South Australia

Health Care Act 2008

An Act to provide for the administration of hospitals and other health services; to establish the Health Performance Council and Health Advisory Councils; to establish systems to support the provision of high-quality health outcomes; to provide licensing systems for ambulance services and private hospitals; to assist with the provision of laboratory services and facilities associated with veterinary science; and for other purposes.

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Legislative history

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Health Care Act 2008*.

3—Interpretation

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

ambulance means a vehicle that is equipped to provide medical treatment or to monitor a person's health and that is staffed by persons who are trained to provide medical attention during transportation;

ambulance service means the service of transporting by the use of an ambulance a person to a hospital or other place to receive medical treatment or from a hospital or other place at which the person has received medical treatment;

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

Department means the administrative unit of the Public Service that is responsible for assisting a Minister in the administration of this Act;

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

emergency ambulance service means an ambulance service that—

(a) responds to requests for medical assistance (whether made by 000 emergency telephone calls or other means) for persons who may have injuries or illnesses requiring immediate medical attention in order to maintain life or to alleviate suffering; and

(b) is set up to provide medical attention to save or maintain a person's life or alleviate suffering while transporting the person to a hospital;

employing authority means—

(a) subject to paragraph (b), the Chief Executive; or

(b) if the Governor thinks fit, a person, or a person holding or acting in an office or position, designated by proclamation made for the purposes of this definition;

governing board—see section 33;

HAC means a Health Advisory Council established under Part 4;

health service means—

(a) a service associated with:

(i) the promotion of health and well-being; or

(ii) the prevention of disease, illness or injury; or

(iii) intervention to address or manage disease, illness or injury; or

(iv) the management or treatment of disease, illness or injury; or

(v) rehabilitation or on-going care for persons who have suffered a disease, illness or injury; or

(b) a paramedical or ambulance service; or

(c) a residential aged care service; or

(ca) a research, pathology or diagnostic service associated with veterinary science; or

(d) a service brought within the ambit of this definition by the regulations,

but does not include a service excluded from the ambit of this definition by the regulations;

HPC means the Health Performance Council established under Part 3;

hospital means, according to the context—

(a) an entity (whether corporate or unincorporated and including a partnership or other structure) by which health services are provided, being health services that include services provided to persons on a live-in basis;

(b) a site at which activities of an incorporated hospital are undertaken;

hospital bed means the bed and associated facilities provided by a hospital for the provision of health services to a patient on a live-in basis;

incorporated hospital means a hospital incorporated under this Act;

liability includes contingent liability;

medical treatment includes all medical or surgical advice, attendances, services, procedures and operations;

non-emergency ambulance service means an ambulance service other than an emergency ambulance service;

private day procedure centre means premises in respect of which a day procedure centre licence is in force under Part 10A;

private day procedure centre licence—see section 89C;

private hospital means a hospital other than an incorporated hospital;

relative—a person is a relative of another if the person is a spouse, domestic partner or parent of the other of or over 18 years of age and a brother, sister, son or daughter of the other;

relevant interest has the same meaning as in the *Corporations Law*;

repealed Act means the *South Australian Health Commission Act 1976*;

restricted ambulance service licence means a licence under Part 6 Division 2 authorising the provision of non-emergency ambulance services;

right includes a right of action;

SAAS means the SA Ambulance Service Inc;

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

Tribunal means the South Australian Civil and Administrative Tribunal established under the *South Australian Civil and Administrative Tribunal Act 2013*;

vehicle includes an aircraft or a boat.

(2) The Governor may, for the purposes of the definition of ***employing authority***—

(a) designate different persons as employing authorities with respect to different classes of employees (or potential employees);

(b) in making a designation under paragraph (a), include the Chief Executive;

(c) from time to time as the Governor thinks fit, vary or revoke a proclamation, or make a new proclamation for the purposes of the definition.

4—Objects of Act

The objects of the Act are—

(a) to enable the provision of an integrated health system that provides optimal health outcomes for South Australians; and

(b) to facilitate the provision of safe, high-quality health services that are focussed on the prevention and proper management of disease, illness and injury and to facilitate efficiencies through the use of certain facilities for veterinary science; and

(c) to facilitate a scheme for health services to meet recognised standards; and

(d) to facilitate the efficient and effective governance and oversight of incorporated hospitals through the establishment of governing boards.

5—Principles

The following principles are to be applied in connection with the operation and administration of this Act:

(a) the protection of the public and the interests of people in need of care related to their health should be the highest priorities in the provision of health services;

(b) Aboriginal people and Torres Strait Islanders should be recognised as having a special heritage and the health system should, in interacting with Aboriginal people and Torres Strait Islanders, support values that respect their historical and contemporary cultures;

(c) the planning and provision of health services should take into account the situation and needs of people who live or work in the country or regional areas of the State, including through the support of health professionals who provide services in those areas;

(d) support should be given to encouraging responsibility at community and individual levels for the promotion and development of healthy communities and individuals, and to ensure that people are able to make informed decisions about their health;

(e) health services or programs should be accessible on a State-wide or community basis;

(f) health services should be provided as part of an integrated system—

(i) that includes all aspects of health promotion and disease, illness and injury prevention so as to maximise community health and well-being; and

(ii) that supports services or programs designed to promote early intervention in detecting and responding to disease, illness or injury; and

(iii) that provides for the effective and safe management and treatment of disease, illness or injury, including through self-management of chronic or other diseases; and

(iv) that supports improved health outcomes for communities with particular health needs; and

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

(v) that promotes a whole of Government approach to advance and improve health status within the community; and

(vi) that seeks to reduce in-patient hospitalisation and dependence on emergency and out-patient services within hospitals; and

(vii) that promotes the efficient and economic provision of services; and

(viii) that achieves an effective balance between local decision-making in relation to incorporated hospitals and health system planning, integration and management;

(g) health services should meet the highest levels of quality and safety;

(h) service providers should seek to engage with the community in the planning and provision of health services, including through the encouragement or involvement of volunteers;

(i) recognition should be given to the fact that there is a significant public benefit in having a single emergency ambulance service that provides an efficient use of assets, a highly-responsive service, and high levels of integration with other health services provided within the public health system.

Part 2—Minister and Chief Executive

6—Minister

(1) The Minister's functions in connection with the operation of this Act include the following (to be performed to such extent as the Minister considers appropriate):

(a) to ascertain the requirements of the community, or sections of the community, in the field of health and health services and to determine how those requirements should be met to the best advantage of the community;

(b) to plan, implement or support the provision of a system of health services that is comprehensive, co-ordinated and readily accessible to the public;

(c) to establish health services within the community;

(d) to act to ensure that hospitals established under this Act, or that hospitals or other health services established, maintained or operated by or with the assistance of the Government of the State, are operated in an efficient and economical manner;

(e) to ensure the proper allocation of resources across health services established under this Act;

(f) to ensure that emergency ambulance services are provided in an efficient and effective manner through SAAS;

(g) to promote or support—

(i) research in the field of health and health services, including through the provision of facilities or other forms of support to a university or other institution, authority or person considered to be appropriate by the Minister; and

(ii) the collection of data, statistics and other information in relation to health and health services; and

(iii) the provision of education, instruction or training in professional or other fields associated with health and the provision of health services;

(h) to promote and encourage the participation of volunteers in the provision of health services;

(i) to disseminate information and knowledge for the benefit of the health of the public;

(j) to establish mechanisms to keep the policies and standards of health and health services developed by the Department under evaluation and review;

(k) to promote a positive relationship between the public, private and other health sectors;

(ka) to provide and maintain such services or facilities as another Minister may request in connection with the field of veterinary science;

(l) such other functions assigned to the Minister by or under this or any other Act, or considered by the Minister to be relevant to the operation of this or any other relevant Act.

(2) The Minister has the power to do anything necessary, expedient or incidental to—

(a) performing the functions of the Minister under this Act; or

(b) administering this Act; or

(c) furthering the objects of this Act.

(3) The Minister cannot give a direction concerning the clinical treatment of a particular person.

7—Chief Executive

(1) The Chief Executive's functions in connection with the operation of this Act include the following:

(a) to assist the Minister in connection with the administration of this Act and to exercise statutory powers conferred by this Act;

(b) to assist and advise the Minister in relation to—

(i) the provision of health services within the State; and

(ii) the protection or promotion of public health within the State;

(c) to assist and advise the Minister in the development and implementation of planning for the health system statewide;

(d) to provide strategic leadership and direction for the provision of public health services in the State;

(e) to promote the effective and efficient use of available resources in the provision of public health services in the State;

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

(g) to contribute to and implement statewide service plans that apply to incorporated hospitals and SAAS;

(h) to undertake workforce planning for the health system statewide;

(i) to ensure that a highly trained workforce is valued within the health system;

(j) to oversee, monitor and promote improvements in the safety and quality of health services provided by incorporated hospitals and SAAS;

(k) to develop and issue policies and directives to apply to the Department, incorporated hospitals and SAAS;

(l) to develop and issue policies on workforce harassment and bullying;

(m) to monitor the performance of incorporated hospitals and SAAS, and to take remedial action if agreed performance measures and operational targets are not met;

(n) to receive and evaluate performance data and other data provided by incorporated hospitals and SAAS;

(o) at the request of the Minister, to provide advice on any other matter in relation to which the Minister considers that the advice of the Chief Executive should be available;

(p) to facilitate the provision of laboratory, research or other similar facilities, including on account of a request by a Minister under section 6(1)(ka);

(q) such other functions assigned to the Chief Executive by or under this or any other Act, or assigned to the Chief Executive by the Minister in connection with the operation of this or any other Act.

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

(2) The Chief Executive has the power to do anything necessary, expedient or incidental to performing the functions of the Chief Executive.

(3) Subject to this Act, the Chief Executive is, in the performance and exercise of the Chief Executive's functions and powers, subject to the control and direction of the Minister.

(4) The Chief Executive cannot give a direction concerning the clinical treatment of a particular person.

8—Delegations

(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—

(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

(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.

Part 3—Health Performance Council

9—Establishment of Health Performance Council

(1) The *Health Performance Council* (***HPC***) is established.

(2) HPC is to consist of up to 15 persons appointed by the Governor on the recommendation of the Minister who together, in the opinion of the Minister—

(a) have a high level of knowledge of, and expertise in, the provision of health care or the administration of health services; and

(b) are able to represent the diversities of South Australia's communities; and

(c) have such experience, skills and qualifications to enable HPC to carry out its functions effectively.

(3) The Minister must consult with prescribed bodies, in accordance with the regulations, before making a recommendation under subsection (2).

(4) The Minister must ensure, as far as practicable, that the persons appointed under subsection (2) consist of equal numbers of women and men.

(5) An act or proceeding of HPC is not invalid by reason only of a vacancy in its membership or a defect or irregularity in, or in connection with, the appointment of a member.

10—Provisions relating to members, procedures and committees and subcommittees

Schedule 1 has effect with respect to HPC.

11—Functions of HPC

(1) The functions of HPC are—

(a) to provide advice to the Minister about—

(i) the operation of the health system; and

(ii) health outcomes for South Australians and, as appropriate, for particular population groups; and

(iii) the effectiveness of methods used within the health system to engage communities and individuals in improving their health outcomes; and

(b) to provide reports to the Minister in accordance with the requirements of this Act; and

(c) to provide advice to the Minister about any matter referred to it by the Minister or any matter it sees fit to advise the Minister about in connection with its responsibilities under this Act; and

(d) such other functions assigned to HPC under this or any other Act, or assigned to HPC by the Minister.

(2) HPC should, in the performance of its functions, seek to obtain, to such extent as is reasonable and relevant in the circumstances, the views of—

(a) Health Advisory Councils; and

(ab) governing boards of incorporated hospitals; and

(b) advisory committees established by the Minister to assist HPC in the performance of its functions.

(3) HPC must, in the performance of its functions, take into account the strategic objectives that have been set or adopted within the Government's health portfolios.

(4) Without limiting subsection (3), HPC must, in providing any advice with respect to the provision of any health services (including proposed services), take into account—

(a) the net benefit provided by the services, the cost effectiveness of services, and available resources; and

(b) the net impact that the adoption of the advice would have on other services, or on the community more generally; and

(c) the value placed on any relevant services by members of the public who use those services.

(5) The Minister must establish arrangements to meet with HPC on a regular basis.

(6) HPC cannot, in the performance of its functions, give directions to the Chief Executive, the Department, the governing board for an incorporated hospital, a hospital or a HAC.

(7) HPC may request the Chief Executive to provide it with specified information in order to assist it in the performance of its functions.

(8) The Chief Executive may impose conditions that HPC must observe in relation to the receipt, use or disclosure of information provided under subsection (7).

12—Annual report

(1) HPC must, within 3 months after the end of each financial year, deliver to the Minister a report on the operations of HPC during that financial year.

(2) The Minister must, within 12 sitting days after the receipt of a report under this section, cause a copy of the report to be laid before both Houses of Parliament.

