- (3) If, on application made to the Authority for the registration of premises as a pharmacy, the Authority is satisfied that the premises and its location comply with—
- (a) the requirements of the regulations; and
 - (b) the requirements determined by the Authority to be necessary for the registration of the premises as a pharmacy,
- the Authority must, subject to subsection (5), register the premises.
- (4) Registration under this section remains in force until 30 September next ensuing after the grant of registration and may from time to time be renewed for successive periods of 1 year expiring on 30 September.
- (5) The Authority must not register, or renew the registration of, premises as a pharmacy unless satisfied that members of the public cannot directly access the premises from within the premises of a supermarket.
- (6) The Authority may refuse to renew the registration of premises as a pharmacy if not satisfied that the premises and its location comply with the requirements of the regulations or the requirements determined by the Authority to be necessary for the registration of the premises as a pharmacy.
- (7) An application for registration or renewal of registration under this section must—
- (a) be made to the Authority in the manner and form approved by the Authority; and
 - (b) be accompanied by the registration fee prescribed under the regulations.
- (8) An applicant for registration or renewal of registration must, if the Authority so requires, provide the Authority with specified information to enable the Authority to determine the application.
- (9) This section does not apply in relation to the dispensing of drugs or medicines by a medical practitioner in the ordinary course of his or her profession.
- (10) In this section—
- supermarket* has the meaning assigned by the regulations.

42—Restriction on number of pharmacies

- (1) Friendly Society Medical Association Limited must not provide pharmacy services at more than 40 pharmacies in this State.
Maximum penalty: \$50 000.
- (2) A person other than a friendly society must not provide pharmacy services at more than 6 pharmacies in this State.
Maximum penalty: \$50 000.
- (3) A friendly society other than Friendly Society Medical Association Limited must not commence to provide pharmacy services at a pharmacy if friendly societies other than Friendly Society Medical Association Limited already provide pharmacy services at 9 pharmacies in this State or, if another number of pharmacies is prescribed, that number (as recorded on the register of pharmacies).
Maximum penalty: \$50 000.

- 5 (4) In determining the number of pharmacies at which a natural person provides pharmacy services, pharmacies at which the person provides pharmacy services as a natural person and pharmacies at which any body corporate or trust in which the person occupies a position of authority provides pharmacy services must be taken into account.

43—Supervision of pharmacies by pharmacists

- 10 (1) A person who carries on a pharmacy business must ensure that a pharmacist is in attendance and available for consultation by members of the public at each pharmacy at which the business is carried on while the pharmacy is open to the public.

Maximum penalty: \$50 000.

- (2) A person is not in breach of subsection (1) on account of a failure to have a pharmacist in attendance in the manner required by that subsection if—

15 (a) restricted pharmacy services or prescribed pharmacy services are not, while a pharmacist is not in attendance, offered to members of the public; and

(b) access to those areas of the pharmacy used for the provision of restricted pharmacy services or prescribed pharmacy services is physically prevented; and

(c) the person who carries on the pharmacy business at the premises can prove—

20 (i) that the person has taken reasonable steps to consider the interests of members of the public who might be interested in accessing the pharmacy business; and

(ii) that any period when a pharmacist would not be in attendance was published in advance in accordance with any requirements prescribed by the regulations; and

25 (iii) that during the period referred to in subparagraph (ii) the staff at the pharmacy had reasonable on-call access to a pharmacist or a medical practitioner.

- 30 (3) In addition, it is a defence to an alleged breach of subsection (1) to prove that the pharmacist who would usually be available for the purposes of that subsection was absent due to an exceptional and unforeseen circumstance.

44—Certain other businesses not to be carried on at pharmacy

A person must not, at a pharmacy, carry on a business consisting of or involving—

(a) the sale of alcohol or tobacco products; or

(b) the sale of animals; or

35 (c) the preparation of food or beverages for sale or consumption; or

(d) a prescribed activity.

Maximum penalty: \$50 000.

45—Registration of premises as pharmacy depot

- (1) A person must not use premises outside Metropolitan Adelaide as a pharmacy depot unless the premises are registered as a pharmacy depot under this section.

Maximum penalty: \$50 000.

- (2) If, on application made to the Authority for the registration of premises as a pharmacy depot, the Authority is satisfied that—

- (a) the premises comply with the regulations; and
- (b) the premises comply with the requirements determined by the Minister to be necessary for the registration of premises as a pharmacy depot,

the Authority must register the premises.

- (3) Registration under this section remains in force until 30 September next ensuing after the grant of registration and may from time to time be renewed for successive periods of 1 year expiring on 30 September.

- (4) The Authority may refuse to renew the registration of premises as a pharmacy depot if not satisfied that the premises comply with the regulations or the requirements determined by the Authority to be necessary for the registration of the premises as a pharmacy depot.

- (5) An application for registration or renewal of registration under this section must—

- (a) be made to the Authority in the manner and form approved by the Authority; and
- (b) be accompanied by the registration fee prescribed under the regulations.

- (6) An applicant for registration or renewal of registration must, if the Authority so requires, provide the Authority with specified information to enable the Authority to determine the application.

46—Conditions

- (1) The registration of a pharmacy or pharmacy depot under this Division will be subject to any condition—

- (a) imposed by the Authority in relation to the registration; or
- (b) prescribed by the regulations.

- (2) The Authority may, if the Authority considers it appropriate to do so, by notice in writing to the person holding the registration, vary a condition to which a registration is subject.

- (3) A person who holds a registration may, on application to the Authority in writing, request the variation of a condition to which the registration is subject and the Authority may, as the Authority thinks fit—

- (a) grant the variation; or
- (b) refuse to grant the variation.

- (4) The condition of a registration may be varied by the addition, substitution or deletion of 1 or more conditions.

- (5) A person must not contravene or fail to comply with a condition of a registration.
Maximum penalty: \$50 000.

47—Notices

- (1) An authorised officer may issue a notice under this section for the purpose of securing compliance with—

- (a) a condition of a registration under this Division; or
(b) a requirement imposed in relation to registration under this Division.

- (2) A notice under this section—

- (a) must be in the form of a written notice served on the person to whom it is issued; and

- (b) must specify the person to whom it is issued (whether by name or by a description sufficient to identify the person); and

- (c) must state the purpose for which the notice is issued and give notice of the condition or requirement to which it relates; and

- (d) may impose any requirement reasonably required for the purpose for which the notice is issued including 1 or more of the following:

- (i) a requirement that the person discontinue a specified activity until further notice from an authorised officer or the General Manager;

- (ii) a requirement that the person not carry on a specified activity except subject to specified conditions;

- (iii) a requirement that the person comply with a specified requirement under this Act;

- (iv) a requirement that the person furnish to the General Manager specified reports; and

- (e) must state that the person may, within 28 days, appeal to the District Court against the notice.

- (3) An authorised officer may, by written notice served on a person to whom a notice under this section has been issued, vary or revoke the notice.

- (4) A person to whom a notice is issued under this section must not, without reasonable excuse, fail to comply with the notice.

Maximum penalty: \$10 000.

- (5) A person must not hinder or obstruct a person complying with a notice under this section.

Maximum penalty: \$10 000.

- (6) Without limiting subsection (4), if a person to whom a notice is issued under this section fails to comply with the notice, the General Manager may, after due inquiry, suspend or cancel the registration of premises as a pharmacy or pharmacy depot (as the case may be) under this Division.

48—Appeals

- (1) An appeal lies to the District Court against—
- (a) a refusal by the Authority to register, or renew the registration of, premises as a pharmacy or pharmacy depot under this Division; or
 - 5 (b) a notice issued by an authorised officer under section 47; or
 - (c) a decision by the Authority to suspend or cancel the registration of premises as a pharmacy or pharmacy depot under this Division.
- (2) An appeal must be instituted within 28 days of the date of the decision appealed against but the District Court may, if satisfied that it is just and reasonable in the
- 10 circumstances to do so, extend that period (whether or not it has already expired).

Division 4—Registration of pharmacy services providers

49—Registers

- (1) The General Manager must keep the following registers on behalf of the Authority:
- (a) a register of pharmacy services providers;
 - 15 (b) a register of former pharmacy services providers—
 - (i) whose registration has been cancelled by disciplinary action under the repealed Act or the *Health Practitioner Regulation National Law (South Australia)*; or
 - 20 (ii) who have been prohibited from carrying on business as a pharmacy services provider or from occupying a position of authority in a corporate pharmacy services provider or a trustee pharmacy services provider by disciplinary action under the repealed Act or this Act,
 (and who have not been reinstated to the register under paragraph (a)).
- (2) The register of pharmacy services providers must include, in relation to each person
- 25 on the register—
- (a) the full name and nominated contact address of the pharmacy services provider; and
 - (b) in the case of a corporate pharmacy services provider or a trustee pharmacy services provider—the full names and addresses of all persons who occupy a
 - 30 position of authority in the provider; and
 - (c) information prescribed by the regulations,
- and may include such other information as the Authority thinks fit.
- (3) The register of former pharmacy services providers must include, in relation to each
- 35 person on the register, information prescribed by the regulations and may include such other information as the Authority thinks fit.
- (4) The General Manager is responsible to the Authority for the form and maintenance of the registers.
- (5) The General Manager must correct an entry in a register that is not, or has ceased to be, correct.

