

House of Assembly—No 199

As laid on the table and read a first time, 16 October 2013

South Australia

**Statutes Amendment (Health Information)
Bill 2013**

A BILL FOR

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

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Statutes Amendment (Health Information) Act 2013*.

2—Commencement

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

3—Amendment provisions

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

Part 2—Amendment of *Health Care Act 2008*

10 4—Amendment of section 93—Confidentiality and disclosure of information

- (1) Section 93—after subsection (5) insert:

- (5a) For the avoidance of doubt, a person engaged or formerly engaged in connection with the operation of this Act must not disclose personal information relating to a person obtained while so engaged to the person's employer except to the extent that he or she may be authorised or required to disclose that information under this section.

- (2) Section 93(6)—before the definition of *personal information* insert:

employer of a person includes a person who has engaged the person to perform work as an independent contractor;

5—Insertion of sections 94 and 94A

After section 93 insert:

94—Requirement to attend medical examination or provide medical information

- 5 (1) An employer must not direct an employee to attend a medical examination unless the employer believes on reasonable grounds that, because of an injury or illness, the employee is not fit to perform, or there will be a risk to the employee's health or safety if he or she continues to perform—
- 10 (a) if the employee is undertaking the normal duties of his or her position at the time the direction is given—the inherent requirements of his or her position; or
- (b) if the employee is undertaking modified duties at the time the direction is given—the requirements of those duties.
- 15 Maximum penalty: \$2 500.
- (2) If an employer directs an employee to attend a medical examination—
- (a) the employer must give the employee written notice of the direction setting out the grounds on which the employer believes the examination is necessary; and
- 20 (b) the direction must not include a requirement for the employee to attend a particular medical practitioner for the purposes of the examination.
- Maximum penalty: \$2 500.
- 25 (3) An employer must not request an employee to provide medical information about the employee to the employer unless the employer has reasonable grounds for believing that, because of an injury or illness, the employee is not fit to perform, or there will be a risk to the employee's health or safety if he or she continues to perform—
- 30 (a) if the employee is undertaking the normal duties of his or her position at the time the request is made—the inherent requirements of that position; or
- (b) if the employee is undertaking modified duties at the time the request is made—the requirements of those duties.
- 35 Maximum penalty: \$2 500.

5 (4) For the purposes of this section, an employer does not have reasonable grounds for believing that an employee is not fit to perform the inherent requirements of his or her position, or the requirements of any modified duties, or that there is a risk to an employee's health or safety, because of an injury or illness unless—

(a) the employee has stated to the employer that an injury or illness is affecting his or her ability to perform the inherent requirements of his or her position or any modified duties; or

10 (b) the employee appears to the employer to be unable to perform the inherent requirements of his or her position, or any modified duties, because of an injury or illness; or

(c) the belief is supported by medical information lawfully obtained from the employee; or

15 (d) the belief is otherwise supported by evidence.

(5) This section does not, however, derogate from a provision of or under any other Act that authorises the issue of a direction of a kind to which this section applies.

(6) In this section—

20 *employee* includes a person who is engaged to perform work as an independent contractor;

employer includes a person who engages another to perform work as an independent contractor;

25 *medical examination* means an examination of the physical or mental health of a person by a medical practitioner registered under the *Health Practitioner Regulation National Law* to practise in the medical profession (other than as a student).

94A—Employer not to be present at examination

30 (1) An employer or his or her representative must not be present at a medical examination of an employee unless the employee consents to the presence of the employer or representative at the examination.

Maximum penalty: \$2 500.

(2) In this section—

35 *employee*, *employer* and *medical examination* have the same respective meanings as in section 94.

Part 3—Amendment of *Mental Health Act 2009*

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

(1) Section 106—after subsection (4) insert:

5 (4a) For the avoidance of doubt, a person engaged or formerly engaged in
the administration of this Act must not disclose personal information
relating to a person obtained in the course of administration of this
Act to the person's employer except to the extent that he or she may
be authorised or required to disclose that information under this
section.

10 (2) Section 106(5)—before the definition of *personal information* insert:

employer of a person includes a person who has engaged the person to
perform work as an independent contractor;