13—4-yearly report

(1) HPC must, on a 4-yearly basis, furnish to the Minister a report that assesses the health of South Australians and changes in health outcomes over the reporting period.

(2) The report must—

(a) identify significant trends in the health status of South Australians and consider future priorities for the health system having regard to trends in health outcomes, including trends that relate to particular illnesses or population groups; and

(b) review the performance of the various health systems established within the State in achieving the objects of this Act; and

(c) identify any other significant issues considered relevant by HPC; and

(d) conform with any requirements of the Minister as to the form of the report and other matters to be addressed by the report.

(3) The Minister must, within 12 sitting days after receipt of a report under this section, cause a copy of the report to be laid before both Houses of Parliament.

(4) The Minister must, within 6 months after receipt of a report under this section, cause a formal response to the report to be laid before both Houses of Parliament.

(5) The first report under this section must be completed by a day to be fixed by the regulations.

14—Use of facilities

HPC may, with the approval of the responsible Minister or, if relevant, a responsible public sector instrumentality, make use of the staff, services or facilities of an administrative unit or another public sector instrumentality.

Part 4—Health Advisory Councils

Division 1—Establishment of Councils

15—Establishment of Councils

(1) The Minister may, by notice in the Gazette, establish a Health Advisory Council (a ***HAC***) to undertake an advocacy role on behalf of the community, to provide advice, and to perform other functions, as determined under this Act, in relation to any of the following:

(a) the Minister;

(b) the Chief Executive;

(c) an incorporated hospital;

(d) SAAS;

(e) any other body involved in the delivery of health services in connection with this Act.

(2) Without limiting subsection (1), the Minister may establish and maintain a HAC, constituted by persons who have experience in providing ambulance services as volunteers, with functions that include to provide advice to SAAS in the performance of its functions.

(3) The notice published under subsection (1) may—

(a) designate the entity or entities in relation to which the HAC is established; and

(b) make provision with respect to the functions of the HAC; and

(c) declare whether the HAC is to be an incorporated or unincorporated body and assign a name to the HAC (which must, if the HAC is to be incorporated, end with the abbreviation "Inc"); and

(d) make provision with respect to the powers of the HAC; and

(e) make such other provision as the Minister thinks fit (including by relating the functions of the HAC to a designated area of the State).

(4) The Minister may, by subsequent notice in the Gazette—

(a) vary a notice under this section;

(b) amalgamate 2 or more HACs;

(c) dissolve a HAC.

(5) However, the Minister—

(a) must consult with the members of the relevant HAC or HACs in the manner prescribed by the regulations before acting under subsection (4); and

(b) must not act under subsection (4)(b) or (c) unless—

(i) the Minister is satisfied that there has been a reasonable level of consultation within the community; and

(ii) the Minister is satisfied that it is appropriate to do so on a ground prescribed by the regulations.

(6) If 2 or more HACs are amalgamated under subsection (4)(b), the Minister may—

(a) exercise any power under a preceding subsection in relation to the HAC established by the amalgamation (including by declaring whether the HAC is to be an incorporated or unincorporated body); and

(b) dissolve the HACs that were the separate entities before the amalgamation.

(7) If 2 or more HACs are amalgamated under subsection (4)(b), the assets, rights and liabilities of the HACs that were the separate entities before the amalgamation vest in or attach to the HAC formed by the amalgamation by operation of this subsection (unless a contrary provision is relevant under subsection (8)).

(8) A reference in a testamentary disposition or other instrument to a HAC that is a party to an amalgamation under subsection (4)(b) will be taken to be (subject to any provision of the testamentary disposition or other instrument to the contrary) a reference to the HAC formed by the amalgamation.

(9) If a HAC is dissolved under subsection (4)(c), the Minister may, as the Minister thinks necessary or appropriate, exercise a power under section 20 (subject to complying with the requirements of that section).

(10) The Minister may, by notice in the Gazette, make other provisions that in the opinion of the Minister are necessary or expedient in connection with taking action under subsection (4).

(11) To avoid doubt, the Minister may establish more than 1 HAC in relation to a particular entity under subsection (1).

16—Status

(1) If a HAC is to be an incorporated body by virtue of a declaration of the Minister—

(a) the HAC is, by force of this section, a body corporate with perpetual succession and a common seal; and

(b) subject to the provisions of this Act and its constitution, the HAC—

(i) is capable of holding, acquiring, dealing with, and disposing of, real and personal property (including the power to enter into leases); and

(ii) is capable of acquiring or incurring other assets, rights or liabilities; and

(iii) is capable of entering into contracts; and

(iv) is capable of suing and being sued; and

(v) is capable of administering any property on trust or accepting gifts (and, if any gift is affected by a trust, is empowered to carry out the terms of the trust); and

(vi) has the rights, powers, authorities, functions, duties and obligations prescribed by or under this Act or its constitution.

(2) If a HAC is not to be a body corporate by virtue of a declaration of the Minister, the HAC has the rights, powers, authorities, functions, duties and obligations prescribed by or under this Act or its rules.

(3) A HAC is an instrumentality of the Crown.

(4) Subject to subsection (5), a HAC holds its property on behalf of the Crown.

(5) Subsection (4) does not apply to the extent that a HAC holds any property on trust.

(6) Without limiting subsection (5), in the event of an inconsistency between the operation or effect of a provision under this Part and the duties or responsibilities of a HAC as a trustee, the provisions of this Part will not apply to the extent of the inconsistency.

(7) Subject to any provision made in its constitution or rules, a HAC may exercise its powers within or outside the State.

17—Constitution and rules

(1) A HAC that is incorporated under this Act will have a constitution determined by the Minister.

(2) A constitution—

(a) must address the appointment of persons as the members of the governing body of the HAC (including by determining the number of members) and, in respect of those members—

(i) the method by which they may be appointed, and their terms of office; and

(ii) the conditions of appointment, or a method by which those conditions will be determined; and

(b) may provide for the appointment of deputies of members of the governing body of the HAC; and

(c) must specify the functions of the HAC and may, in doing so, provide for functions of the HAC that are in addition to those specified under Division 2, or limit or regulate the functions or powers of the HAC under this Act; and

(d) may make any other provision that, in the opinion of the Minister, is necessary or expedient in connection with the functions, powers or activities of the HAC.

(3) A HAC that is not incorporated under this Act will have rules determined by the Minister.

(4) A set of rules—

(a) must address the appointment of persons as members of the HAC (including by determining the number of members) and, in respect of those members—

(i) the method by which they may be appointed, and their terms of office; and

(ii) the conditions of appointment, or a method by which those conditions will be determined; and

(b) may provide for the appointment of deputies of members of the HAC; and

(c) must specify the functions of the HAC and may, in doing so, provide for functions of the HAC that are in addition to those specified under Division 2, or limit or regulate the functions or powers of the HAC under this Act; and

(d) may make any other provision that, in the opinion of the Minister, is necessary or expedient in relation to the functions, powers or activities of the HAC.

(5) If a HAC is established in relation to an incorporated hospital established to provide services within the country areas of the State, the constitution or rules of the HAC (as the case may be) must provide that a majority of members of the governing body of the HAC (in the case of an incorporated HAC) or a majority of members of the HAC (in the case of a HAC that is not incorporated) are persons who are selected or appointed on the basis of being members of the local community.

(6) The Minister may publish a constitution or set of rules in such manner as the Minister thinks fit.

(7) The Minister may, as the Minister thinks fit, vary a constitution or set of rules from time to time.

(8) For the purposes of facilitating the operation of this section, the Minister must develop a model constitution and a model set of rules (and may then vary or replace any such model from time to time).

(9) The Minister must, in varying or replacing a model, undertake the consultation required by the regulations.

(10) To avoid doubt, the Minister may depart from a model in a particular case.

Division 2—Functions and powers

18—Functions

(1) The functions of a HAC may include 1 or more of the following:

(a) to act as an advocate to promote the interests of the community, or a section of the community;

(b) to provide advice about any relevant aspect of the provision of health services from the perspective of consumers of those services, any carers or volunteers or the community more generally;

(c) to provide advice about relevant health issues, goals, priorities, plans, and other strategic initiatives;

(d) to provide advice or assistance in undertaking the development or implementation of systems or mechanisms designed to support the delivery of health services or programs;

(e) to provide information to, and to consult broadly with, the consumers of any relevant services, any relevant carers or volunteers, and the community more generally;

(f) to encourage community participation in programs associated with supporting the provision of health services, and to promote the importance of carers and volunteers in assisting in achieving successful outcomes;

(g) to consult with other bodies that are interested in the provision of health services within the community;

(h) to provide advice to the Minister about any matter referred to it by the Minister or the Chief Executive;

(ha) to provide advice to the governing board for an incorporated hospital about any matter referred to it by the board;

(i) to participate in the consultation or assessment processes associated with the selection of senior staff of a relevant entity;

(j) in the case of a HAC that is incorporated—

(i) to act as a trustee or to assume other fiduciary functions or duties;

(ii) to participate in budget discussions and financial management or development processes;

(iii) to undertake fund-raising activities;

(k) in the case of a HAC that is not incorporated—

(i) to provide advice in relation to the management of resources available for relevant health services;

(ii) to provide assistance with fund-raising activities in accordance with its rules;

(l) such other functions—

(i) assigned to the HAC under this or any other Act; or

(ii) assigned to the HAC by the Minister; or

(iii) adopted by the HAC with the approval of the Minister.

(2) Subject to this Act, a HAC must, in the performance of its functions, take into account the strategic objectives (including any health care plan or plans) that have been set or adopted within the Government's health portfolios.

(3) A HAC that is incorporated under this Act must, with respect to an entity in relation to which it is established—

(a) support and foster the activities and objects of the entity; and

(b) subject to this Act, hold its assets for the benefit, purposes and use of the entity on terms or conditions determined or approved by the Minister.

19—Specific provisions in relation to powers

(1) Subject to this Act, a HAC has the power to do anything necessary, expedient or incidental to performing its functions.

(2) Without limiting subsection (1), a HAC that is incorporated under this Act may establish any fund (including a *gift fund*) or account.

(3) A HAC must not do any of the following without the approval of the Minister:

(a) acquire or dispose of real property, or an interest in real property;

(b) borrow money or grant a mortgage or create any other form of charge over its property;

(c) grant a lease over any real property;

(d) enter into any form of guarantee or grant any indemnity;

(e) engage a person under a contract for the provision of services;

(f) anything else identified under the constitution or rules of the HAC as being within the operation of this subsection.

(4) The Minister may, in granting an approval under subsection (3), impose such conditions as the Minister thinks fit.

(5) Subsection (3) does not apply in any circumstances excluded from the operation of that subsection—

(a) by the regulations; or

(b) by the constitution or rules of the HAC.

(6) A HAC does not have the power to employ any person.

Division 3—Related matters

20—Specific provisions in relation to property

(1) Subject to this section, the Minister may, by notice in the Gazette—

(a) transfer the assets, rights and liabilities of a HAC (either as a whole or in separate parcels specified in the notice)—

(i) to a Minister; or

(ii) to another HAC; or

(iii) to an incorporated hospital; or

(iv) to SAAS; or

(v) to the Crown, or to another agent or instrumentality of the Crown; or

(vi) with the agreement of the person or body—to a person or body that is not an agent or instrumentality of the Crown; and

(b) make other provisions in relation to the property of the HAC that in the opinion of the Minister are necessary or expedient in the circumstances.

(2) The Minister may, by notice in the Gazette, transfer to and vest in a HAC any assets, rights or liabilities of another entity.

(3) The Minister—

(a) must not act under subsection (1) to transfer any assets or rights of a HAC unless the Minister is acting at the request of the HAC, or the Minister has taken reasonable steps to consult with the HAC; and

(b) must not act under subsection (2) unless the Minister is acting at the request of the other entity.

(4) Subsection (1) does not apply to any property that a HAC holds on trust to the extent that a transfer under that subsection would be inconsistent with the terms or conditions of the trust.

(5) In addition, if the Minister is proposing to transfer any real property of a HAC that has been used for the purposes of an incorporated hospital (other than at the request of the HAC) and the Minister has not obtained the concurrence of the HAC under subsection (3)(a)—

(a) the matter must be referred to an independent person for mediation in accordance with guidelines established by the Minister for the purposes of this provision (with the Minister being represented in those proceedings by a person nominated by the Minister); and

(b) if the concurrence of the HAC is not obtained through mediation under paragraph (a), the Minister may only proceed to make the transfer under subsection (1) if—

(i) the transfer is to another HAC; and

(ii) the Minister has given public notice of the proposed transfer by notice published in the Gazette at least 2 months before making the transfer.

(6) A notice published in the Gazette under subsection (5)(b)(ii) must set out the reasons for the Minister's decision to proceed.

21—Accounts and audit

(1) A HAC must cause proper accounts to be kept of its financial affairs and financial statements to be prepared in respect of each financial year (unless the HAC did not deal with any money or property or otherwise undertake any financial activity in the financial year).

(2) The accounts and financial statements required under subsection (1) must comply with any requirements issued by the Minister.