- (6) The registers must be kept available for inspection by any person during ordinary office hours at the principal office of the Authority and the registers or extracts from the registers may be made available to the public by electronic means.
- (7) A person may, on payment of the prescribed fee, obtain a copy of any part of a register under this section.

50—Registration of pharmacy services providers

- (1) A person must not act as a pharmacy services provider unless registered under this Division.

Maximum penalty: \$10 000.

- (2) Registration remains in force until 30 September next ensuing after the grant of registration and may from time to time be renewed for successive periods of 1 year expiring on 30 September.

- (3) An application for registration or renewal of registration must—

(a) be made to the Authority in the manner and form approved by the Authority; and

(b) be accompanied by the registration fee prescribed under the regulations.

- (4) A pharmacy services provider must, within 30 days of any change occurring in the particulars required to be given under this section in relation to registration, inform the General Manager in writing of the change.

Maximum penalty: \$10 000.

Division 5—Restrictions relating to provision of pharmacy services

51—Restrictions relating to provision of pharmacy services

- (1) A person must not provide a restricted pharmacy service unless—

(a) in the case of a natural person—

(i) he or she is a qualified person and provides the service personally or through the instrumentality of a natural person who is a qualified person; or

(ii) he or she is a pharmacist who does not hold a current authorisation to practise and provides the service through the instrumentality of a natural person who is a qualified person;

(b) in the case of a body corporate—

(i) the body corporate is a corporate pharmacy services provider; and

(ii) the body corporate provides the service through the instrumentality of a natural person who is a qualified person;

(c) in the case of a trust (however constituted)—

(i) the trust is a trustee pharmacy services provider; and

(ii) the trust provides the service through the instrumentality of a natural person who is a qualified person.

Maximum penalty: \$50 000 or imprisonment for 6 months.

- (2) Subsection (1) does not apply in relation to—
- (a) a restricted pharmacy service provided by a natural person who is an unqualified person if—
 - (i) the person carried on a pharmacy business before 20 April 1972 and has continued to do so since that date; and
 - (ii) the service is provided through the instrumentality of a natural person who is a qualified person; or
 - (b) a restricted pharmacy service provided by the personal representative of a deceased pharmacist or person referred to in paragraph (a) if—
 - (i) the service is provided for a period of not more than 1 year (or such longer period as the Authority may allow); and
 - (ii) the service is provided through the instrumentality of a natural person who is a qualified person; or
 - (c) a restricted pharmacy service provided by the official receiver of a bankrupt or insolvent pharmacist if—
 - (i) the service is provided for a period of not more than 1 year (or such longer period as the Authority may allow); and
 - (ii) the service is provided through the instrumentality of a natural person who is a qualified person; or
 - (d) a restricted pharmacy service provided by a person vested by law with power to administer the affairs of a corporate pharmacy services provider that is being wound up or is under administration, receivership or official management if—
 - (i) the service is provided for a period of not more than 1 year (or such longer period as the Authority may allow); and
 - (ii) the service is provided through the instrumentality of a natural person who is a qualified person.
- (3) Subsection (1) does not apply in relation to a restricted pharmacy service provided by—
- (a) an unqualified person in prescribed circumstances; or
 - (b) a person pursuant to an exemption under subsection (4).
- (4) The Governor may, by proclamation, exempt a person from subsection (1) if of the opinion that good reason exists for doing so in the particular circumstances of the case.
- (5) An exemption under subsection (4) may be subject to such conditions as the Governor thinks fit and specifies in the proclamation.
- (6) A person who contravenes, or fails to comply with, a condition of an exemption under this section is guilty of an offence.
Maximum penalty: \$50 000.
- (7) The Governor may, by proclamation, vary or revoke a proclamation under this section.

(8) In this section—

qualified person, in relation to a restricted pharmacy service, means—

- 5
- (a) a person who is a pharmacist who holds a current authorisation to practise in the pharmacy profession (other than as a student) under the *Health Practitioner Regulation National Law*; or
 - (b) a person authorised by or under another Act to provide such a service.

Division 6—Disciplinary proceedings

52—Preliminary

(1) In this Division—

- 10
- (a) a reference to **occupier of a position of authority** includes a reference to a person who is not but who was, at the relevant time, the occupier of a position of authority;
 - (b) a reference to **pharmacy services provider** includes a reference to a person who is not but who was, at the relevant time, a pharmacy services provider.

15 (2) The Authority and the National Agency or a National Board, or all 3 entities, may agree on protocols that relate to—

- 20
- (a) the handling of disciplinary proceedings under this Act and the handling of disciplinary proceedings under the *Health Practitioner Regulation National Law*;
 - (b) the handling of disciplinary proceedings under this Act that relate to matters that are (or may be) relevant to criminal proceedings under the *Health Practitioner Regulation National Law*.

25 (3) Without limiting subsection (2), the Authority may decide not to proceed (or not to proceed further) with proceedings under this Act on account of proceedings under the *Health Practitioner Regulation National Law*.

53—Cause for disciplinary action

(1) There is proper cause for disciplinary action against a pharmacy services provider if—

- 30
- (a) the provider has contravened or failed to comply with a provision of this Act; or
 - (b) there has been, in connection with the provision of pharmacy services by the provider, a contravention or failure to comply with a code of conduct under this Act applying to the provider; or
 - (c) the provider or any person employed or engaged by the provider has, in connection with the provision of pharmacy services by the provider, engaged in conduct that would, if the person were a pharmacist, constitute unprofessional conduct; or
 - (d) the provider is for any reason not a fit and proper person to be a pharmacy services provider; or
 - (e) in the case of a corporate pharmacy services provider or a trustee pharmacy services provider, an occupier of a position of authority in the provider—
- 40

- (i) has contravened or failed to comply with a provision of this Act; or
- (ii) has, in connection with the provision of pharmacy services by the provider, engaged in conduct that would, if the person were a pharmacist, constitute unprofessional conduct; or
- (iii) is for any reason not a fit and proper person to occupy a position of authority in a corporate pharmacy services provider.

(2) There is proper cause for disciplinary action against the occupier of a position of authority in a corporate pharmacy services provider or a trustee pharmacy services provider if—

- (a) the person has contravened or failed to comply with a provision of this Act; or
- (b) the person has, in connection with the provision of pharmacy services by the provider, engaged in conduct that would, if the person were a pharmacist, constitute unprofessional conduct; or
- (c) the person is for any reason not a fit and proper person to occupy a position of authority in a corporate pharmacy services provider or a trustee pharmacy services provider; or
- (d) —
 - (i) the provider has contravened or failed to comply with a provision of this Act; or
 - (ii) there has been, in connection with the provision of pharmacy services by the provider, a contravention or failure to comply with a code of conduct under this Act applying to the provider; or
 - (iii) the provider, or any person employed or engaged by the provider, has, in connection with the provision of pharmacy services by the provider, engaged in conduct that would, if the provider or the person were a pharmacist, constitute unprofessional conduct,

unless it is proved that the person could not, by the exercise of reasonable care, have prevented the contravention, failure to comply or conduct.

54—Inquiries as to matters constituting grounds for disciplinary action

(1) A complaint setting out matters that are alleged to constitute grounds for disciplinary action against a person may be laid before the Authority (in a manner and form approved by the Authority) by—

- (a) the General Manager; or
- (b) the Minister; or
- (c) a representative body; or
- (d) a person who is aggrieved by conduct of the person or, if the person aggrieved is a child or is suffering from a mental or physical incapacity, by a person acting on his or her behalf.

- (2) If a complaint is laid under this section, the Authority must inquire into the subject matter of the complaint unless—
- (a) the Authority considers that the matter should be dealt with under the *Health Practitioner Regulation National Law (South Australia)*; or
 - (b) the Authority considers that the complaint is frivolous or vexatious.
- (3) If a complaint has been laid under this section by or on behalf of an aggrieved person and the Authority is satisfied that the complaint arose from a misapprehension on the part of the complainant or from a misunderstanding between the parties, it may, before proceeding further with the hearing of the complaint, require the parties to attend before the General Manager in order to clarify the misapprehension or misunderstanding.
- (4) If, after conducting an inquiry under this section, the Authority is satisfied on the balance of probabilities that there is proper cause for disciplinary action against the respondent, the Authority may, by order, do 1 or more of the following:
- (a) censure the respondent;
 - (b) require the respondent to pay to the Authority a fine not exceeding \$10 000;
 - (c) prohibit the respondent from carrying on business as a pharmacy services provider;
 - (d) prohibit the respondent from occupying a position of authority in a corporate pharmacy services provider or a trustee pharmacy services provider.
- (5) The Authority may—
- (a) stipulate that a prohibition under subsection (4) is to apply—
 - (i) permanently; or
 - (ii) for a specified period; or
 - (iii) until the fulfilment of specified conditions; or
 - (iv) until further order;
 - (b) stipulate that an order relating to a person is to have effect at a specified future time and impose conditions as to the conduct of the person or the person's business until that time.
- (6) If—
- (a) a person has been found guilty of an offence; and
 - (b) the circumstances of the offence form, in whole or in part, the subject matter of the complaint,
- the person is not liable to a fine under this section in respect of conduct giving rise to the offence.
- (7) The Authority may—
- (a) fix a period within which a fine imposed under this section must be paid;
 - (b) on application by a person liable to pay a fine imposed under this section, extend the period within which the fine must be paid.
- (8) A fine imposed under this section is recoverable by the Authority as a debt.

- (9) If the Authority makes an order under subsection (4)(c) in relation to a pharmacist registered under the *Health Practitioner Regulation National Law*, the General Manager must give written notice of the order to the National Board established for pharmacy.

55—Contravention of prohibition order

- (1) If a person carries on business as a pharmacy services provider in contravention of an order of the Authority, the person is guilty of an offence.

Maximum penalty: \$75 000 or imprisonment for 6 months.

- (2) If a person occupies a position of authority in a corporate pharmacy services provider or a trustee pharmacy services provider in contravention of an order of the Authority, the person and the provider are each guilty of an offence.

Maximum penalty: \$75 000 or imprisonment for 6 months.

- (3) If a person contravenes or fails to comply with a condition imposed by the Authority as to the conduct of the person or the person's business, the person is guilty of an offence.

Maximum penalty: \$75 000 or imprisonment for 6 months.

56—Constitution of Authority for purpose of proceedings

- (1) The Authority will, for the purpose of hearing and determining proceedings under this Division, be constituted of 3 members, of whom—

(a) 1 will be a legal practitioner appointed by the Minister for the purpose of constituting the Authority under this Division; and

(b) 1 will be a member who is a pharmacist.

- (2) An appointment under subsection (1)(a) will be on terms and conditions determined by the Minister.

- (3) The member referred to in subsection (1)(a) will preside over the proceedings.

- (4) The members of the Authority, other than the legal practitioner, will, for the purposes of any particular proceedings, be selected by the presiding member of the Authority or, in the absence of the presiding member, the deputy presiding member.

- (5) If a member of the Authority as constituted under this section (other than the member presiding over the proceedings) dies or is for any other reason unable to continue with the proceedings, the Authority constituted of the remaining members may, if the member presiding over the proceedings so determines, continue and complete the proceedings.

- (6) Any questions of law or procedure arising before the Authority will be determined by the member presiding over the proceedings and any other questions by unanimous or majority decision of the members.

- (7) The Authority constituted of the member presiding over the proceedings may, sitting alone—

(a) deal with—

(i) preliminary, interlocutory or procedural matters; or

(ii) questions of costs; or

(iii) questions of law; or

(b) enter consent orders; or

(c) perform any other function or exercise any other power of a prescribed kind,

and may, for that purpose or as a consequence, while sitting alone, make any
determination or order (including a final order) that the member considers appropriate.

57—Provisions as to proceedings before Authority

(1) Subject to this Act, the Authority must give to all of the parties to proceedings before the Authority under this Division at least 14 days written notice of the time and place at which it intends to conduct the proceedings, and must afford to the parties a reasonable opportunity to call and give evidence, to examine or cross-examine witnesses, and to make submissions to the Authority.

(2) However—

(a) the Authority may, if it thinks special reasons exist for doing so, give a lesser period of written notice under subsection (1); and

(b) the Authority may, if of the opinion that it is desirable to do so in the public interest—

(i) suspend the registration of the person the subject of the proceedings;
or

(ii) impose conditions on the person's registration restricting the person's right to provide pharmacy services,

pending hearing and determination of the proceedings.

(3) The requirement to give written notice under subsection (1) does not extend to adjournments.

(4) If a party to whom notice has been given under subsection (1) does not attend at the time and place fixed by the notice, the Authority may proceed to hear and determine the matter in the absence of that party.

(5) A person who is aggrieved by conduct that is the subject-matter of proceedings before the Authority under this Division is, subject to any direction of the Authority to the contrary, entitled to be present at the hearing of the proceedings.

(6) In the course of proceedings before the Authority under this Division, the Authority may—

(a) receive in evidence a transcript of evidence taken in proceedings before a court, tribunal or other body constituted under the law of South Australia or of any other State or a Territory of Australia, of the Commonwealth or of another country, and draw any conclusions of fact from the evidence that it considers proper;

(b) adopt, as in its discretion it considers proper, any findings, decision, judgment, or reasons for judgment, of any such court, tribunal or body that may be relevant to the proceedings.

(7) The Authority should conduct proceedings under this Division as expeditiously as possible.

- (8) If the Authority takes action under subsection (2)(b) in relation to a pharmacist registered under the *Health Practitioner Regulation National Law*, the General Manager must give written notice of the action that has been taken to the National Board established for pharmacy.

5 **58—Powers of Authority in relation to witnesses etc**

- (1) For the purposes of proceedings before the Authority under this Division, the Authority may—
- (a) by summons signed on behalf of the Authority by a member of the Authority or the General Manager, require the attendance before the Authority of a person whom the Authority thinks fit to call before it; or
 - (b) by summons signed on behalf of the Authority by a member of the Authority or the General Manager, require the production of relevant documents, records or equipment and, in the case of a document or record that is not in the English language—
 - (i) a written translation of the document or record into English; and
 - (ii) a certificate signed by a translator approved by the Authority certifying that the translation accurately reproduces in English the contents of the document or record; or
 - (c) inspect documents, records or equipment produced before it, and retain them for such reasonable period as it thinks fit, and make copies of the documents or records or their contents; or
 - (d) require a person to make an oath or affirmation (which may be administered by a member of the Authority) to answer truthfully questions put by a member of the Authority or a person appearing before the Authority; or
 - (e) require a person appearing before the Authority (whether summoned to appear or not) to answer questions put by a member of the Authority or by a person appearing before the Authority.
- (2) On the receipt of an application for the issue of a summons under this section, a member or the General Manager may, without referring the matter to the Authority, issue a summons on behalf of the Authority.
- (3) A person who—
- (a) fails without reasonable excuse to comply with a summons issued to attend, or to produce documents, records or equipment, before the Authority; or
 - (b) having been served with a summons to produce—
 - (i) a written translation of the document or record into English; and
 - (ii) a certificate signed by a translator approved by the Authority certifying that the translation accurately reproduces in English the contents of the document or record,
 fails, without reasonable excuse, to comply with the summons; or
 - (c) misbehaves before the Authority, wilfully insults the Authority or 1 or more of the members in the exercise of the member's official duties, or wilfully interrupts the proceedings of the Authority; or

- (d) refuses to be sworn or to affirm, or refuses or fails to answer truthfully a relevant question when required to do so by the Authority,

is guilty of an offence.

Maximum penalty: \$10 000 or imprisonment for 6 months.

- 5 (4) A person who appears as a witness before the Authority has the same protection as a witness in proceedings before the Supreme Court.

59—Principles governing proceedings

- (1) In proceedings before the Authority under this Division, the Authority—

- 10 (a) is not bound by the rules of evidence and may inform itself on any matter as it thinks fit; and
(b) must act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms.

- (2) In proceedings before the Authority, the Authority must keep the parties to the proceedings properly informed as to the progress and outcome of the proceedings.

60—Representation at proceedings before Authority

15 A party to proceedings before the Authority is entitled to be represented at the hearing of those proceedings.

61—Costs

- 20 (1) The Authority may award such costs against a party to proceedings before it as the Authority considers just and reasonable.
(2) A party who is dissatisfied with the amount of the costs awarded by the Authority may request a Master of the District Court to tax the costs and, after taxing the costs, the Master may confirm or vary the amount of the costs awarded by the Authority.
(3) Costs awarded by the Authority under this section may be recovered as a debt.

62—Appeal

- 25 (1) An appeal lies to the District Court against a decision of the Authority in proceedings under this Division.
(2) An appeal under subsection (1) against a decision may be instituted by the complainant or the respondent in the proceedings in which the decision was made.
30 (3) An appeal must be instituted within 1 month of the date of the decision appealed against.

63—Operation of order may be suspended

- 35 (1) Where an order has been made by the Authority, and the Authority or the District Court is satisfied that an appeal against the order has been instituted, or is intended, it may suspend the operation of the order until the determination of the appeal.
(2) Where the Authority has suspended the operation of an order under subsection (1), the Authority may terminate the suspension, and where the District Court has done so, the Court may terminate the suspension.

Division 7—Related provisions

64—Authorised officers

- (1) The Minister may, on the recommendation of the Authority, appoint a suitably qualified person to be an authorised officer for the purposes of this Part.
- 5 (2) An appointment under this section may be made subject to such conditions or limitations as the Minister thinks fit.
- (3) An authorised officer (other than the General Manager if appointed as an authorised officer) is subject to direction by the General Manager.
- (4) The Minister may vary or revoke an appointment at any time.
- 10 (5) An authorised officer may investigate any matter relevant to the operation, administration or enforcement of this Part.
- (6) For the purposes of an investigation, an authorised officer may—
 - 15 (a) at any reasonable time, enter and inspect registered premises or premises on which the authorised officer reasonably suspects an offence against this Part has been or is being committed; or
 - (b) with the authority of a warrant issued by a magistrate or in circumstances in which the authorised officer reasonably believes that immediate action is required, use reasonable force to break into or open any part of, or anything in or on any premises referred to in paragraph (a); or
 - 20 (c) while on premises entered under paragraph (a) or (b), seize and retain anything found on the premises that the authorised officer reasonably believes may afford evidence relevant to the matters under investigation; or
 - (d) require any person who has possession of documents or records relevant to the matters under investigation to produce those documents or records for
25 inspection, including written records that reproduce in a readily understandable form information kept by computer, microfilm or other process; or
 - (e) inspect any documents or records produced to the authorised officer and retain them for such reasonable period as the authorised officer thinks fit, and
30 make copies of the documents or records; or
 - (f) require any person who is in a position to provide information relevant to the matters under investigation to answer any question put by the authorised officer in relation to those matters; or
 - (g) take photographs, films or video or audio recordings; or
 - 35 (h) if the authorised officer reasonably suspects that an offence against this Part has been or is being committed, require the suspected offender to state his or her full name and address.
- (7) An authorised officer must not exercise the power conferred by subsection (6)(a) in
40 relation to any residential premises except with the permission of the occupier of the premises or on the authority of a warrant issued by a magistrate.