(3) The accounts and financial statements of a HAC incorporated under this Act, other than a prescribed HAC, must be audited at least once in every year by an auditor approved by the Auditor-General.

(4) The accounts and financial statements of a prescribed HAC incorporated under this Act must be audited at least once in every year by the Auditor-General.

22—Annual report

(1) A HAC must, within 3 months after the end of each financial year, deliver to the Minister a report on the operations of the HAC during that financial year.

(2) The report must incorporate the audited accounts and financial statements of the HAC for the financial year (if relevant).

(3) The Minister must, within 12 sitting days after the receipt of a report under this section, cause a copy of the report to be laid before both Houses of Parliament.

(4) This section only applies to a HAC that is not incorporated under this Act if the rules of the HAC declare that this section will apply to the HAC.

23—Use of facilities

A HAC may, with the approval of the responsible Minister or, if relevant, a responsible public sector instrumentality, make use of the staff, services or facilities of an administrative unit or another public sector instrumentality.

24—Delegations

(1) Subject to subsection (2), a HAC may delegate a function or power conferred on the HAC—

(a) to a specified person or body; or

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

(2) A delegation—

(a) may not be made if contrary to any limitation or exclusion imposed by the Minister by notice in writing furnished to the HAC; and

(b) subject to paragraph (a)—

(i) may be made subject to conditions or limitations specified in the instrument of delegation; and

(ii) if the instrument of delegation so provides, may be further delegated by the delegate; and

(iii) is revocable at will and does not prevent the HAC from acting in a matter.

25—Access to information

(1) A HAC is entitled to request such information as it considers to be necessary or expedient to assist it in the performance of its functions.

(2) Subsection (1) does not extend to information excluded from the operation of that subsection—

(a) by the regulations; or

(b) by the Chief Executive.

(3) The Chief Executive may impose conditions that a HAC must observe in relation to the receipt, use or disclosure of information provided under subsection (1).

26—Common seal

Where an apparently genuine document purports to bear the common seal of a HAC incorporated under this Act, it will be presumed, in the absence of proof to the contrary, that the common seal of that HAC was duly fixed to that document.

27—Schedule 2 has effect

Schedule 2 has effect with respect to a HAC.

28—Administration

(1) The Minister may, if satisfied that it is appropriate to do so on a ground prescribed by the regulations, by notice in the Gazette, remove all members of a HAC from office and—

(a) appoint new members; or

(b) appoint a person as administrator until new members are appointed.

(2) A person will be appointed under subsection (1)(b) on conditions determined by the Minister.

(3) A person appointed under subsection (1)(b)—

(a) will be able to act in the management or affairs of the HAC (so that an act done or a decision made by the person as administrator is an act or decision of the HAC); and

(b) will have all the powers conferred on the members of the HAC (including as its governing body) by the constitution or rules of the HAC.

(4) The Minister may appoint new members under subsection (1)(a) or (b) if or when the Minister thinks fit but in any event must appoint new members within 12 months after the removal of the previous members under subsection (1).

Part 4A—Service agreements

28A—Preliminary

In this Part—

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

service agreement—see section 28B(1).

28B—Service agreement with Chief Executive

(1) The Chief Executive must enter into an agreement (a ***service agreement***) relating to the provision of health services with the following:

(a) each incorporated hospital;

(b) SAAS.

(2) A service agreement must specify—

(a) the health services to be provided to the State by the health service provider, including particulars relating to the volume, scope and standard of services; and

(b) the teaching, training and research to be provided in support of the provision of health services; and

(c) the funding to be provided to the health service provider for the provision of the services, including the way in which the funding is to be provided; and

(d) that each health service provider must operate programs that promote the provision of health care for Aboriginal and Torres Strait Islander people; and

(e) the performance measures and operational targets for the provision of the services by the health service provider; and

(f) how the evaluation and review of results in relation to the performance measures and operational targets are to be carried out; and

(g) the performance data and other information to be provided by the health service provider to the Chief Executive, including how, and how often, the data is to be provided; and

(h) any other matter the Chief Executive considers relevant to the provision of the services by a health service provider; and

(i) any other matter prescribed by the regulations.

(3) A service agreement may—

(a) deal with matters relating to funding provided by the Commonwealth (despite the fact that the Commonwealth is not a party to the agreement); and

(b) state the circumstances in which the health service provider (the ***first provider***) may agree with another health service provider to provide services for the first provider.

(4) Negotiations relating to a service agreement must be conducted in accordance with a policy established by the Chief Executive and any requirements prescribed by the regulations.

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

28C—General provisions about service agreements

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

(2) A service agreement is entered into by an incorporated hospital by the chief executive officer of the incorporated hospital signing the service agreement with the approval of the governing board for the incorporated hospital.

(3) A service agreement is entered into by SAAS by the chief executive officer of SAAS signing the service agreement.

(4) A service agreement may be varied by agreement between the parties, provided that a party that seeks to vary a service agreement gives the other party 14 days notice of the proposed variation.

(5) If the parties entering into or proposing to vary a service agreement cannot agree on a term or variation of the agreement, the Minister may make a decision about the term or proposed variation and must—

(a) advise the parties of the decision in writing; and

(b) cause a copy of the decision to be tabled in each House of Parliament within 7 sitting days after the service agreement to which the decision relates is entered into or varied.

(6) A term or variation decided under subsection (5) will be taken to be a term or variation of a service agreement.

(7) The Chief Executive must, within 14 days after a service agreement is entered into or varied, publish the service agreement, or the agreement as varied, in a way that allows the agreement to be accessed by members of the public (including, for example, on the Internet).

Part 5—Hospitals

Division 1—Incorporation

29—Incorporation

(1) The Governor may, by proclamation—

(a) establish an incorporated hospital to provide services and facilities under this Act and assign a name to the incorporated hospital;

(b) transfer the whole or part of the undertaking of a specified person or body to an incorporated hospital.

(2) A proclamation under subsection (1) that provides for an incorporated hospital to take over from any other body the function of providing health services provided by that other body may provide that any incorporation of that other body is dissolved, and the proclamation will have effect according to its terms.

(3) If the incorporation of a body is dissolved by a proclamation, the real and personal property and rights and liabilities of that body are, according to the terms of a proclamation, transferred to and vested in 1 or more incorporated hospitals specified by proclamation.

(4) An incorporated hospital may not take over functions from another body under subsection (1) unless agreement has been reached between the Minister and the other body on the transfer of functions.

(5) The Governor may, by proclamation—

(a) alter the name of an incorporated hospital;

(b) dissolve an incorporated hospital.

(6) The Governor may, by a proclamation under subsection (5)(b) or by a separate proclamation—

(a) transfer the assets, rights and liabilities of an incorporated hospital dissolved under this section (either as a whole or in separate parcels specified by proclamation)—

(i) to a Minister; or

(ii) to another incorporated hospital; or

(iii) to the Crown, or to another agent or instrumentality of the Crown; or

(iv) with the agreement of the person or body—to a person or body that is not an agent or instrumentality of the Crown; and

(b) make other provisions that in the opinion of the Governor are necessary or expedient in connection with the dissolution of an incorporated hospital under this section.

30—Hospital to serve the community

An incorporated hospital must be administered and managed on the basis that its services will address the health needs of the community but may, in so doing, focus on 1 or more areas or sections of the community if so determined by the Minister, the Chief Executive or the governing board for the hospital.

Note—

It is recognised that some groups within the community should be able to access special or enhanced health services due to their special needs. Examples of these groups include veterans, Aboriginal people and Torres Strait Islanders.

31—General powers of incorporated hospital

(1) An incorporated hospital is a body corporate with perpetual succession and a common seal and, subject to any determination of the Minister—

(a) is capable of holding, acquiring, dealing with, and disposing of, real and personal property (including the power to enter into a lease); and

(b) is capable of acquiring or incurring other assets, rights or liabilities; and

(c) is capable of entering into contracts; and

(d) is capable of suing and being sued; and

(e) is able to promote the formation of a company under the *Corporations Act 2001* of the Commonwealth and to hold shares or other interests in any body corporate; and

(f) is capable of administering any property on trust or accepting gifts (and, if any gift is affected by a trust, is empowered to carry out the terms of the trust); and

(g) has the functions, rights, powers, authorities, duties and obligations conferred, imposed or prescribed under this or any other Act (and including such powers necessary or expedient for, or incidental to, the performance of any function).

(1a) Without limiting subsection (1), an incorporated hospital may undertake the following functions:

(a) to undertake or facilitate—

(i) the commercial exploitation of knowledge arising from its activities; or

(ii) the commercial development of its services, functions or expertise;

(b) to produce and sell instruments or other equipment for use in—

(i) the provision of medical services, including medical diagnostic services; or

(ii) the teaching of medical science; or

(iii) scientific research;

(c) to provide consultancy services;

(d) to provide and maintain a drug and alcohol testing service for such persons as the hospital thinks fit;

(e) to conduct a testing service for the purpose of determining parentage or other human genetic relationships;

(f) to provide and maintain such services or facilities as a Minister may require in relation to—

(i) veterinary laboratory services, or services to veterinary surgeons in private practice, or other veterinary services provided by a public sector agency within the meaning of the *Public Sector Act 2009*; or

(ii) research in the field of veterinary science;

(g) to conduct such other activities considered appropriate by the Minister that can be efficiently or effectively managed through the use of hospital facilities and resources.

(2) An incorporated hospital may hold a licence or any other form of authority or accreditation (including a licence, authority or accreditation issued under a law of the Commonwealth or of another State or a Territory).

(3) An incorporated hospital is an instrumentality of the Crown.

(4) Subject to subsection (5), an incorporated hospital holds its property on behalf of the Crown.

(5) Subsection (4) does not apply to the extent that an incorporated hospital holds any property on trust.

(6) Without limiting subsection (5), in the event of an inconsistency between the operation or effect of a provision under this Part and the duties or responsibilities of an incorporated hospital as a trustee, the provisions of this Part will not apply in a particular case to the extent of the inconsistency.

(7) Without limiting any other provision, an incorporated hospital may establish any fund (including a *gift fund*) or account.

(8) An incorporated hospital may exercise its powers within or outside the State.

(9) An incorporated hospital may not exercise its power under subsection (1)(e) without the approval of the Governor.

32—Common seal

Where an apparently genuine document purports to bear the common seal of an incorporated hospital, it will be presumed, in the absence of proof to the contrary, that the common seal of that hospital was duly affixed to that document.

Division 1A—Transfer of functions etc between incorporated hospitals

32A—Transfer of functions etc between incorporated hospitals

The Governor may, by proclamation—

(a) transfer all or some of the functions of an incorporated hospital to another incorporated hospital;

(b) transfer the assets, rights and liabilities of an incorporated hospital to another incorporated hospital;

(c) make other provisions that in the opinion of the Governor are necessary or expedient in connection with a transfer under this section.

Division 2—Management arrangements

33—Governance and management arrangements

(1) Each incorporated hospital is to be governed by a board (a ***governing board***).

(2) The functions of a governing board for an incorporated hospital include the following:

(a) to ensure effective clinical and corporate governance frameworks are established to support the maintenance and improvement of standards of patient care and services by the incorporated hospital and to approve those frameworks;

(b) to ensure—

(i) the operations of the incorporated hospital are carried out efficiently, effectively and economically; and

(ii) the incorporated hospital manages its budget so that performance targets are met; and

(iii) that hospital resources are applied equitably to meet the needs of the community served by the incorporated hospital;

(c) to ensure strategic plans to guide the delivery of services are developed for the incorporated hospital and to approve those plans;

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

(cb) to ensure that the incorporated hospital—

(i) promotes a healthy workforce culture for and among staff employed to work within the incorporated hospital; and

(ii) implements measures to provide for and promote the health, safety and wellbeing of those staff within the workplace (including the psychosocial health, safety and wellbeing of staff); and

(iii) implements policies issued by the Chief Executive on workforce health, safety and welfare (including policies on workforce harassment and bullying), so far as those policies apply to the incorporated hospital;

(d) to provide strategic oversight of and monitor the incorporated hospital's financial and operational performance;

(e) to prepare and keep under review strategies—

(i) for the provision of health services by the incorporated hospital; and

(ii) to promote consultation with health professionals working in the incorporated hospital; and

(iii) to promote consultation with health consumers and community members about the provision of health services by the incorporated hospital;

(f) to advise providers and consumers of health services, and other members of the community served by the incorporated hospital, as to the hospital's policies, plans and initiatives for the provision of health services;

(g) to manage performance against the performance measures in the service agreement between the incorporated hospital and the Chief Executive;

(h) to cooperate with other providers of health services, including providers of primary health care, in planning for, and providing, health services;

(i) to endorse the incorporated hospital's annual report;

(j) to liaise with the boards of other incorporated hospitals and the Chief Executive in relation to both local and statewide initiatives for the provision of health services.

(3) A governing board is also to carry out other functions assigned to the board by or under this or any other Act, or by the Minister.

(4) The governing board for an incorporated hospital—

(a) must comply with any directions of the Minister and any directions of the Chief Executive; and

(b) must comply with any policies of the Department specified by the Minister or the Chief Executive to apply to a governing board in the performance of its functions; and

(c) must not exercise a function in a way that is inconsistent with the exercise of a function by the Chief Executive (including a function that has been delegated to the Chief Executive).

(5) An act done or decision made by the governing board for an incorporated hospital in the course of official functions and duties is an act or decision of the incorporated hospital.

33A—Engagement strategies

(1) The governing board for an incorporated hospital must develop and publish the following strategies:

(a) a strategy to promote consultation with health professionals working in the incorporated hospital (a ***clinician engagement strategy***);

(b) a strategy to promote consultation with health consumers and members of the community about the provision of health services by the incorporated hospital (a ***consumer and community engagement strategy***).

(2) The governing board must consult with the following persons in developing and reviewing the strategies:

(a) for the clinician engagement strategy—health professionals working in the incorporated hospital;

(b) for the consumer and community engagement strategy—health consumers and members of the community.

(3) A strategy developed and published under this section must—

(a) satisfy any requirements prescribed by regulation for that strategy; and

(b) be published in a way that allows the strategy to be accessed by members of the public, including, for example, on the Internet.

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

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

(4) The governing board and the incorporated hospital must give effect to the strategies developed and published under this section in performing functions under this Act.

33B—Composition of governing boards for incorporated hospitals

(1) A governing board for an incorporated hospital consists of 6 or more members (but not more than 8) appointed by the Minister, being persons who collectively have, in the opinion of the Minister, knowledge, skills and experience necessary to enable the board to carry out its functions effectively.

(2) As far as is practicable, the membership of a governing board for an incorporated hospital must comprise persons who between them have knowledge of, and experience and expertise in, the following fields:

(a) health management;

(b) clinical governance;

(c) commercial management;

(d) financial management;

(e) the practice of the law;

(f) the provision of health services;

(g) other knowledge, experience and expertise that, in the opinion of the Minister, will enable the effective performance of the board's functions.

(3) At least 2 members of a governing board must be health professionals.

(4) At least 1 member of a governing board must be a person who has expertise, knowledge or experience in relation to Aboriginal health.

(5) A person is not eligible for appointment to the governing board for an incorporated hospital if—

(a) the person is employed or engaged to work at the incorporated hospital; or

(c) the person is an employee of the Department.

(6) A governing board must, as far as practicable, be comprised of equal numbers of women and men.

(7) On the office of a member of a governing board becoming vacant, a person may be appointed in accordance with this Act to the vacant office.

(8) The Minister may appoint a suitable person to be the deputy of a member of a governing board during any period of absence of the member (and any reference to a member in this Act will be taken to include, unless the contrary intention appears, a reference to a deputy while acting as a member of the board).

(9) In this section—

health professional means—

(a) an individual who holds, or has previously held, general registration in a health profession under the *Health Practitioner Regulation National Law (South Australia)*; or

(b) an individual who practises, or has previously practised, a profession providing health services involving the provision of care or treatment to other persons (directly or indirectly).

33C—Members of governing boards for incorporated hospitals to act in public interest

A member of a governing board for an incorporated hospital is to act impartially and in the public interest in performing the member's duties.

33D—Disclosure of pecuniary or personal interest

(1) A member of a governing board who has a pecuniary or personal interest in a matter being considered or about to be considered by the board must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the board.

Maximum penalty: $25 000.

(2) A member of a committee who has a pecuniary or personal interest in a matter being considered or about to be considered by the committee must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a committee meeting.

Maximum penalty: $25 000.

(3) A member of a governing board or a committee who has a pecuniary or personal interest in a matter being considered or about to be considered by the board or the committee—

(a) must not vote, whether at a meeting or otherwise, on the matter; and

(b) must not be present while the matter is being considered at the meeting.

(4) Subsection (3) does not apply if—

(a) a member of a governing board or committee has disclosed an interest in a matter under subsection (1) or (2); and

(b) the board or committee (as the case requires) has at any time passed a resolution that—

(i) specifies the member, the interest and the matter; and

(ii) states that the members voting for the resolution are satisfied that the interest is so trivial or insignificant as to be unlikely to influence the disclosing member's conduct and should not disqualify the member from considering or voting on the matter.

(5) Despite a provision of Schedule 3, if a member of a governing board is disqualified under subsection (3) in relation to a matter, a quorum is present during the consideration of the matter if at least half the number of members who are entitled to vote on any motion that may be moved at the meeting in relation to the matter are present.

(6) The Minister may by instrument in writing declare that subsection (3) or subsection (5), or both, do not apply in relation to a specified matter either generally or in voting on particular resolutions.

(7) The Minister must cause a copy of a declaration under subsection (6) to be laid before both Houses of Parliament within 14 sitting days after the declaration is made.

(8) Particulars of a disclosure made under subsection (1) or (2) at a meeting of a governing board or committee of a governing board must be recorded—

(a) in the minutes of the meeting; and

(b) in a register kept by the board which must be reasonably available for inspection by any person.

(9) A reference in subsection (3) to a matter includes a reference to a proposed resolution under subsection (4) in respect of the matter, whether relating to that member or a different member.

(10) Subsection (2) applies to a person who is a member of a committee and also a member of a governing board even though the person has already disclosed the nature of the interest at a board meeting.

(11) A contravention of this section does not invalidate any decision of the board.

(12) Section 8 of the *Public Sector (Honesty and Accountability) Act 1995* does not apply to a member of a governing board.

(13) In this section—

committee means a committee or subcommittee established by a governing board under Schedule 3 clause 9.

33E—Chief executive officer for incorporated hospital

(1) The governing board for an incorporated hospital may, after consultation with the Chief Executive, appoint—

(a) a specified person; or

(b) a person occupying a specified office or position,

as the chief executive officer of the incorporated hospital.

(2) An appointment under subsection (1)—

(a) takes effect following confirmation of the appointment by the Chief Executive; and

(b) is revocable by the governing board at any time, subject to the confirmation of the Chief Executive.

(3) The chief executive officer of an incorporated hospital is responsible for managing the operations and affairs of the hospital and is accountable to, and subject to the direction of, the governing board for the hospital in undertaking that function (although the governing board cannot give a direction concerning the clinical treatment of a particular person).

(4) An act done or decision made by the chief executive officer of an incorporated hospital in the course of official functions and duties is an act or decision of the incorporated hospital.

33F—Provisions relating to members, procedures, committees and subcommittees etc

Schedule 3 applies in respect of governing boards for incorporated hospitals.

Division 3—Employed staff

34—Employed staff

(1) An employing authority may employ persons to perform functions in connection with the operations or activities of an incorporated hospital.

(2) The terms and conditions of employment of a person under subsection (1) will be fixed by the Chief Executive and approved by the Commissioner for Public Employment.

(2a) For the purposes of subsection (2), the Chief Executive must issue policies and directives relating to terms and conditions of employment of persons appointed under subsection (1).

(3) A person employed under this section will be taken to be employed by or on behalf of the Crown (but will not be employed in the Public Service of the State unless brought into an administrative unit under the *Public Sector Act 2009*).

(4) An employing authority may direct a person employed under this section to perform functions in connection with the operations or activities of another incorporated hospital, or any other public sector agency, specified by the employing authority (and the person must comply with that direction).

(5) An employing authority is, in acting under this section, subject to direction by the Minister.

(6) However, no Ministerial direction may be given by the Minister relating to the appointment, transfer, remuneration, discipline or termination of a particular person.

(7) An employing authority may delegate a power or function under this section.

(8) A delegation under subsection (7)—

(a) must be by instrument in writing; and

(b) may be made to a body or person (including a person for the time being holding or acting in a specified office or position); and

(c) may be unconditional or subject to conditions; and

(d) may, if the instrument of delegation so provides, allow for the further delegation of a power or function that has been delegated; and

(e) does not derogate from the power of the employing authority to act personally in any matter; and

(f) may be revoked at any time by the employing authority.

(8a) If—

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

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

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

(9) A change in the person who constitutes an employing authority under this Act will not affect the continuity of employment of a person under this section.

(10) An incorporated hospital must, at the direction of the Minister, the Treasurer or an employing authority, make payments with respect to any matter arising in connection with the employment of a person under this section (including, but not limited to, payments with respect to salary or other aspects of remuneration, leave entitlements, superannuation contributions, taxation liabilities, workers compensation payments, termination payments, public liability insurance and vicarious liabilities).

(11) An incorporated hospital does not have the power to employ any person unless specifically authorised by the Minister.

(12) An incorporated hospital may, under an arrangement established by the responsible Minister or, if relevant, approved by a responsible public sector entity, make use of the staff, services or facilities of an administrative unit or another public sector agency.

(13) On the incorporation of a hospital under this Part, any Public Service employees who had, before the date of incorporation, been assigned by the Chief Executive to work in the hospital and have been designated by the Chief Executive as employees to whom this subsection applies will become persons employed by the employing authority under this section on terms and conditions fixed by the Chief Executive (without reduction of salary or status).

(14) In this section—

public sector agency has the same meaning as in the *Public Sector Act 2009*.

35—Superannuation and accrued rights etc

(1) An employing authority may enter into arrangements contemplated by section 5 of the *Superannuation Act 1988* with respect to a person employed at an incorporated hospital.

(2) If a person commences employment by an employing authority at an incorporated hospital after ceasing to be employed—

(a) in the Public Service of the State; or

(b) by the employing authority or another employing authority at any incorporated hospital; or

(c) as a member of the staff of SAAS,

and that employment at the incorporated hospital follows immediately on the cessation of that previous employment, then—

(d) the person's existing and accruing rights immediately before the cessation of that previous employment in respect of recreation leave, sick leave and long service leave continue in full force and effect as if that previous employment had been employment by the employing authority at the incorporated hospital; and

(e) the person is not entitled to payment in lieu of those rights.

(3) Except where subsection (2) applies, if a person commences employment by an employing authority at an incorporated hospital within 3 months after ceasing to be employed—

(a) in the Public Service of the State; or

(b) by the employing authority or another employing authority at an incorporated hospital; or

(c) as a member of the staff of SAAS; or

(d) in prescribed employment,

the person's existing and accruing rights immediately before the cessation of that employment in respect of recreation leave, sick leave and long service leave continue, to the extent directed by the employing authority and subject to such conditions as may be determined by the employing authority, as if that previous employment had been employment by the employing authority at the hospital.

Division 4—Accounts, audits and reports

36—Accounts and audit

(1) An incorporated hospital must cause proper accounts to be kept of its financial affairs and financial statements to be prepared in respect of each financial year.

(2) The Auditor-General may at any time, and must in respect of each financial year, audit the accounts and financial statements of an incorporated hospital.

37—Annual report

(1) An incorporated hospital must, within 3 months after the end of each financial year, deliver to the Minister a report on the operations of the incorporated hospital during that financial year.

(2) The report must incorporate the audited accounts and financial statements of the incorporated hospital for the financial year.

(3) The Minister must, within 12 sitting days after the receipt of a report under this section, cause a copy of the report to be laid before both Houses of Parliament.

Division 5—Sites, facilities and property

38—Ability to operate at various sites

An incorporated hospital may be established or undertake its activities in relation to various sites.

39—Ability to provide a range of services and facilities

(1) An incorporated hospital may establish, maintain and operate—

(a) sites that provide a variety of health services;

(b) health and community care services for all or specific sections of the community, including residential services for the aged and other vulnerable groups, or for persons who must interact with the public health system;

(c) other forms of service or facilities (including services and facilities that benefit (directly or indirectly) staff, patients or visitors, and services and residential facilities for the aged and other forms of accommodation).

(2) The Minister may establish guidelines about the services or facilities that may be provided under subsection (1)(c) (and may, in so doing, provide that the Minister's approval is required before a service or facility of a specified kind is established at a hospital).

Division 6—Delegations

41—Delegations

(1) An incorporated hospital may delegate a function or power conferred on the incorporated hospital—

(a) to a specified person or body; or

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

(2) A delegation—

(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 in a matter.

Division 7—By-laws and removal of persons

42—By-laws

(1) An incorporated hospital may make, alter and repeal by-laws for all or any of the following purposes:

(a) to prohibit persons from trespassing on the grounds of the hospital;

(b) to define parts of the grounds of the hospital as prohibited areas and to prohibit persons from entering any part of any such prohibited area or to provide for the removal of persons from any such area;

(c) to prevent damage to the property, buildings or grounds of the hospital;

(d) to regulate the speed at which vehicles may be driven within the grounds of the hospital;

(e) to prohibit dangerous or careless driving of vehicles within the grounds of the hospital;

(f) to prescribe the routes to be followed by traffic within the grounds of the hospital;

(g) to prohibit or regulate the standing, parking or ranking of vehicles within the grounds of the hospital and to provide for the removal of vehicles from the grounds;

(h) to require drivers of vehicles within the grounds of the hospital to comply with traffic directions;

(i) to regulate traffic of all kinds within the grounds of the hospital;

(j) to prohibit disorderly or offensive behaviour within the hospital or the grounds of the hospital;

(k) to regulate, restrict or prohibit the consumption of alcoholic liquor or unlawful substances within the hospital or the grounds of the hospital;

(l) to prohibit or regulate the smoking of tobacco;

(m) to prevent undue noise within the hospital or the grounds of the hospital;

(n) to provide for the appointment of authorised officers, and to confer functions and powers on authorised officers and other persons, in connection with the administration of the hospital or the operation or enforcement of the by-law;

(o) to prescribe any other matters necessary or expedient for the maintenance of good order, the protection of property of the hospital or the prevention of hindrance to, or interference with, any activities conducted within the hospital or its grounds;

(p) to prescribe fines, not exceeding $1 000, for contravention of any by-law (including any direction given under any by-law);

(q) to fix expiation fees, not exceeding $200, for alleged offences against the by-laws.