(8) A magistrate must not issue a warrant under this section unless satisfied, by information given on oath, that the warrant is reasonably required in the circumstances.

(9) The person in charge of premises at the relevant time must give an authorised officer such assistance and provide such facilities as are necessary to enable the powers conferred by this section to be exercised.

Maximum penalty: \$5 000.

(10) A person who—

(a) hinders or obstructs an authorised officer in the exercise of powers conferred by this section; or

(b) uses abusive, threatening or insulting language to an authorised officer; or

(c) refuses or fails to comply with a requirement of an authorised officer under this section; or

(d) when required by an authorised officer to answer a question, refuses or fails to answer the question to the best of the person's knowledge, information and belief; or

(e) falsely represents, by words or conduct, that he or she is an authorised officer, is guilty of an offence.

Maximum penalty: \$5 000.

(11) If a person is required to provide information or to produce a document, record or equipment under this section and the information, document, record or equipment would tend to incriminate the person or make the person liable to a penalty, the person must nevertheless provide the information or produce the document, record or equipment, but the information, document, record or equipment so provided or produced will not be admissible in evidence against the person in proceedings for an offence, other than an offence against this or any other Act relating to the provision of false or misleading information.

65—False or misleading statement

A person must not make a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of any particular) in any information provided under this Part.

Maximum penalty: \$20 000.

66—Disclosure of information

(1) The Authority may disclose any information obtained by the Authority while acting under this Part to the National Agency or to a National Board if the disclosure is reasonably required in connection with any aspect of the administration or operation of the *Health Practitioner Regulation National Law* (including any disciplinary or criminal proceedings under that Law).

(2) The Authority may act under subsection (1) even if the information was obtained by the Authority in confidence.

67—Use of word "pharmacy"

A person must not, in the course of carrying on a business, use the word "pharmacy" to describe premises that are not registered as a pharmacy or pharmacy depot under this Part.

5 Maximum penalty: \$50 000.

68—Pharmacy services providers to be indemnified against loss

- (1) A pharmacy services provider must not, unless exempted by the Authority, provide pharmacy services unless insured or indemnified in a manner and to an extent approved by the Authority against civil liabilities that might be incurred by the provider in connection with the provision of pharmacy services.

10

Maximum penalty: \$50 000.

- (2) The Authority may, subject to such conditions as it thinks fit, exempt a person, or a class of persons, from the requirements of this section and may, whenever it thinks fit, revoke an exemption or revoke or vary the conditions under which an exemption operates.

15

69—Information relating to claim against pharmacy services provider to be provided

If a person has claimed damages or other compensation from a pharmacy services provider for alleged negligence committed by the pharmacy services provider in connection with the provision of pharmacy services, the pharmacy services provider must—

20

- (a) within 30 days after the claim is made; and
- (b) within 30 days after any order is made by a court to pay damages or other compensation in respect of that claim or any agreement has been entered into for payment of a sum of money in settlement of that claim (whether with or without a denial of liability),

25

provide the Authority with prescribed information relating to the claim.

Maximum penalty: \$10 000.

70—Punishment of conduct that constitutes an offence

If conduct constitutes an offence and is also a ground for disciplinary action under this Part, the taking of disciplinary action under this Part is not a bar to conviction and punishment for the offence, nor is conviction and punishment for the offence a bar to disciplinary action under this Part.

30

71—Evidentiary provision

In proceedings for an offence against this Part, an allegation in a complaint—

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- (a) that premises specified in the complaint are or are not, or were or were not, on a specified date, registered on the register of pharmacies or the register of pharmacy depots;
- (b) that a person named in the complaint is, or was on a specified date, a pharmacy services provider;

40

- (c) that a person named in the complaint is, or was on a specified date, occupying a position of authority in a corporate pharmacy services provider or trust, must be accepted as proved in the absence of proof to the contrary.

72—Vicarious liability for offences

- 5 If a body corporate is guilty of an offence against this Part, each person occupying a position of authority in the body corporate is guilty of an offence and liable to the same penalty as is prescribed for the principal offence unless it is proved that the person could not, by the exercise of reasonable care, have prevented the commission of the principal offence.

10 Part 5—Optometry practice

73—Interpretation

In this Part—

medical practitioner means a person registered under the *Health Practitioner Regulation Law* to practise in the medical profession (other than as a student);

15 *optical appliance* means—

- (a) any appliance designed to correct, remedy or relieve any refractive abnormality or defect of sight, including, for example, spectacle lenses; or
(b) contact lenses, whether or not designed to correct, remedy or relieve any refractive abnormality or defect of sight;

20 *optometrist* means a person registered under the *Health Practitioner Regulation Law* to practise in the optometry profession (other than as a student);

orthoptist means a person whose name is recorded in the Register of Orthoptists kept by the Australian Orthoptists Registration Body Pty Ltd (ACN 095 11 7 678).

74—Unauthorised dispensing of optical appliances

- 25 (1) Subject to subsection (2), a person must not sell an optical appliance by retail unless the appliance has been prescribed for the purchaser by an optometrist or orthoptist or a medical practitioner.

Maximum penalty: \$30 000.

- (2) Subsection (1) does not apply to the sale of glasses if—

- 30 (a) the glasses are designed only to alleviate the effects of presbyopia; and
(b) the glasses comprise 2 lenses of the same power, being a power of +1 dioptré or more but not exceeding +3 dioptrés; and
(c) the glasses are manufactured to the prescribed standard; and
35 (d) a prescribed warning is attached to the glasses in the prescribed manner at the time of sale.

75—Dispensing expired prescription

- (1) A person must not dispense an optical appliance pursuant to an expired prescription.

Maximum penalty: \$15 000.

- (2) For the purposes of subsection (1)—
- (a) a prescription for contact lenses expires—
 - (i) unless subparagraph (ii) expires—18 months after the date on which it is written;
 - 5 (ii) if the person who issues the prescription indicates a shorter period—
at the end of that shorter period;
 - (b) a prescription for an optical appliance other than a contact lens expires—
 - (i) unless subparagraph (ii) applies—3 years after the date on which it is written;
 - 10 (ii) if the person who issues the prescription indicates a shorter period—
at the end of that shorter period.

76—Failure to give free prescription on request

- (1) Subject to subsection (2), an optometrist or orthoptist or a medical practitioner who prescribes an optical appliance for a person must give the person a free copy of the prescription on request.
15
Maximum penalty: \$5 000.
- (2) In the case of a contact lens, an obligation under subsection (1) does not arise until after the relevant person has finished prescribing and fitting the lens.
- (3) A person who dispenses an optical appliance for a person on and in accordance with the prescription of an optometrist, orthoptist or medical practitioner must give the person a free copy of the prescription on request.
20
Maximum penalty: \$5 000.
- (4) A prescription provided under subsection (1) or (3) must contain all information required to fabricate accurately the relevant optical appliance, as specified by the Optometry Board of Australia from time to time.
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77—Authorised officers

- (1) The Minister may appoint a suitably qualified person to be an authorised officer for the purposes of this Part.
- (2) An appointment under this section may be made subject to such conditions or limitations as the Minister thinks fit.
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- (3) An authorised officer is subject to direction by the Chief Executive.
- (4) The Minister may vary or revoke an appointment at any time.
- (5) An authorised officer may investigate any matter relevant to the operation, administration or enforcement of this Part.
- (6) For the purposes of an investigation, an authorised officer may—
35
 - (a) at any reasonable time, enter and inspect premises on which the authorised officer reasonably suspects an offence against this Part has been or is being committed; or

- (b) with the authority of a warrant issued by a magistrate or in circumstances in which the authorised officer reasonably believes that immediate action is required, use reasonable force to break into or open any part of, or anything in or on any premises referred to in paragraph (a); or
- 5 (c) while on premises entered under paragraph (a) or (b), seize and retain anything found on the premises that the authorised officer reasonably believes may afford evidence relevant to the matters under investigation; or
- 10 (d) require any person who has possession of documents or records relevant to the matters under investigation to produce those documents or records for inspection, including written records that reproduce in a readily understandable form information kept by computer, microfilm or other process; or
- 15 (e) inspect any documents or records produced to the authorised officer and retain them for such reasonable period as the authorised officer thinks fit, and make copies of the documents or records; or
- (f) require any person who is in a position to provide information relevant to the matters under investigation to answer any question put by the authorised officer in relation to those matters; or
- (g) take photographs, films or video or audio recordings; or
- 20 (h) if the authorised officer reasonably suspects that an offence against this Part has been or is being committed, require the suspected offender to state his or her full name and address.
- (7) An authorised officer must not exercise the power conferred by subsection (6)(a) in relation to any residential premises except with the permission of the occupier of the premises or on the authority of a warrant issued by a magistrate.
- 25 (8) A magistrate must not issue a warrant under this section unless satisfied, by information given on oath, that the warrant is reasonably required in the circumstances.
- (9) The person in charge of premises at the relevant time must give an authorised officer such assistance and provide such facilities as are necessary to enable the powers conferred by this section to be exercised.
- 30 Maximum penalty: \$5 000.
- (10) A person who—
- 35 (a) hinders or obstructs an authorised officer in the exercise of powers conferred by this section; or
- (b) uses abusive, threatening or insulting language to an authorised officer; or
- (c) refuses or fails to comply with a requirement of an authorised officer under this section; or
- 40 (d) when required by an authorised officer to answer a question, refuses or fails to answer the question to the best of the person's knowledge, information and belief; or
- (e) falsely represents, by words or conduct, that he or she is an authorised officer,

is guilty of an offence.