(2) A by-law made under this section must be submitted to the Minister for approval.

(3) On approval of a by-law under this section, the by-law must be transmitted to the Governor for confirmation and, on confirmation by the Governor, comes into force.

(4) In any proceedings relating to an offence against a by-law—

(a) an allegation in a complaint that any specified place is or was within the grounds of a hospital will be taken to be proved in the absence of proof to the contrary;

(b) an allegation in a complaint that a person named in the complaint was the owner of a vehicle referred to in the complaint will be taken to be proved in the absence of proof to the contrary;

(c) where it is proved that a vehicle was parked within the grounds of a hospital in contravention of a by-law, it will be presumed, in the absence of proof to the contrary, that the vehicle was so parked by the owner of the vehicle.

(5) The Minister may exclude or limit an incorporated hospital from the ability to make by-laws under this section.

43—Removal of persons

(1) This section applies to a person—

(a) who is present at a site at which an incorporated hospital provides any health services; and

(b) who—

(i) is considered by an authorised officer to be acting in a manner that constitutes disorderly or offensive behaviour; or

(ii) is considered by an authorised officer on reasonable grounds to be a threat to another person at the site; or

(iii) is suspected by an authorised officer on reasonable grounds of being unlawfully in possession of an article or substance; or

(iv) without limiting a preceding subparagraph, is suspected by an authorised officer on reasonable grounds to have committed, or to be likely to commit, an offence against any Act or law.

(2) An authorised officer may exercise 1 or more of the following powers in relation to a person to whom this section applies:

(a) the authorised officer may require the person to provide the person's name and address, and to answer questions;

(b) the authorised officer may require the person to submit to a search of his or her clothes, or of anything in his or her possession;

(c) the authorised officer may seize anything in the person's possession that the authorised officer believes on reasonable grounds—

(i) could be used to harm a person on the site; or

(ii) constitutes an article or substance the possession of which is unlawful in the circumstances;

(d) the authorised officer may require the person to leave the site and, if the person does not immediately do so, the authorised officer may use reasonable force to remove the person;

(e) the authorised officer may require that the person not return to the site for a period (not exceeding 24 hours) specified by the authorised officer.

(3) An authorised officer must, before acting under subsection (2)(d) or (e), take reasonable steps to ensure that the person is not in need of medical assistance.

(4) An authorised officer may restrain a person to the extent necessary to exercise a power under subsection (2).

(5) In the exercise of powers under this section, an authorised officer may be assisted by such persons as may be necessary or desirable in the circumstances.

(6) A person who—

(a) without reasonable excuse, fails to comply with a requirement of an authorised officer under this section; or

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

(c) without reasonable excuse, fails to answer, to the best of the person's knowledge, information and belief, a question put by an authorised officer,

is guilty of an offence.

Maximum penalty: $10 000.

(7) A person is not obliged to answer a question under this section if to do so might incriminate the person.

(8) In this section—

authorised officer means an authorised officer appointed under a by-law made by an incorporated hospital under this Division.

Division 8—Fees

44—Fees

(1) The Minister may, by notice in the Gazette, set fees (including differential fees) to be charged by any incorporated hospital in respect of any service provided by it.

(2) Without limiting the effect of subsection (1), the Minister may provide that no fee is payable in respect of a service of a specified class or a service provided to a person of a specified class.

(3) Fees payable to a hospital (whether regulated under this section or not) for a service provided by it may be recovered from—

(a) the person to whom the service was provided; or

(b) the spouse or domestic partner of that person; or

(c) if the service was provided to a person under the age of 18 years, the parent or parents of that person.

(4) If fees are recovered from a person under this section, he or she may recover as a debt from any other person who is jointly liable for the payment of the fees a contribution fixed by the court in which proceedings for recovery of the contribution are taken.

Division 9—Rights of hospitals against insurers

45—Interpretation

In this Division—

accident to which this Division applies means an accident—

(a) caused by, or arising out of, the use of a motor vehicle; and

(b) in which some person has suffered bodily injury;

bodily injury includes mental or nervous shock;

designated entity means—

(a) any hospital, whether incorporated under this Act or not; or

(b) SAAS;

insurer means any person, or association of persons, carrying on the business of insurance;

owner, in relation to a motor vehicle, means the person registered as the owner of the vehicle.

46—Report of accidents to which this Division applies

(1) The Commissioner of Police must, on receipt of a report that an accident to which this Division applies has occurred, furnish the Minister with such of the prescribed particulars of the accident as are known to the Commissioner.

(2) An insurer must, within 7 days after receipt of a report that an accident to which this Division applies has occurred, furnish the Minister with such of the prescribed particulars of the accident as are known to the insurer.

Maximum penalty: $2 500.

(3) The prescribed particulars of an accident to which this Division applies are—

(a) the nature of the accident and the time and place at which it occurred; and

(b) the name and address of each person injured in the accident; and

(c) the name and address of the driver of each vehicle involved in the accident; and

(d) the name and address of the owner of each vehicle involved in the accident; and

(e) the name and address of any insurer who has insured the owner or driver (or both) of a vehicle involved in the accident in respect of bodily injury caused by, or arising out of, the use of the vehicle.

47—Notice by designated entity to insurer

(1) If a person suffers bodily injury in an accident to which this Division applies and a designated entity provides a health service to that person in respect of that bodily injury, the designated entity may give, personally or by post, to an insurer notice stating that the person has been provided with a health service by the designated entity and that the designated entity has a claim for payment for the health service that has been provided.

(2) A notice may be given under this section notwithstanding that the person who has been provided with the health service has died.

48—First claim of designated entity

(1) If a notice has been given by a designated entity to an insurer under this Division, the designated entity has first claim on any money to be paid by the insurer in respect of the bodily injury of the person to whom the notice relates.

(2) If an insurer on whom a notice has been served under this Division proposes to pay money in respect of the bodily injury of the person to whom the notice relates (whether or not the money is to be paid in pursuance of an order of the court or voluntarily by the insurer, with or without an admission of liability), the money must be applied by the insurer—

(a) first, in or towards satisfaction of the claim of the designated entity; and

(b) as to any residue, in the same manner as if this Division had not been enacted.

(3) If notices have been served under this Division on an insurer by 2 or more designated entities in respect of the same patient and the money to be paid by the insurer is not sufficient to meet the claims of both or all of those designated entities, the money must be divided between the designated entities in proportion to their respective claims.

(4) If an insurer fails to make a payment to a designated entity as required by this section, the designated entity may, by action in a court of competent jurisdiction, recover the amount of the payment that should have been made to the designated entity as a debt due to it from the insurer.

Division 10—Inspectors

48A—Inspectors

(1) The Minister may, by instrument in writing, appoint suitable persons to be inspectors for the purposes of inspecting, investigating and assessing the administration, operations and governance of incorporated hospitals.

(2) An inspector holds office on the conditions stated in the instrument of appointment.

(3) An inspector appointed under subsection (1) may, at any reasonable time, enter the premises of an incorporated hospital (including the premises of the governing board for an incorporated hospital) and, while on the premises, may—

(a) inspect the premises or any equipment or other thing on the premises; and

(b) require any person to answer any questions, orally or in writing; and

(c) require any person to produce any documents or records; and

(d) examine any documents or records and take extracts from, or make copies of, any of them; and

(e) seize any documents or records that, in the opinion of the inspector, constitute evidence of a breach of a provision of this Act.

(4) An inspector must, at the request of a person in relation to whom the inspector intends to exercise powers under this section, produce for the inspection of the person the inspector's instrument of appointment, or a copy of the instrument.

(5) An inspector may, in exercising powers under this section, be assisted by such other persons as are reasonably necessary for the purpose.

(6) A person must not refuse or fail to comply with a requirement made pursuant to this section.

Maximum penalty: $10 000.

(7) A person must not hinder or obstruct an inspector, or a person assisting an inspector, in the exercise of the powers conferred by this section.

Maximum penalty: $10 000.

Part 5A—Health access zones

48B—Interpretation

In this Part—

health access zone, in relation to protected premises, means—

(a) the protected premises; and

(b) any public area located within 150 metres of the protected premises;

prohibited behaviour means—

(a) to threaten, intimidate or harass another person; or

(b) to obstruct another person approaching, entering or leaving protected premises; or

(c) to record (by any means whatsoever) images of a person approaching, entering or leaving protected premises; or

(d) to communicate by any means in relation to abortions in a manner that is able to be seen or heard by a person accessing, attempting to access, or leaving protected premises and that is reasonably likely to cause distress or anxiety;

protected premises means any premises at which abortions are lawfully performed, but does not include a pharmacy within the meaning of Part 4 of the *Health Practitioner Regulation National Law (South Australia) Act 2010*;

public area means an area or place that the public, or a section of the public, is entitled to use or that is open to, or used by, the public or a section of the public (whether access is unrestricted or subject to payment of money, membership of a body or otherwise);

publish means to disseminate or provide access to the public or a section of the public by any means, including by—

(a) publication in a book, newspaper, magazine or other written publication; or

(b) broadcast by radio or television; or

(c) public exhibition; or

(d) broadcast or electronic communication,

and ***publication*** is to be construed accordingly.

48C—Object and application of Part

(1) The object of this Part is to ensure the safety, wellbeing, privacy and dignity of people accessing abortion services, as well as health professionals and other people providing abortion services.

(2) To avoid doubt, nothing in this Part prevents a person from—

(a) lawfully engaging in behaviour outside of a health access zone; or

(b) engaging in lawful protest, or otherwise engaging in lawful behaviour, within a health access zone in relation to a matter other than abortion.

48D—Certain behaviour prohibited in health access zones

(1) A person who engages in prohibited behaviour in a health access zone is guilty of an offence.

Maximum penalty: $10 000 or imprisonment for 12 months.

(2) However, subsection (1) does not apply in relation to the recording of images, or the communication of information—

(a) by a person employed, or otherwise providing services, at protected premises to which the health access zone relates; or

(b) that occurs with the permission of the person whose image is recorded, or to whom the information is communicated; or

(c) that occurs in circumstances prescribed by the regulations.

(3) For the purposes of this section, a person will be taken to be in a health access zone if any part of the person is within the health access zone.

48E—Police officer may direct person to leave health access zone

(1) A police officer may, if the police officer reasonably suspects that a person has engaged, or is about to engage, in prohibited behaviour in a health access zone, direct the person to immediately leave the health access zone.

(2) A police officer may, if the police officer reasonably suspects that a person or persons are engaging, or are about to engage, in prohibited behaviour in a health access zone, direct any or all persons within the health access zone to immediately leave the health access zone (whether or not the person or persons to whom the direction is given are engaging, or are about to engage, in prohibited behaviour).

(3) However, a direction under subsection (2) will be taken not to apply to—

(a) a person employed, or otherwise providing services, at protected premises to which the health access zone relates; or

(b) a person who has had, or is to have, an abortion, or be provided other services, at protected premises to which the health access zone relates; or

(c) a person genuinely accompanying a person referred to in a preceding paragraph; or

(d) any other person of a kind declared by the regulations to be included in the ambit of this subsection.

(4) A person who refuses or fails to comply with a direction under this section is guilty of an offence.

Maximum penalty: $10 000.

(5) A person who, having been directed to leave a health access zone under this section, without reasonable excuse, re-enters the health access zone within 24 hours after the direction is guilty of an offence.

Maximum penalty: $10 000.

48F—Offence to publish or distribute recording

A person must not, without the consent of the other person, publish or distribute a recording of a person approaching, entering or leaving protected premises if the recording contains information that—

(a) identifies, or is likely to lead to the identification of, the other person; and

(b) identifies, or is likely to lead to the identification of, the other person as having accessed protected premises.

Maximum penalty: $10 000.

Part 6—Ambulance services

Division 1—South Australian Ambulance Service (SAAS)

49—Continuation of SAAS

(1) The *SA Ambulance Service Inc* (***SAAS***) continues in existence (as the same body corporate but now to be constituted under this Act).

Note—

The *SA St John Ambulance Service Inc*, incorporated on 1 July 1993 under the *Associations Incorporation Act 1985* for the purpose of carrying on the business of providing ambulance services, continued in existence under the *Ambulance Services Act 1992* under the name *SA Ambulance Service Inc* (***SAAS***).