Maximum penalty: \$5 000.

- 5 (11) If a person is required to provide information or to produce a document, record or equipment under this section and the information, document, record or equipment would tend to incriminate the person or make the person liable to a penalty, the person must nevertheless provide the information or produce the document, record or equipment, but the information, document, record or equipment so provided or produced will not be admissible in evidence against the person in proceedings for an offence, other than an offence against this or any other Act relating to the provision of false or misleading information.
- 10

Part 6—Miscellaneous

78—Delegations

- 15 (1) The Minister may delegate a function or power conferred on the Minister under this Act—
- (a) to a specified person or body; or
- (b) to a person occupying or acting in a specified office or position.
- (2) The Chief Executive may delegate a function or power conferred on the Chief Executive under this Act—
- 20 (a) to a specified person or body; or
- (b) to a person occupying or acting in a specified office or position.
- (3) A delegation—
- (a) may be made subject to conditions or limitations specified in the instrument of delegation; and
- 25 (b) if the instrument of delegation so provides, may be further delegated by the delegate; and
- (c) is revocable at will and does not prevent the delegator from acting personally in a matter.

79—Commissioner of Police may give criminal history information

- 30 (1) The Commissioner of Police may give criminal history information to—
- (a) a National Board; or
- (b) CrimTrac, or a police force or service of the Commonwealth or another State, for the purpose of CrimTrac or the police force or service giving the criminal history information to the National Board.
- (2) In this section—
- 35 ***criminal history information*** means information about a person's criminal history that may be included in a written report under the *Health Practitioner Regulation National Law*.

80—Application of fines

- (1) A fine imposed for an offence against this Act (other than Part 3 or 4) must be paid to the Minister.
- (2) A fine imposed for an offence against Part 3 must be paid to the Attorney-General.
- 5 (3) A fine imposed for an offence against Part 4 must be paid to the Pharmacy Regulation Authority SA.

81—Investigators

10 A National Board may, in addition to the persons referred to in section 163 of the *Health Practitioner Regulation National Law (South Australia)*, appoint a person employed in the Public Service of the State, or by an agency or instrumentality of the Crown, as an investigator under that Law.

82—Regulations

- (1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.
- 15 (2) Without limiting the generality of subsection (1), the regulations may—
 - (a) prescribe, or empower the Minister to fix, fees or charges for the purposes of this Act, and may provide for the recovery of a fee or charge so prescribed;
 - (b) require the provision of any report or other form of information relating to—
 - 20 (i) pharmacy services, any pharmacy business or any premises constituting a pharmacy or pharmacy depot; or
 - (ii) the sale of optical appliances; or
 - (iii) the provision of other health services within the State;
 - (c) prohibit or regulate the use of specified names or names of a specified class in connection with a pharmacy or pharmacy business;
 - 25 (d) make any provision with respect to the keeping of a register;
 - (e) exempt any person or class of persons from the obligation to pay a fee or charge so prescribed;
 - (f) prescribe penalties, not exceeding \$5 000, for breach of, or non-compliance with, a regulation.
- 30 (3) The regulations may—
 - (a) be of general or limited application; and
 - (b) make different provision according to the persons, things or circumstances to which they are expressed to apply; and
 - 35 (c) refer to or incorporate, wholly or partially and with or without modification, a code, standard or other document prepared or published by a prescribed body, either as in force at the time the regulations are made or as in force from time to time; and

- 5
- (d) provide that a specified provision of this Act does not apply, or applies with prescribed variations, to any person, circumstance or situation (or person, circumstance or situation of a prescribed class) specified by the regulations, subject to any condition to which the regulations are expressed to be subject; and
- (e) provide that any matter or thing is to be determined, dispensed with, regulated or prohibited according to the discretion of the Minister or another prescribed authority.
- 10 (4) If a code, standard or other document is referred to or incorporated in the regulations—
- (a) a copy of the code, standard or other document must be kept available for public inspection, without charge and during ordinary office hours, at an office or offices specified in the regulations; and
- 15 (b) evidence of the contents of the code, standard or other document may be given in any legal proceedings by production of a document apparently certified by the Minister to be a true copy of the code, standard or other document.

83—Review of Part 3

- 20 (1) The Minister must, as soon as practicable after the third anniversary of the commencement of this Act, cause a review to be carried out on the operation of Part 3.
- (2) The review must be completed within 6 months after it is initiated.
- (3) The Minister must, within 12 sitting days after receiving a report on the outcome of the review, have copies of the report laid before both Houses of Parliament.

Schedule 1—Related amendments, repeals and transitional provisions

Part 1—Preliminary

1—Amendment provisions

In this Schedule, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Acts Interpretation Act 1915*

2—Amendment of section 4—Interpretation

Section 4(1)—after the definition of *the Governor-in-Chief, the Governor or the Lieutenant-Governor* insert:

Health Practitioner Regulation National Law means—

- 35 (a) the *Health Practitioner Regulation National Law*—
- (i) as in force from time to time, set out in the schedule to the *Health Practitioner Regulation National Law Act 2009* of Queensland; and

- (ii) as it applies as a law of South Australia, another State or a Territory (with or without modification); or
- (b) the law of another State or a Territory that substantially corresponds to the law referred to in paragraph (a);

5 **Part 3—Amendment of *Births, Deaths and Marriages Registration Act 1996***

3—Amendment of section 4—Definitions

Section 4, definition of *doctor*—delete the definition and substitute:

10 *doctor* means a person registered under the *Health Practitioner Regulation National Law* to practise in the medical profession (other than as a student);

Part 4—Amendment of *Boxing and Martial Arts Act 2000*

4—Amendment of section 3—Interpretation

Section 3, definition of *medical practitioner*—delete the definition and substitute:

15 *medical practitioner* means a person registered under the *Health Practitioner Regulation National Law* to practise in the medical profession (other than as a student);

Part 5—Amendment of *Consent to Medical Treatment and Palliative Care Act 1995*

5—Amendment of section 4—Interpretation

20 (1) Section 4, definition of *dentist*—delete the definition and substitute:

dentist means a person registered under the *Health Practitioner Regulation National Law*—

- (a) to practise in the dental profession as a dentist (other than as a student); and
- 25 (b) in the dentists division of that profession;

(2) Section 4, definition of *medical practitioner*—delete the definition and substitute:

medical practitioner means a person registered under the *Health Practitioner Regulation National Law* to practise in the medical profession (other than as a student) and includes a dentist;

Part 6—Amendment of *Controlled Substances Act 1984*

6—Amendment of section 4—Interpretation

- (1) Section 4(1), definition of *dentist*—delete the definition and substitute:

5 *dentist* means a person registered under the *Health Practitioner Regulation National Law*—

- (a) to practise in the dental profession as a dentist (other than as a student); and
(b) in the dentists division of that profession;

- (2) Section 4(1), definition of *medical practitioner*—delete the definition and substitute:

10 *medical practitioner* means a person registered under the *Health Practitioner Regulation National Law* to practise in the medical profession (other than as a student);

- (3) Section 4(1), definition of *nurse*—delete the definition and substitute:

15 *nurse* means a person registered under the *Health Practitioner Regulation National Law* to practise in the nursing and midwifery profession as a nurse (other than as a student);

- (4) Section 4(1), definition of *pharmacist*—delete the definition and substitute:

20 *pharmacist* means a person registered under the *Health Practitioner Regulation National Law* to practise in the pharmacy profession (other than as a student);

Part 7—Amendment of *Coroners Act 2003*

7—Amendment of section 3—Interpretation

- Section 3, definition of *medical practitioner*—delete the definition and substitute:

25 *medical practitioner* means a person registered under the *Health Practitioner Regulation National Law* to practise in the medical profession (other than as a student);

Part 8—Amendment of *Cremation Act 2000*

8—Amendment of section 4—Interpretation

- Section 4, definition of *doctor*—delete the definition and substitute:

30 *doctor* means a person registered under the *Health Practitioner Regulation National Law* to practise in the medical profession (other than as a student);

Part 9—Amendment of *Criminal Law Consolidation Act 1935*

9—Amendment of section 269A—Interpretation

Section 269A—Interpretation, definition of *psychiatrist*—delete "*Medical Practitioners Act 1983*" and substitute:

5 *Health Practitioner Regulation National Law*

Part 10—Amendment of *Health and Community Services Complaints Act 2004*

10—Amendment of section 4—Interpretation

(1) Section 4(1)—after the definition of *local government council* insert:

10 *nationally registered health practitioner* means a registered health practitioner under the *Health Practitioner Regulation National Law* and includes a person who was, but is no longer, registered in a health profession under that law (or a previous corresponding Act of the State);

(2) Section 4(1), definition of *register*—after "an Act" insert:

15 (including pursuant to the *Health Practitioner Regulation National Law (South Australia)*)

(3) Section 4(1), definition of *registration Act*—delete the definition

(4) Section 4(1), definition of *registration authority*, (a)—delete paragraph (a) and substitute:

20 (a) the body with the function, under a registration law, of determining an application for registration under that law and includes a body vested with disciplinary powers under a registration law; or

(5) Section 4(1)—after the definition of *registration authority* insert:

registration law means—

25 (a) the *Health Practitioner Regulation National Law*; or

(b) the *Health Practitioner Regulation National Law (South Australia) Act 2010*; or

(c) the *Occupational Therapy Practice Act 2005*; or

(d) an Act brought within the ambit of this definition by the regulations;

11—Amendment of section 57—Complaints received by Commissioner that relate to registered service providers

(1) Section 57(3)(a)—delete "registration Act" and substitute:

registration law

(2) Section 57(4)—delete "its registration Act" and substitute:

35 the relevant registration law

(3) Section 57(5)—delete subsection (5) and substitute:

(5) If a complaint relates to a nationally registered health practitioner, the matter will proceed under Part 8 of the *Health Practitioner Regulation National Law (South Australia)* rather than under a preceding subsection.

(6) The Commissioner and a registration authority may agree on protocols that relate to—

(a) the consultation processes referred to in subsection (1); and

(b) the referral of complaints between the Commissioner and the registration authority after taking into account the principles reflected by this section and the *Health Practitioner Regulation National Law (South Australia)*, as may be relevant.

12—Amendment of section 58—Referral of complaint to registration authority

(1) Section 58(1)—delete "its registration Act" and substitute:

the relevant registration law

(2) Section 58—after subsection (3) insert:

(4) This section does not apply in relation to a complaint about a nationally registered health practitioner that is dealt with by a National Board under section 150 of the *Health Practitioner Regulation National Law (South Australia)*.

13—Amendment of section 59—Action on referred complaints

Section 59—delete "Act" and substitute:

law

14—Amendment of section 60—Referral of complaint to Commissioner

(1) Section 60(4)(a)—delete "registration Act" and substitute:

registration law

(2) Section 60(5)—delete "its registration Act" and substitute:

the relevant registration law

(3) Section 60(8)—delete subsection (8) and substitute:

(8) If a complaint relates to a nationally registered health practitioner, the matter will proceed under section 150 of the *Health Practitioner Regulation National Law (South Australia)* rather than under a preceding subsection.

(9) The Commissioner and a registration authority may agree on protocols that relate to—

(a) the consultation process referred to in subsection (1); and

- (b) the referral of complaints between the registration authority and the Commissioner after taking into account the principles reflected by this section and the *Health Practitioner Regulation National Law (South Australia)*, as may be relevant.

5

15—Amendment of section 62—Information from registration authority

Section 62(2)—delete "registration Act" and substitute:

registration law

16—Repeal of Schedule 1

10

Schedule 1—delete the Schedule

Part 11—Amendment of *Health Professionals (Special Events Exemption) Act 2000*

17—Amendment of section 3—Interpretation

Section 3, definition of *Health Registration Act*—delete the definition

15

18—Amendment of section 5—Definition of visiting health professional

Section 5(d)—delete "a Health Registration Act" and substitute:

the *Health Practitioner Regulation National Law*

19—Amendment of section 10—Exemptions relating to offences

Section 10(1)—delete "a Health Registration Act" and substitute:

20

the *Health Practitioner Regulation National Law*

20—Amendment of section 11—Complaints about visiting health professionals

- (1) Section 11(1)—delete "a Health Registration Act" and substitute:

the *Health Practitioner Regulation National Law*

- (2) Section 11(2)—delete "a Health Registration Act" and substitute:

25

the *Health Practitioner Regulation National Law*

Part 12—Amendment of *Landlord and Tenant Act 1936*

21—Amendment of section 13—Interpretation

Section 13, definition of *health practitioner*—delete the definition and substitute:

30

health practitioner means a registered health practitioner under the *Health Practitioner Regulation National Law* and includes a person who was, but is no longer, registered in a health profession under that law (or a previous corresponding Act of the State);

Part 13—Amendment of *Mental Health Act 2009*

22—Amendment of section 3—Interpretation

- (1) Section 3, definition of *medical practitioner*—delete the definition and substitute:

medical practitioner means a person registered under the *Health Practitioner Regulation National Law* to practise in the medical profession (other than as a student);

- (2) Section 3, definition of *psychiatrist*—delete the definition and substitute:

psychiatrist means a person registered under the *Health Practitioner Regulation National Law*—

- (a) to practise in the medical profession; and
(b) holding specialist registration as a psychiatrist;

Part 14—Amendment of *Rail Safety Act 2007*

23—Amendment of section 4—Interpretation

- Section 4, definition of *medical practitioner*—delete the definition and substitute:

medical practitioner means a person registered under the *Health Practitioner Regulation National Law* to practise in the medical profession (other than as a student);

24—Amendment of section 148—Immunity for reporting unfit rail safety worker

- Section 148(3)—delete subsection (3) and substitute:

- (3) In this section—

person to whom this section applies means—

- (a) a medical practitioner; or
(b) a person registered under the *Health Practitioner Regulation National Law* to practise in the nursing and midwifery profession as a nurse (other than as a student); or
(c) a person registered under the *Health Practitioner Regulation National Law* to practise in the optometry profession (other than as a student); or
(d) a person registered under the *Health Practitioner Regulation National Law* to practise in the physiotherapy profession (other than as a student); or
(e) a person brought within the ambit of this definition by the regulations.

25—Amendment of Schedule 2—Provisions relating to alcohol and other drug testing

Schedule 2, clause 1(1), definition of *registered nurse*—delete the definition and substitute:

5 *registered nurse* means a person registered under the *Health Practitioner Regulation National Law*—

- (a) to practise in the nursing and midwifery profession as a nurse (other than as a student);
- (b) in the registered nurses division of that profession.

10 **Part 15—Amendment of *Road Traffic Act 1961***

26—Amendment of Schedule 1—Oral fluid and blood sample process

Schedule 1, clause 1, definition of *registered nurse*—delete the definition and substitute:

15 *registered nurse* means a person registered under the *Health Practitioner Regulation National Law*—

- (a) to practise in the nursing and midwifery profession as a nurse (other than as a student); and
- (b) in the registered nurses division of that profession.

Part 16—Amendment of *Summary Offences Act 1953*

20 **27—Amendment of section 81—Power to search, examine and take particulars of persons**

Section 81(6), definitions of *medical practitioner* and *registered nurse*—delete the definitions and substitute:

25 *medical practitioner* means a person registered under the *Health Practitioner Regulation National Law* to practise in the medical profession (other than as a student);

registered nurse means a person registered under the *Health Practitioner Regulation National Law*—

- 30 (a) to practise in the nursing and midwifery profession as a nurse (other than as a student); and
- (b) in the registered nurses division of that profession.

Part 17—Repeal of certain South Australian Acts

28—Repeal of certain South Australian Acts

The following Acts are repealed:

- 35 (a) the *Chiropractic and Osteopathy Practice Act 2005*;
- (b) the *Dental Practice Act 2001*;

- (c) the *Medical Practice Act 2004*;
- (d) the *Nursing and Midwifery Practice Act 2008*;
- (e) the *Optometry Practice Act 2007*;
- (f) the *Pharmacy Practice Act 2007*;
- 5 (g) the *Physiotherapy Practice Act 2005*;
- (h) the *Podiatry Practice Act 2005*;
- (i) the *Psychological Practices Act 1973*.

Part 18—Saving and transitional provisions

Division 1—Interpretation

10 29—Interpretation

In this Part—

asset means tangible or intangible real or personal property of any description and includes—

- 15 (a) a present, future or contingent legal or equitable interest in real or personal property;
- (b) a chose in action;
- (c) a right, power, privilege or immunity;
- (d) goodwill;
- (e) a security;
- 20 (f) money;
- (g) documents;
- (h) information (including data and records) in any form;

liability means a monetary or non-monetary obligation and includes a future or contingent obligation;

25 **National Agency** means the Australian Health Practitioner Regulation Agency;

national body means a body established under—

- (a) the *Health Practitioner Regulation (Administrative Arrangements) National Law Act 2008* of Queensland; or
- (b) the *Health Practitioner Regulation National Law*;

30 **participation day** has the same meaning as under Part 12 of the *Health Practitioner Regulation National Law (South Australia)*;

prescribed body means any of the following:

- 35 (a) the Chiropractic and Osteopathy Board of South Australia;
- (b) the Dental Board of South Australia;
- (c) the Medical Board of South Australia;

- (d) the Nursing and Midwifery Board of South Australia;
- (e) the Optometry Board of South Australia;
- (f) the Pharmacy Board of South Australia;
- (g) the Physiotherapy Board of South Australia;
- 5 (h) the Podiatry Board of South Australia;
- (i) the South Australian Psychological Board;
- (j) a body brought within the ambit of this definition by the regulations;

property includes intellectual property;

repealed Act means an Act that is repealed under Part 17;

10 *responsible tribunal* means the responsible tribunal for the purposes of the *Health Practitioner Regulation National Law (South Australia)*.