(2) SAAS—

(a) is a body corporate; and

(b) has perpetual succession and a common seal; and

(c) is capable of suing and being sued; and

(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) SAAS is an agency of the Crown and holds its property on behalf of the Crown.

(4) Subsection (3) does not apply to the extent that SAAS holds any property on trust.

(6) The staff of SAAS will be constituted by—

(a) persons employed under this Division to perform functions in connection with the operations or activities of SAAS (subject to any direction or arrangement under this Division); and

(b) volunteers who are appointed by SAAS to perform functions in connection with the operations or activities of SAAS.

50—Management arrangements

(1) The Chief Executive is responsible for the administration of SAAS.

(2) The Chief Executive may, by instrument in writing, appoint—

(a) a specified person; or

(b) a person occupying a specified office or position,

as the chief executive officer of SAAS.

(3) An appointment under subsection (2) is revocable at will and does not prevent the Chief Executive from acting personally in a matter.

(4) In addition, a person acting under subsection (2) is subject to the control and direction of the Chief Executive (although the Chief Executive cannot give a direction concerning the clinical treatment of a particular person).

(5) An act done or decision made by the Chief Executive, or a person acting under subsection (2), in the administration or management of SAAS (including by exercising a power of SAAS under this or any other Act) is an act or decision of SAAS.

51—Functions and powers of SAAS

(1) The functions of SAAS are—

(a) to provide ambulance services envisaged by this Part (making use of the services of both volunteer and employed staff); and

(b) to carry out any other functions assigned or conferred to SAAS by or under this or any other Act.

(2) SAAS may, if—

(a) an identified major incident, a major emergency or a disaster is declared under the *Emergency Management Act 2004*; or

(b) a public health incident or a public health emergency is declared under the *South Australian Public Health Act 2011*,

direct a person holding a restricted ambulance service licence to assist with the provision of response and recovery operations in such a manner as the SAAS sees fit.

(3) SAAS should confer with the person before taking steps to issue a direction to a person under subsection (2).

(4) SAAS may, for the purpose of performing its functions, exercise any powers that are necessary or expedient for, or incidental to, the performance of its functions.

(5) SAAS may, for example—

(a) enter into any form of contract or arrangement;

(b) acquire, hold, deal with and dispose of real and personal property;

(c) provide and maintain appliances and equipment;

(d) establish, maintain or monitor alarm systems;

(e) make representations and provide advice relating to ambulance services;

(f) publish or disseminate information.

(6) SAAS is capable of administering any property on trust or accepting gifts (and, if any gift is affected by a trust, is empowered to carry out the terms of the trust).

(7) Without limiting any other provision, SAAS may establish any fund (including a *gift fund*) or account.

(8) SAAS may exercise its powers within or outside the State.

52—Employed staff

(1) An employing authority may employ persons to perform functions in connection with the operations or activities of SAAS (and accordingly to be a member of the staff of SAAS, subject to the operation of this section).

(2) The terms and conditions of employment of a person under subsection (1) will be fixed by the employing authority and approved by the Commissioner for Public Employment.

(3) A person employed under this section will be taken to be employed by or on behalf of the Crown (but will not be employed in the Public Service of the State unless brought into an administrative unit under the *Public Sector Act 2009*).

(4) An employing authority may direct a person employed under this section to perform functions in connection with the operations or activities of an incorporated hospital, or any other public sector agency, specified by the employing authority (and the person must comply with that direction).

(5) An employing authority is, in acting under this section, subject to direction by the Minister.

(6) However, no Ministerial direction may be given by the Minister relating to the appointment, transfer, remuneration, discipline or termination of a particular person.

(7) An employing authority may delegate a power or function under this section.

(8) A delegation under subsection (7)—

(a) must be by instrument in writing; and

(b) may be made to a body or person (including a person for the time being holding or acting in a specified office or position); and

(c) may be unconditional or subject to conditions; and

(d) may, if the instrument of delegation so provides, allow for the further delegation of a power or function that has been delegated; and

(e) does not derogate from the power of the employing authority to act personally in any matter; and

(f) may be revoked at any time by the employing authority.

(9) A change in the person who constitutes an employing authority under this Act will not affect the continuity of employment of a person under this section.

(10) SAAS must, at the direction of the Minister, the Treasurer or an employing authority, make payments with respect to any matter arising in connection with the employment of a person under this section (including, but not limited to, payments with respect to salary or other aspects of remuneration, leave entitlements, superannuation contributions, taxation liabilities, workers compensation payments, termination payments, public liability insurance and vicarious liabilities).

(11) SAAS does not have the power to employ any person unless specifically authorised by the Minister.

(12) SAAS may, under an arrangement established by the responsible Minister or, if relevant, approved by a responsible public sector entity, make use of the staff, services or facilities of an administrative unit or another public sector agency.

(13) In this section—

public sector agency has the same meaning as in the *Public Sector Act 2009*.

52A—SAAS workforce culture and staff wellbeing

SAAS must—

(a) promote a healthy workforce culture for and among staff employed to work within SAAS; and

(b) implement measures to provide for and promote the health, safety and wellbeing of those staff within the workplace (including the psychosocial health, safety and wellbeing of staff); and

(c) implement policies issued by the Chief Executive on workforce health, safety and welfare (including policies on workforce harassment and bullying), so far as those policies apply to SAAS.

53—Accrued rights for employees

(1) If a person commences employment by an employing authority as a member of the staff of SAAS after ceasing to be employed—

(a) in the Public Service of the State; or

(b) by the employing authority or another employing authority at an incorporated hospital,

and that employment as a member of the staff of SAAS follows immediately on the cessation of that previous employment, then—

(c) the person's existing and accruing rights immediately before the cessation of that previous employment in respect of recreation leave, sick leave and long service leave continue in full force and effect as if that previous employment had been employment by the employing authority at SAAS; and

(d) the person is not entitled to payment in lieu of those rights.

(2) Except where subsection (1) applies, if a person commences employment by an employing authority as a member of the staff of SAAS within 3 months after ceasing to be employed—

(a) in the Public Service of the State; or

(b) by the employing authority or another employing authority at an incorporated hospital; or

(c) in prescribed employment,

the person's existing and accruing rights immediately before the cessation of that employment in respect of recreation leave, sick leave and long service leave continue, to the extent directed by the employing authority and subject to such conditions as may be determined by the employing authority, as if that previous employment had been employment by the employing authority as a member of the staff of SAAS.

54—Delegation

(1) SAAS may delegate a function or power conferred on SAAS under this or any other Act—

(a) to a specified person or body; or

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

(2) A delegation—

(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 in a matter.

55—Accounts and audit

(1) SAAS must cause proper accounts to be kept of its financial affairs and financial statements to be prepared in respect of each financial year.

(2) The Auditor-General may at any time, and must in respect of each financial year, audit the accounts and financial statements of SAAS.

56—Annual report

(1) SAAS must, within 3 months after the end of each financial year, deliver to the Minister a report on the operations of SAAS during that financial year.

(2) The report must incorporate the audited accounts and financial statements of SAAS for the financial year.

(3) The Minister must, within 12 sitting days after the receipt of a report under this section, cause a copy of the report to be laid before both Houses of Parliament.

Division 2—Provision of ambulance services

57—Emergency ambulance services

(1) A person must not provide emergency ambulance services unless—

(a) the services are carried out by SAAS; or

(b) the services are provided by a person or a person of a class, or in circumstances, prescribed by regulation; or

(c) the services are provided under an exemption granted by the Minister under this Part.

Maximum penalty: $20 000.

(2) A person holding a restricted ambulance service licence may, despite subsection (1), provide an emergency ambulance service if—

(a) the person is acting within the scope of an authorisation given by SAAS (either in relation to specified cases, or in relation to a particular case, and subject to such conditions as may be prescribed by the regulations or determined by SAAS); or

(b) the person has reason to believe that failure to provide such a service will put at risk the health or safety of a particular person, or of a section of the public more generally, and the person providing the service has taken such action as is reasonable in the circumstances to contact SAAS to seek an authorisation under this section; or

(c) the person is acting at the direction or request of SAAS.

(3) If a person acts under subsection (2)(b), the person must, at the request of SAAS, furnish to SAAS a written report on the circumstances of the particular case within a time specified by SAAS.

Maximum penalty: $5 000.

(4) A person must not display the term "Emergency Ambulance" on a motor vehicle driven on a public road unless the vehicle is being used—

(a) by SAAS; or

(b) by a person in circumstances prescribed by the regulations.

Maximum penalty: $5 000.

58—Licence to provide non-emergency ambulance services

(1) A person must not provide non-emergency ambulance services unless—

(a) the services are carried out—

(i) by SAAS; or

(ii) by a person acting under the direction or request of SAAS; or

(b) the person holds a licence under this section (a ***restricted ambulance service licence***); or

(c) the services are provided by a person or a person of a class, or in circumstances, prescribed by regulation; or

(d) the services are provided under an exemption granted by the Minister under this Part.

Maximum penalty: $20 000.

(2) An application for a licence under this section—

(a) must be made to the Minister; and

(b) must conform to the requirements of the Minister about its form, contents and the manner in which it is made; and

(c) must be accompanied by the fee fixed by the Minister.

(3) An application for a licence must set out details of services proposed to be provided under the licence.

(4) The Minister may, by written notice, require the applicant—

(a) to provide further information, documents or records relevant to the application; or

(b) to allow persons authorised by the Minister to inspect premises, vehicles, plant or equipment proposed to be used by the applicant in connection with activities proposed to be authorised by the licence.

(5) The Minister may refuse the application if the applicant does not comply with a requirement under subsection (4).

(6) The Minister may, pending determination of an application for licence, grant a temporary licence under this section.

(7) A temporary licence operates for a term not exceeding 6 months and on conditions determined by the Minister.

(8) The Minister may grant a licence to a person under this section if, in the Minister's opinion—

(a) the services proposed to be provided under the licence are non-emergency ambulance services; and

(b) the person has the capacity to provide those services at a standard appropriate for the licence; and

(c) the person is a fit and proper person to hold the licence.

(9) The Minister may, if he or she thinks fit, grant a licence to an applicant for an indefinite period or for a limited term specified in the licence.

(10) A licence is not transferable.

(11) The Minister may attach such conditions to a licence as the Minister thinks fit.

(12) The Minister may, on giving notice in writing to the holder of a licence—

(a) vary the existing conditions of the licence or attach new conditions to the licence;

(b) revoke a condition of the licence.

(13) A person who contravenes or fails to comply with a condition of a licence is guilty of an offence.

Maximum penalty: $20 000.

(14) The Minister may, by the terms or conditions of a licence, limit the scope of a licence to specified services or classes of services.

(15) If, in the opinion of the Minister—

(a) a person has contravened, or failed to comply with, a provision of this Act or a condition of a licence; or

(b) action should be undertaken under this section in the public interest,

the Minister may, by notice in writing to the holder of the licence, suspend or revoke a licence under this section.

(16) A suspension under subsection (15) may be—

(a) for a period specified by the Minister; or

(b) until the Minister removes the suspension by further notice to the holder of the licence.

(17) A person who objects to a decision of the Minister under this section—

(a) refusing to grant a licence to the person; or

(b) attaching conditions to, or varying conditions of, a licence granted to the person; or

(c) suspending or revoking a licence granted to the person,

may apply to the Tribunal for review of the decision under section 34 of the *South Australian Civil and Administrative Tribunal Act 2013*.

Division 3—Miscellaneous

59—Fees

(1) The Minister may, by notice in the Gazette, fix fees in relation to—

(a) the provision of ambulance services; and

(b) the provision of incidental services by SAAS; and

(c) any other matter prescribed by the regulations.

(2) A notice under subsection (1) may fix different fees for different classes of ambulance service or for ambulance services provided in different parts of the State.

(3) A person who charges, or accepts payment of, a fee for an ambulance service that exceeds the fee fixed by the Minister is guilty of an offence.

Maximum penalty: $20 000.

(4) The fee for an ambulance service is payable by the patient transported to, or from, a hospital or other place whether or not he or she consented to the provision of the service.

(5) If the identity and address of a patient is disclosed to the holder of a licence under this Act to enable recovery of a fee for an ambulance service, the disclosure will not constitute the breach of any Act or other law and will not be in breach of any principle of professional ethics.

(6) In this section—

incidental services—incidental services are provided by SAAS if—

(a) a member of the staff of SAAS—

(i) attends at a place in response to a request for medical assistance (whether made by 000 emergency telephone call or other means) for a person who may have an injury or illness requiring immediate medical attention in order to maintain life or to alleviate suffering; and

(ii) assesses or treats the person; but

(b) the person is not transported by ambulance.

60—Holding out etc

(1) A person must not hold himself or herself out as a person who carries on the business of providing ambulance services unless he or she carries on that business and is either licensed under this Part or is a person who is not required to be licensed under this Part in relation to services provided in the course of carrying on that business.

Maximum penalty: $20 000.

(2) A person must not hold himself or herself out as a person who is engaged in the provision of ambulance services unless he or she is a member of the staff of a provider of ambulance services acting in accordance with the other provisions of this Part.

Maximum penalty: $10 000.

61—Power to use force to enter premises

(1) A person who is a member of the staff of SAAS may use reasonable force to break into any place if the person believes that it is necessary to do so—

(a) to determine whether any person is in need of medical assistance; or

(b) to provide any person with medical assistance.

(2) A member of the staff of SAAS acting under subsection (1) must comply with any protocols or procedures established by SAAS for the purposes of this section.

62—Exemptions

(1) The Minister may, by notice in the Gazette, confer exemptions from this Part or specified provisions of this Part—

(a) on specified persons or persons of a specified class; or

(b) in relation to specified services or services of a specified class.

(2) An exemption under subsection (1) may be granted by the Minister on such conditions as the Minister thinks fit.

(3) The Minister may, at any time, by further notice in the Gazette—

(a) vary or revoke an exemption;

(b) vary or revoke a condition of an exemption or attach new conditions to an exemption.

(4) A person who contravenes or fails to comply with a condition imposed under this section is guilty of an offence.

Maximum penalty: $20 000.

Part 7—Quality improvement and research

63—Preliminary

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

authorised activity means an activity within the ambit of a declaration under section 64;

authorised person means a person within the ambit of a declaration under section 64, including by being the member of a group (or committee) as it may be constituted from time to time;

confidential information means—

(a) information relating to a health service in which the identity of a patient or person providing the service is revealed;

(b) other information declared by the regulations to be confidential information for the purposes of this Part;

court includes a tribunal, authority, board or person having power to require the production of documents or the answering of questions;

disclose, in relation to information, means to give, reveal or communicate in any way;

governing body of an entity means the person or body (however named or described) having the general direction or control of the operations of the entity;

prescribed health-sector body means—

(a) a college, professional association or university; or

(b) a body established wholly or partly for the purposes of research; or

(c) a hospital (including a private hospital); or

(d) the Department; or

(e) SAAS; or

(ea) an entity that provides health services at a private day procedure centre; or

(f) any other entity concerned with the provision of health services; or

(g) any other entity brought within the ambit of this definition by the regulations;

produce includes permit access to;

research ethics committee means—

(a) a committee established in accordance with guidelines or other requirements published by the National Health and Medical Research Council and recognised by the Minister by notice published in the Gazette for the purposes of this definition; or

(b) a committee, or a committee of a class, designated by the regulations for the purposes of this definition.

(2) The purpose of this Part is to allow the authorisation of activities associated with undertaking or making assessments, evaluations or recommendations with respect to the practices, procedures, systems, structures or processes of a health service—

(a) where the purpose of any such activity is wholly or predominantly to improve the quality and safety of health services; and

(b) where the public disclosure of, or public access to, information is restricted in order to achieve the best possible outcomes associated with the improvement of health services.

(3) This Part has effect despite the *Freedom of Information Act 1991*.

(4) If the provisions of this Part are inconsistent with any other Act or law, this Part prevails to the extent of the inconsistency.

64—Declaration of authorised activities and authorised persons

(1) Subject to this Part, the Minister may, by notice published in the Gazette—

(a) declare an activity described in the declaration to be—

(i) an authorised quality improvement activity; or

(ii) an authorised research activity;

(b) declare a person or group of persons (including a group formed as a committee) described in the declaration to be an authorised entity for the purposes of carrying out—

(i) an authorised quality improvement activity; or

(ii) an authorised research activity.

(2) The Minister must—

(a) in the case of a declaration under subsection (1)(a)(i)—relate the declaration to any activity that involves—

(i) an assessment or evaluation of the quality of services provided by prescribed health-sector bodies, including by assessing or evaluating clinical practices or by conducting studies of the incidence or causes of conditions or circumstances that may affect the quality of any such services; or

(ii) the making of recommendations about the provision of services provided by prescribed health-sector bodies after taking into account the outcome of any activity of a kind described in paragraph (a); or

(iii) the monitoring of the implementation of any recommendations or other initiatives that are relevant to improving the quality of services provided by prescribed health-sector bodies;

(b) in the case of a declaration under subsection (1)(a)(ii)—relate the declaration to research activities that relate to the causes of mortality or morbidity;

(c) in the case of a declaration under subsection (1)(b) that relates to a person—ensure that the person holds an appropriate authorisation from the governing body of the prescribed health-sector body and, if relevant, an appropriate approval from a research ethics committee;

(d) in the case of a declaration under subsection (1)(b) that relates to a group of persons—ensure—

(i) that the group is established in accordance with the rules of the governing body of the prescribed health-sector body; and

(ii) that the functions of the group include activities involved in carrying out a quality improvement activity or research activity within the contemplation of this Part; and

(iii) that each member of the group will hold a qualification or have experience or training that is relevant to the performance of its functions in relation to a quality improvement activity or research activity; and

(iv) if the relevant rules so require—that the group holds an appropriate authorisation from the governing body of the prescribed health-sector body and, if relevant, an appropriate approval from a research ethics committee.

(3) The Minister must, in acting under this section, make the health and safety of the public the primary consideration.

(4) In addition, the Minister must not make a declaration under this section unless satisfied—

(a) that the performance of an activity within the ambit of the declaration, or the functions or activities of a person or group of persons within the ambit of the declaration, would be facilitated by the making of the declaration; and

(b) that the making of the declaration is in the public interest.

(5) The Minister must also take into account any criteria prescribed by the regulations for the purposes of this section.

(6) To avoid doubt, the Minister may—

(a) make a declaration under subsection (1)(a) without specifying a particular person or group of person as being an authorised entity to which the declaration is to apply at that particular time;

(b) make a declaration under subsection (1)(b)—

(i) without specifying a particular authorised quality improvement activity or authorised research activity that is to be carried out by the authorised entity at any particular time;

(ii) by defining the group rather than by specifying particular members (on the basis that the constitution of the group may change from time to time).

(7) A declaration under this section does not confer authority on a person or group of persons to conduct an investigation for the purpose of determining the competence of a particular person in providing services.

(8) The Minister may, by subsequent notice in the Gazette, vary or revoke a declaration under this section.

(9) A declaration, unless sooner revoked, ceases to be in force at the end of 3 years after it is made, but this subsection does not prevent the Minister from making a further declaration in respect of the same activity or person or group of persons.

(10) The Minister may, as the Minister thinks fit, determine various protocols or procedures that must be complied with by a person or group of persons acting under this Part.

65—Provision of information

Information (including confidential information) may be disclosed for the purposes of an authorised activity without the breach of any law or principle of professional ethics.

66—Protection of information

(1) This section applies to—

(a) a person who is, or has been, an authorised person; or

(b) a person—

(i) who provides, or has provided, technical, administrative or secretarial assistance to an authorised person or in connection with an authorised activity; or

(ii) who receives or gathers information on behalf of an authorised person in connection with an authorised activity.

(2) A person to whom this section applies must not—

(a) make a record of information gained as a result of, or in connection with, an authorised activity; or

(b) make use of or disclose information gained as a result of, or in connection with, an authorised activity,

except—

(c) to the extent necessary for the proper performance of the authorised activity; or

(d) in pursuance of any reporting requirements of a prescribed kind to a governing body of an entity; or

(e) as part of making a disclosure to another authorised person; or

(f) to the extent allowed by the regulations.

Maximum penalty: $60 000.

(3) Without limiting subsection (2), a person to whom this section applies cannot be required—

(a) to produce to a court, agency or other body any document that has been brought into existence for the purposes of an authorised activity; or

(b) to disclose to a court, agency or other body any information that has become known for the purposes of an authorised activity.

(4) Subsections (2) and (3) do not apply to any information or document that does not identify, either expressly or by implication, a particular person or particular persons.

(5) This section does not prohibit a disclosure of information if the person, or each of the persons, who would be directly or indirectly identified by the disclosure consents to that disclosure of the information.

67—Protection from liability

No act or omission of a person in good faith for the purposes of an approved activity, or for the purposes of an activity that the person reasonably believes to be an approved activity, gives rise to any liability against the person, or against any governing body or other entity involved in authorising or managing a person or group of persons involved in an authorised activity (or a purported authorised activity) under this Part.

Part 8—Analysis of adverse incidents

68—Preliminary

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

adverse incident means an incident relating to the provision of health services by a health services entity or health services entities that falls within a class of incident specified by the Chief Executive by notice in the Gazette;

authorised quality improvement body means a person or group of persons that is an authorised entity under section 64(1)(b);

designated authority means—

(a) the general manager or chief executive officer of a health service entity (however described); or

(b) a person who is appointed by a health service entity to exercise the powers of a designated authority under this Part; or

(c) an authorised quality improvement body; or

(d) in relation to the investigation of an adverse incident involving a mental health patient or mental health services provided by a health services entity—the Chief Psychiatrist;

health services entity means—

(a) a hospital (including a private hospital); or

(ab) an entity that provides health services at a private day procedure centre; or

(b) an entity involved in the provision of a health service that is brought within the ambit of this definition by the regulations;

RCA team means a team appointed under section 69.

(2) This Part has effect despite the *Freedom of Information Act 1991*.

(3) If the provisions of this Part are inconsistent with any other Act or law, this Part prevails to the extent of the inconsistency.

69—Appointment of teams

(1) If an adverse incident involving a health services entity is reported to, or comes to the attention of, a designated authority, the designated authority may appoint a team (a *root cause analysis* or *RCA* team) to undertake an investigation and to provide reports in relation to the incident in accordance with this Part.

(2) The RCA team may be constituted by such persons as the designated authority may determine after taking into account any requirements prescribed by the regulations.

(3) The designated authority must ensure that a written record is kept of the persons appointed as members of the RCA team.

(4) The purpose of an investigation is to identify issues within the system that contributed to or resulted in the occurrence of the adverse incident and to provide recommendations for measures to prevent a reoccurrence of a similar incident.

(5) The procedures and processes adopted for the purposes of an investigation will be determined—

(a) by the regulations; or

(b) to the extent that the regulations do not regulate a particular matter—by the relevant team (taking into account any relevant protocols authorised by the health services entity or professional standards or requirements).

70—Restrictions on teams

(1) An RCA team must not conduct an investigation into the competence of a person in providing health services.

(2) If an RCA team has reason to suspect that its investigations may relate to an adverse incident that involves a prescribed act, the RCA team must suspend its activities and comply with the procedures prescribed by the regulations (and must not recommence its activities unless or until authorised under the provisions of the regulations).

(3) In this section—

prescribed act means—

(a) an act that is an offence under the law of the State that appears to have been committed by a member of the staff of the health services entity; or

(b) an act that is attributable to a member of the staff of the health services entity, or any other person involved in the adverse incident, being medically unfit; or

(c) an act that constitutes the abuse of a patient; or

(d) an act that appears to be a deliberately unsafe act (other than an act that might be reasonably undertaken in the provision of a health service); or

(e) an act brought within the ambit of this definition by the regulations.

71—Provision of information

Information (including confidential information) may be disclosed to an RCA team without the breach of any law or principle of professional ethics.

72—Reports

(1) An RCA team will, at the completion of its investigation of an adverse incident, prepare 2 reports—

(a) one report that contains—

(i) a description of the adverse incident, based on facts that, in the opinion of the RCA team, are known independently of its investigation; and

(ii) the recommendations of the RCA team as to the need for changes or improvements in relation to a procedure or practice associated with the incident; and

(b) a second report that contains 1 or more of the following elements, as the RCA team thinks fit:

(i) a description of the adverse incident;

(ii) a *flow* diagram;

(iii) a *cause and effect* diagram;

(iv) a *causation* statement;

(v) the recommendations of the RCA team;

(vi) the working documents associated with the RCA team's investigation and processes (incorporated as attachments);

(vii) any other material considered relevant by the RCA team.

(2) The report under subsection (1)(a) may be released publicly.

(3) The report under subsection (1)(b) may only be released by the RCA team to—

(a) a person who provides expert, technical, administrative or secretarial assistance to a member of the RCA team, or to the RCA team;

(b) a person who is a member of an authorised quality improvement body;

(c) in the case of that part of the report that constitutes the causation statement—a designated authority;

(d) a prescribed person, or a person of a prescribed class, who is entitled to receive the report, or a prescribed part of the report, in accordance with the regulations.

73—Protection of information

(1) This section applies to—

(a) a person who is, or has been, a member of an RCA team; or

(b) a person—

(i) who provides, or has provided, expert, technical, administrative or secretarial assistance to a member of an RCA team, or to an RCA team, or in connection with the activities of an RCA team; or

(ii) who acts, or has acted, for the purposes of receiving or gathering information on behalf of an RCA team; or

(c) a person who receives a report under section 72(3).

(2) A person to whom this section applies must not—

(a) make a record of information gained as a result of, or in connection with, the activities of an RCA team; or

(b) make use of or disclose information gained as a result of, or in connection with, the activities of an RCA team,

except—

(c) to the extent necessary for the proper performance of the activities of the RCA team (including as to the preparation of the reports required at the conclusion of the investigation); or

(d) in pursuance of any reporting requirements of a prescribed kind; or

(e) to the extent allowed by the regulations.