Division 2—Transfer of assets and liabilities

30—Ministerial orders

- (1) The Minister may, by instrument in writing (an *allocation order*), transfer—
 - 15 (a) specified assets or liabilities of a prescribed body to the National Agency or the Minister;
 - (b) specified classes of assets or liabilities of a prescribed body to the National Agency or the Minister;
 - 20 (c) all assets and liabilities of a prescribed body, other than specified classes of assets or liabilities, to the National Agency or the Minister;
 - (d) all assets and liabilities of a prescribed body, or all remaining assets or liabilities of a prescribed body, to the National Agency or the Minister.
- (2) The Minister may, by further instrument in writing (an *allocation order*), transfer any
25 asset or liability acquired or assumed by the Minister under subclause (1) to another person or body.
- (3) However, the Minister must not transfer an asset or liability under subclause (2) to a person or body who or that is not an agency or instrumentality of the Crown without the consent or concurrence of that person or body.
- (4) An allocation order takes effect from a date (which may be earlier than the date of the
30 order) specified in the order.
- (5) The Minister may make an allocation order in relation to assets or liabilities situated outside South Australia.
- (6) An allocation order may be made on conditions specified in the order.

31—Effect of allocation order

- 35 (1) On the date that an allocation order takes effect, assets and liabilities vest in the transferee named in the allocation order in accordance with the order.

- (2) If an allocation order provides for the transfer of a prescribed body's interest in an agreement—
- (a) the transferee becomes, on the date that the order takes effect, a party to the agreement in place of the prescribed body; and
 - 5 (b) on and after the date that the order takes effect, the agreement has effect as if the transferee had always been a party to that agreement.

32—Continued effect of certain acts by a prescribed body

10 Anything done, or omitted to be done, by a prescribed body in relation to assets or liabilities transferred by an allocation order is, if it continues to have effect as at the date of the transfer, taken to be the transferee's act or omission.

33—Continuation of proceedings

Proceedings commenced before the date of transfer by or against a prescribed body in relation to an asset or liability transferred by an allocation order may be continued and completed by or against the transferee.

34—Evidence of transfer

A written notice signed by the Minister stating that a specific transfer of assets or liabilities has been made under this Division is conclusive evidence of the transfer.

35—References

- 20 (1) A reference in an instrument or other document to a prescribed body in connection with an asset or liability transferred under this Division is, from the date of transfer, taken to be a reference to the transferee.
- (2) Subclause (1) does not apply to any instrument or document, or instrument or document of a specified class, excluded from the operation of that subclause by the Minister by notice in the Gazette.

36—Substitution of relevant entity

- 25 (1) Any contract entered into by or on behalf of a prescribed body, and all guarantees, undertakings and securities given by or on behalf of a prescribed body, that are subject to the operation of this Division will, after any relevant transfer under this Division, be taken to have been entered into or given by the transferee.
- 30 (2) Subclause (1) does not apply in relation to any contract, guarantee, undertaking or security, or contract, guarantee, security or undertaking of a specified class, excluded by the operation of that subclause by the Minister by notice in the Gazette.

Division 3—Staff

37—Staff

- 35 (1) A qualifying member of the staff of a prescribed body who, on the commencement of this subclause, has not gained employment with the National Agency (either by commencing employment with the National Agency by that commencement or by accepting an offer of employment with the National Agency by that commencement) will be incorporated into the Department as a redeployee by force of this clause.

(2) A qualifying member of the staff of a prescribed body—

- 5
- (a) who, on the commencement of this subclause, has gained employment with the National Agency (either by commencing employment with the National Agency by that commencement or by accepting an offer of employment with the National Agency by that commencement); and
 - (b) who, within the period of 2 years after the commencement of this subclause, is determined by the National Agency to be excess to the requirements of the National Agency,

10 may, by notice furnished to the Chief Executive within the designated period in a manner and form determined by the Chief Executive, elect to be incorporated into the Department as a redeployee (and will then be so incorporated by force of this clause).

(3) If a person is incorporated into the Department under subclause (1) or (2)—

- 15
- (a) the person will be incorporated into the Department on a date to be determined by the Chief Executive; and
 - (b) the person's existing and accruing rights immediately before cessation of the person's employment with a prescribed body or the National Agency in respect of recreation leave, sick leave and long service leave continue in full force and effect as if his or her previous employment with a prescribed body or the National Agency were employment with the Department (and the person is not entitled to payment in lieu of those rights) and the person will be taken to have continuity of employment without a termination of the person's service.

(4) In this clause—

25 ***designated period*** means a period prescribed by the regulations for the purposes of this definition;

qualifying member of the staff of a prescribed body means a person who, on a date prescribed by the regulations for the purposes of this definition in relation to the particular prescribed body (which may be a date that precedes the commencement of this clause)—

- 30
- (a) is employed on a permanent basis by a prescribed body—
 - (i) on a salary not exceeding \$120 000; or
 - (ii) on a salary package valued at an amount not exceeding \$120 000 (and for the purposes of this subparagraph a salary package is to be valued in accordance with any principles prescribed by the regulations); or
 - (b) is employed or engaged by a prescribed body and is brought within the ambit of this paragraph by proclamation.
- 35

Division 4—Provision of information and assistance

38—Provision of information and assistance

- (1) Despite any other Act or law, a prescribed body is authorised, on its own initiative or at the request of the national body—
- 5 (a) to provide a national body, or a person nominated by a national body, with such documents and other information (including data and records and including information given in confidence) in the possession or control of the prescribed body that is reasonably required in connection with the performance or exercise of a function or power of the national body; and
- 10 (b) to provide a national body, or a person nominated by a national body, with such assistance as is reasonably required in connection with the performance or exercise of a function or power of the national body.
- (2) Despite any other Act or law, a prescribed body or the Minister may authorise a national body, or a person nominated by a national body, to disclose information
- 15 provided under subclause (1) even if the information was given to a prescribed body in confidence.

Division 5—References

39—References to members of professions

- (1) Unless the contrary intention appears or the context requires a different interpretation, a reference within an Act or another instrument within the ambit of column 1 of the following table will have effect as if it were the corresponding reference in column 2 of the table.
- 20

Table

Column 1	Column 2
chiropractor	a person registered under the <i>Health Practitioner Regulation National Law</i> to practise in the chiropractic profession (other than as a student)
dental practitioner	a person registered under the <i>Health Practitioner Regulation National Law</i> to practise in the dental profession (including, if appropriate, a dental therapist, dental hygienist, dental prosthetist or oral health therapist but not including a student)
dentist	a person registered under the <i>Health Practitioner Regulation National Law</i> — <p>(a) to practise in the dental profession as a dentist (other than as a student); and</p> <p>(b) in the dentists division of that profession</p>

Health Practitioner Regulation National Law (South Australia) Bill 2010

Schedule 1—Related amendments, repeals and transitional provisions

Column 1	Column 2
enrolled nurse	a person registered under the <i>Health Practitioner Regulation National Law</i> — (a) to practise in the nursing and midwifery profession as a nurse (other than as a student); and (b) in the enrolled nurses division of that profession
legally qualified medical practitioner	a person registered under the <i>Health Practitioner Regulation National Law</i> to practise in the medical profession (other than as a student)
medical practitioner	a person registered under the <i>Health Practitioner Regulation National Law</i> to practise in the medical profession (other than as a student)
midwife	a person registered under the <i>Health Practitioner Regulation National Law</i> — (a) to practise in the nursing and midwifery profession as a midwife (other than as a student); and (b) in the register of midwives kept for that profession
nurse	a person registered under the <i>Health Practitioner Regulation National Law</i> to practise in the nursing and midwifery profession as a nurse (other than as a student)
optometrist	a person registered under the <i>Health Practitioner Regulation National Law</i> to practise in the optometry profession (other than as a student)
osteopath	a person registered under the <i>Health Practitioner Regulation National Law</i> to practise in the osteopathy profession (other than as a student)
pharmacist	a person registered under the <i>Health Practitioner Regulation National Law</i> to practise in the pharmacy profession (other than as a student)
physiotherapist	a person registered under the <i>Health Practitioner Regulation National Law</i> to practise in the physiotherapy profession (other than as a student)
podiatrist	a person registered under the <i>Health Practitioner Regulation National Law</i> to practise in the podiatry profession (other than as a student)

Column 1

Column 2

psychologist

a person registered under the *Health Practitioner Regulation National Law* to practise in the psychology profession (other than as a student)

registered nurse

a person registered under the *Health Practitioner Regulation National Law*—

- (a) to practise in the nursing and midwifery profession as a nurse (other than as student); and
- (b) in the registered nurses division of that profession

- (2) Unless the contrary intention appears or the context requires a different interpretation, a reference in an Act or another instrument to a registered health practitioner will have effect as if it were a reference to a health practitioner registered in the relevant health profession under the *Health Practitioner Regulation National Law*.

5 Division 6—Complaints, notifications and disciplinary proceedings

40—Extended application of disciplinary proceedings

Part 8 of the *Health Practitioner Regulation National Law (South Australia)* extends to any conduct, behaviour, event, situation, condition (including medical condition or impairment) or other circumstance occurring, arising or existing before the participation day for this jurisdiction (and the definitions of *impairment*, *professional misconduct*, *unprofessional conduct* and *unsatisfactory professional performance* are to be interpreted as so extending).

41—Proceedings before boards

(1) If—

- 15 (a) a matter is, immediately before the participation day for this jurisdiction, the subject of an investigation or other form of consideration by a prescribed body (or the Registrar of a prescribed body), in circumstances where no formal complaint has been laid; and
- 20 (b) the matter is of a nature that it could be the subject of a notification under the *Health Practitioner Regulation National Law (South Australia)*,

that matter will, from the participation day, taken to be the subject of a notification under Part 8 of the *Health Practitioner Regulation National Law (South Australia)*.

- 25 (2) All matters falling within the ambit of subclause (1) are to be taken to be within the ambit of section 288 of the *Health Practitioner Regulation National Law (South Australia)* and section 289 of that Law will have no application to those matters.
- (3) A national body may, in connection with any matter before the national body by virtue of the operation of this Division or Division 13 of Part 12 of the *Health Practitioner Regulation National Law (South Australia)*—
 - 30 (a) adopt, as in its discretion it considers proper, any step, determination, decision, finding or other act of a prescribed body; and

- (b) as in its discretion it considers proper—
- (i) initiate any investigation; or
 - (ii) take over or assume any investigation being undertaken by, or on behalf of, a prescribed body;
 - (iii) receive any report as a result of any investigation (including an investigation initiated by a prescribed body),
- and take any action on account of the results of any such investigation; and
- (c) dispense with any step or requirement that might otherwise need to be taken or apply under the *Health Practitioner Regulation National Law (South Australia)*.

42—Proceedings initiated by complaint

- (1) If, immediately before the participation day for this jurisdiction—

- (a) —
- (i) a formal complaint has been laid before a prescribed body under a relevant Act by the Registrar of that prescribed body; or
 - (ii) a prescribed body has laid a complaint before a prescribed Tribunal; and
- (b) the prescribed body or the prescribed Tribunal (as the case may be) has commenced but not completed the substantive hearing and determination of the complaint (that is, the complaint is part-heard),

the proceedings will continue and be completed in all respects under the relevant Act as if that Act had not been repealed (and the relevant Act will also continue to operate as if it had not been repealed for the purposes of exercising any right of review or appeal).

- (2) A right of review or appeal—

- (a) existing, or the subject of proceedings, before the participation day for this jurisdiction; or
- (b) arising under subclause (1),

may be exercised, or will continue to be subject to any proceedings, (as the case requires) under the relevant Act as if that Act had not been repealed.

- (3) A decision arising out of any proceedings under subclause (1) or (2) will take effect as if it were a decision under the *Health Practitioner Regulation National Law (South Australia)* (and the National Board for the relevant health profession will give effect to the decision accordingly).

- (4) If, immediately before the participation day for this jurisdiction—

- (a) —
- (i) a formal complaint has been laid before a prescribed body under a relevant Act by the Registrar of that prescribed body; or
 - (ii) a prescribed body has laid a complaint before a prescribed Tribunal; and

- (b) the prescribed body or the prescribed Tribunal (as the case may be) has not commenced the substantive hearing and determination of the complaint (that is, the complaint is not part-heard),

5 the proceedings will be taken to be within the ambit of section 289 of the *Health Practitioner Regulation National Law (South Australia)* and are to be dealt with in all respects under the relevant Act as if that Act had not been repealed, but with the following modifications:

- (c) the proceedings are to proceed before the responsible tribunal;
- (d) the National Board for the relevant profession is to have the carriage as complainant of the proceedings before the responsible tribunal;
- 10 (e) the relevant Act is to be applied as if a reference to the prescribed body or the prescribed Tribunal (as the case may be) were a reference to the responsible tribunal;
- (f) in respect of a complaint laid before the Dental Board of South Australia or the Medical Board of South Australia, the responsible tribunal may impose any disciplinary sanction that could have been imposed by the Dental Professional Conduct Tribunal or the Medical Professional Conduct Tribunal (as the case may be) in respect of a complaint laid before that Tribunal.

- 15 (5) This clause applies despite any contrary provision in the *Health Practitioner Regulation National Law (South Australia)*.

- (6) In this clause—

prescribed Tribunal means a tribunal constituted under an Act being repealed by this Act;

25 *relevant Act*, in relation to any proceedings, means an Act to be repealed by this Act, being the Act under which the proceedings arise (despite its repeal under this Act).

43—Complaints being dealt with on participation day

30 For the purposes of proceedings under section 289 of the *Health Practitioner Regulation National Law (South Australia)*, the responsible tribunal may deal with a matter as if it were a tribunal or other adjudication authority under a repealed Act (and section 289 will be modified accordingly).

Division 7—Other matters

44—Actions with respect to immunity

An action that would lie against a prescribed body under section 74(3) of the *Public Sector Act 2009* but for the dissolution of that body will lie instead against the Crown.

45—Pharmacies and pharmacy depots

- 35 (1) Premises registered as a pharmacy under the *Pharmacy Practice Act 2007* immediately before the commencement of this clause will, on that commencement, be taken to be registered as a pharmacy under this Act.
- (2) Premises registered as a pharmacy depot under the *Pharmacy Practice Act 2007*
- 40 immediately before the commencement of this clause will, on that commencement, be taken to be registered as a pharmacy depot under this Act.

46—Pharmacy services providers

5 A person who is recorded by the Pharmacy Board of South Australia as a pharmacy services provider for the purposes of section 42(4) of the *Pharmacy Practice Act 2007* immediately before the commencement of this clause will, on that commencement, be taken to be registered as a pharmacy services provider under this Act.

47—Areas of special need

10 A determination of the Minister and the Medical Board of South Australia in force for the purposes of section 33(2)(d)(iii) of the *Medical Practice Act 2004* immediately before the commencement of this clause will, on that commencement, be taken to be an equivalent decision with respect to an area of need under section 67 of the *Health Practitioner Regulation National Law (South Australia)* (and will, until revoked by the Minister, have effect for the purposes of that Law without further notice to the National Board).

48—References to Registrars

15 (1) For the purposes of any proceedings under a repealed Act after the commencement of this clause—

(a) a reference in any such Act to a Registrar will be taken to be a reference to the National Board for the relevant health profession; and

20 (b) a reference in any such Act to a prescribed body will, in the case of proceedings commenced before a prescribed Tribunal, be taken to be a reference to the National Board for the relevant health profession.

(2) Unless the context requires a different interpretation, a reference to a Registrar in an instrument (including an undertaking given to a prescribed body or to the Registrar of a prescribed body), or in a condition of registration, will be taken to be a reference to a person holding or acting in an office designated by the Minister by notice in the Gazette under this subclause.

(3) In this clause—

prescribed Tribunal means a tribunal constituted under an Act being repealed by this Act.

49—FOI applications

30 (1) If, in relation to an application under the FOI Act, the relevant agency under that Act would, apart from this clause, be a prescribed body, the National Agency, or a National Board nominated by the National Agency for the purposes of the application, will be taken to be the agency under that Act for the purposes of dealing with the application.

(2) In connection with subclause (1), the regulations may provide that the FOI Act applies to applications within the ambit of that subclause with such modifications as may be prescribed (and any such regulation will then have effect according to its terms).

(3) In this clause—

40 *FOI Act* means the *Freedom of Information Act 1991*.

50—Fees

- 5 (1) If a member of a designated health profession is due to pay a registration or reinstatement fee by the designated date for that profession, but that fee has not been paid by that date, the period for the payment of the fee will be taken to have been extended by a period of 1 month from the designated date.

- (2) In this clause—

designated date means a date designated for the purposes of this definition by the Minister by notice in the Gazette;

10 *designated health profession* is a health profession designated for the purposes of this clause by the Minister by notice in the Gazette.

- (3) Different dates may be designated for different health professions.

51—Regulations

- 15 (1) The Governor may, by regulation, make additional provisions of a saving or transitional nature consequent on—

- (a) the enactment of this Act; or
(b) the transition from a scheme established by an Act repealed by this Act to the scheme established under the *Health Practitioner Regulation National Law*.

- (2) A provision of a regulation made under subclause (1) may, if the regulation so provides, take effect from the commencement of this Act or from a later day.

- 20 (3) To the extent to which a provision takes effect under subclause (2) from a day earlier than the day of the regulation's publication in the Gazette, the provision does not operate to the disadvantage of a person by—

- (a) decreasing the person's rights; or
(b) imposing liabilities on the person.

25 52—Validity and effect of steps

- (1) Nothing done under this Schedule or under Part 12 of the *Health Practitioner Regulation National Law (South Australia)*—

- 30 (a) is to be regarded as placing any person in breach of contract or confidence or as otherwise making any person guilty of a civil wrong; or

- (b) is to be regarded as placing any person in breach of, or as constituting a default under, any Act or other law or obligation or any provision in any agreement, arrangement or understanding including, but not limited to, any provision or obligation prohibiting, restricting or regulating the assignment, transfer, sale or disposal of any property or the disclosure of any information;
35 or

- (c) is to be regarded as fulfilling any condition that allows a person to exercise a power, right of remedy in respect of or to terminate any agreement or obligation; or

- (d) is to be regarded as giving rise to any remedy for a party to a contract or an instrument or as causing or permitting the termination of any contract or instrument because of a change in the beneficial or legal ownership of any relevant property; or
- 5 (e) is to be regarded as causing any contract or instrument to be void or otherwise unenforceable; or
- (f) is to be regarded as frustrating any contract; or
- (g) releases any surety or other obligor wholly or in part from any obligation; or
- (h) gives rise to any right or entitlement to damages or compensation.
- 10 (2) The Registrar-General or another authority required or authorised under a law of the State to register or record transactions affecting assets or liabilities, or documents relating to such transactions, must, on application under this subclause, register or record in an appropriate manner a vesting under this Schedule.
- (3) No fee is payable in respect of an application under subclause (2).