Maximum penalty: $60 000.

(3) Without limiting subsection (2), a person to whom this section applies cannot be required—

(a) to produce to a court, agency or other body any document that has been brought into existence for the purposes of the activities of an RCA team; or

(b) to disclose to a court, agency or other body any information that has become known for the purposes of the activities of an RCA team.

(4) Subsections (2) and (3) do not apply to—

(a) information contained in the report of the RCA team that may be released publicly; and

(b) any information or document that does not identify, either expressly or by implication, a particular person or particular persons.

74—Immunity provision

No act or omission of a person in good faith for the purposes of the activities of an RCA team, or for the purposes of an activity that the person reasonably believes to be the activity of an RCA team, gives rise to any liability against the person, or against any governing body or other entity involved in authorising an RCA team to act under this Part.

75—Victimisation

(1) A person commits an act of victimisation against another person (the ***victim***) if he or she causes detriment to the victim on the ground, that the victim has provided, or intends to provide, information or other assistance to an RCA team in connection with an investigation under this Part.

(2) An act of victimisation under this section may be dealt with—

(a) as a tort; or

(b) as if it were an act of victimisation under the *Equal Opportunity Act 1984*,

but, if the victim commences proceedings in a court seeking a remedy in tort, he or she cannot subsequently lodge a complaint under the *Equal Opportunity Act 1984*, and conversely, if the victim lodges a complaint under that Act, he or she cannot subsequently commence proceedings in a court seeking a remedy in tort.

(3) Where a complaint alleging an act of victimisation under this section has been lodged with the Commissioner for Equal Opportunity and the Commissioner is of the opinion that the subject matter of the complaint has already been adequately dealt with by a competent authority, the Commissioner may decline to act on the complaint or to proceed further with action on the complaint.

(4) In this section—

detriment includes—

(a) injury, damage or loss; or

(b) intimidation or harassment; or

(c) discrimination, disadvantage or adverse treatment in relation to the victim's employment or business; or

(d) threats of reprisal.

Part 9—Testamentary gifts and trusts

76—Interpretation

In this Part—

prescribed entity means—

(a) a hospital or health centre incorporated under the repealed Act; or

(b) an entity incorporated under another Act which performs functions related to the provision of a health service, other than a private hospital; or

(c) an entity incorporated under this Act,

but does not include any entity excluded from the ambit of this definition by the regulations.

77—Application of Part

(1) This Part applies to a testamentary disposition or trust made or created before or after the commencement of this Part.

(2) This Part is in addition to, and does not derogate from, the *Trustee Act 1936*.

(3) However, references in section 69B of the *Trustee Act 1936* to the original purposes of a trust will, if relevant to an application under that section, be construed after taking into account the operation of this Part.

78—Testamentary gifts and trusts

(1) If—

(a) a testamentary disposition has been made in favour of, or a trust has been created for the benefit of, a prescribed entity or a part of a prescribed entity; and

(b) the prescribed entity has been dissolved (whether before or after the commencement of this section); and

(c) either—

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

(ii) the Minister has, by instrument published in the Gazette, certified that, in his or her opinion, a major proportion of the functions of the prescribed entity or the relevant part of the prescribed entity (as the case requires) have been transferred to an incorporated hospital under this Act,

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

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

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

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

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

(1a) If—

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

(b) —

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

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

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

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

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

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

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

(2) The Minister must consult with the Attorney-General before making a designation under subsection (1)(e).

(3) If—

(a) a testamentary disposition has been made in favour of, or a trust has been created for the benefit of, the patients or residents of a prescribed entity or a part of a prescribed entity; and

(b) the prescribed entity has been dissolved (whether before or after the commencement of this section); and

(c) either—

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

(ii) the Minister has, by instrument published in the Gazette, certified that, in his or her opinion, a major proportion of the functions of the prescribed entity or the relevant part of the prescribed entity (as the case requires) have been transferred to an incorporated hospital under this Act,

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

(3a) If—

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

(b) —

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

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

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

(4) A testamentary disposition or trust that is subject to the operation of this section must be administered in a manner that accords, as far as is reasonably practicable, with the spirit of the original purposes of the disposition or trust.

(5) Nothing in this section operates to defeat the intention reflected by the provisions or terms of a testamentary disposition or trust that provide that, should the beneficiary cease to exist, the testamentary disposition or trust was to lapse or was to be in favour of some other person or body.

(6) Nothing in this section invalidates the execution, declaration or creation of a testamentary disposition or trust made or effected before the commencement of this section.

(7) Nothing in this section—

(a) affects the operation of any order or determination of a court made before the commencement of this section; or

(b) affects the operation or validity of an act or decision of an executor or executrix, or a trustee, lawfully taken or made before the commencement of this section.

(8) This section operates subject to any exclusions prescribed by the regulations.

(9) For the purposes of this section, a reference to a ***testamentary disposition*** includes a reference to a surrender or release effected by a testamentary disposition.

Part 10—Private hospitals

79—Prohibition of operating private hospitals unless licensed

(1) Health services must not be provided by a private hospital except at premises in respect of which a licence is in force under this Part.

(2) If health services are provided by a private hospital in contravention of subsection (1), the person or each person constituting the private hospital is guilty of an offence.

Maximum penalty: $60 000.

(3) This section does not apply in relation to—

(a) premises at which the holder of a licence under this Part (being a licence relating to other premises) provides health services with the written approval of the Minister; or

(b) premises licensed under the *Supported Residential Facilities Act 1992*.

80—Application for licence

(1) A person may apply to the Minister for a licence under this Part.

(2) An application for a licence must—

(a) conform to the requirements of the Minister about its form, contents and the manner in which it is made; and

(b) contain a statement of the maximum number of hospital beds sought to be provided pursuant to the licence and any other information required by the Minister; and

(c) be accompanied by the fee fixed by the Minister.

81—Grant of licence

(1) Subject to this section, if application is made under this Part for a licence in respect of premises or proposed premises, the Minister must determine whether a licence should be granted or refused and, if granted, what conditions should be imposed, having regard to—

(a) the suitability of the applicant to be granted the licence; and

(b) the standards of construction, facilities and equipment of the premises or proposed premises; and

(c) the scope and quality of the health services to be provided in pursuance of the licence; and

(d) the location of the premises or proposed premises and their proximity to other facilities for the provision of health services; and

(e) the adequacy of existing facilities for the provision of health services to persons in the locality; and

(f) any proposals for the provision of health services to persons in the locality through the establishment of new facilities or the expansion of existing facilities; and

(h) any other relevant matter.

(2) The Minister may, by notice in the Gazette, establish standards of construction, facilities and equipment for the premises of private hospitals for the purposes of this Part.

(2a) A notice published by the Minister under subsection (2)—

(a) may adopt, wholly or partially and with or without modification a code, standard, guideline or other document prepared or published by a body referred to in the notice (as in force at a particular time or from time to time); and

(b) may be of general or limited application.

(2b) Standards established under subsection (2) do not apply to premises in respect of which a licence under this Part was in force immediately before the commencement of subsection (2) except—

(a) in relation to any alteration or extension of the premises; or

(b) where there is a change in the health services provided.

(3) If the Minister determines under this section that the licence should be granted and, in the case of an application in respect of proposed premises, subsequently is satisfied that the premises have been established substantially in accordance with proposals approved by the Minister, the Minister will, on payment of a fee fixed by the Minister, grant the licence to the applicant.

82—Conditions of licence

(1) The Minister may attach such conditions to a licence under this Part as the Minister thinks fit.

(2) Without limiting the matters with respect to which conditions may be imposed, the Minister may impose conditions in respect of a licence—

(a) limiting the kinds of health services that may be provided pursuant to the licence;

(b) fixing the maximum number of hospital beds that may be provided pursuant to the licence;

(c) preventing the alteration or extension of the premises without the approval of the Minister;

(d) preventing the installation or use of facilities or equipment of a specified kind, either absolutely or without the approval of the Minister;

(e) requiring the installation or use of facilities or equipment of a specified kind not otherwise required by or under this Act;

(f) requiring that the premises be in the charge of a person with specified qualifications, and otherwise regulating the staffing of the premises.

(3) The holder of a licence may apply to the Minister for the variation of the licence or a condition of the licence.

(4) An application under subsection (3) must—

(a) conform to the requirements of the Minister about its form, contents and the manner in which it is made; and

(b) be accompanied by the fee fixed by the Minister.

(5) The Minister may, on application under subsection (3) or the Minister's own motion, vary or revoke a condition of a licence or impose a further condition by notice in writing given to the holder of the licence.

(6) If the Minister imposes a condition under subsection (5) on the Minister's own motion, the condition will not, except with the agreement of the licensee, take effect until the expiration of the period of 30 days after service of the notice imposing the condition.

83—Offence for licence holder to contravene Act or licence condition

The holder of a licence under this Part must not contravene, or fail to comply with, a provision of this Act or a condition of the licence.

Maximum penalty: $60 000.

84—Duration of licences

(1) Subject to this Part, a licence remains in force until—

(a) the licence is surrendered; or

(b) the holder of the licence dies or, in the case of a body corporate, is dissolved.

(2) The holder of a licence under this Part must, not later than the prescribed day in each year—

(a) pay to the Minister the annual licence fee fixed by the Minister; and

(b) lodge with the Minister an annual return containing the prescribed information.

(3) If the holder of a licence fails to pay the annual licence fee or lodge the annual return in accordance with subsection (2), the Minister may, by notice in writing, require the holder to make good the default.

(4) If the holder of a licence fails to comply with a notice under subsection (3) within 14 days after service of the notice, the licence is, by force of this subsection, suspended until the holder complies with the notice.

(5) If a licence has been suspended by virtue of subsection (4) for a continuous period of 6 months, the licence is, by force of this subsection, cancelled.

85—Transfer of licence

(1) An application may be made to the Minister for the transfer of a licence under this Part.

(2) An application for the transfer of a licence must—

(a) conform to the requirements of the Minister about its form, contents and the manner in which it is made; and

(b) contain the information required by the Minister and conform with such other requirements determined by the Minister; and

(c) be accompanied by the fee fixed by the Minister.

(3) An applicant must furnish the Minister with such further information as the Minister may require to determine the application.

(4) The Minister will, on application under this section and payment of the fee fixed by the Minister, transfer the licence to the proposed transferee if the Minister is satisfied as to the suitability of the person to hold a licence under this Part.

86—Surrender, suspension and cancellation of licences

(1) The holder of a licence under this Part may, at any time, surrender the licence (and the licence then ceases to be of force or effect).

(2) The Minister may, after giving 30 days notice in writing to the holder of a licence to show cause why the licence should not be suspended or cancelled, suspend or cancel the licence, if the Minister is satisfied—

(a) that the grant or transfer of the licence was obtained improperly; or

(b) that the holder of the licence has contravened, or failed to comply with, a provision of this Act or a condition of the licence.

(3) If the Minister suspends a licence, the Minister may order that the suspension be for a specified period or until the fulfilment of stipulated conditions or until further order.

(4) If the Minister cancels a licence, the Minister may order that the cancellation have effect at a specified future time and impose conditions as to the provision of health services in pursuance of the licence until that time.

(5) If a condition is imposed in relation to a licence under subsection (4), the holder of the licence must not contravene, or fail to comply with, the condition.

Maximum penalty: $60 000.

(6) A licence—

(a) that is suspended under subsection (2) ceases to be of force or effect for the period of the suspension; or

(b) that is cancelled under that subsection ceases to be of force or effect.

87—Review of decision or order of Minister

(1) A decision or order of the Minister under this Part is reviewable by the Tribunal under section 34 of the *South Australian Civil and Administrative Tribunal Act 2013*.

(2) An application for review of a decision or order of the Minister under this Part must be made within 1 month of the making of the decision or order, but the Tribunal may, if it is satisfied that it is just and reasonable in the circumstances to do so, extend that period (whether or not it has already expired).

(4) The Minister must, if so required by a person affected by a decision or order made by the Minister under this Part, state in writing the reasons for the decision or order.

(5) If the reasons of the Minister are not given in writing at the time of making a decision or order and the applicant then requests the Minister to state the Minister's reasons in writing, the time for making the application for review runs from the time when the applicant receives the written statement of those reasons.

88—Inspectors

(1) The Minister may appoint suitable persons to be inspectors for the purposes of this section.

(2) An inspector appointed under subsection (1) may, at any reasonable time, enter the premises of a private hospital and, while on the premises, may—

(a) inspect the premises or any equipment or other thing on the premises; and

(b) require any person to produce any documents or records; and

(c) examine any documents or records and take extracts from, or make copies of, any of them.

(3) A person must not refuse or fail to comply with a requirement made pursuant to this section.

Maximum penalty: $10 000.

(4) A person must not hinder or obstruct an inspector in the exercise by the inspector of the powers conferred by this section.

Maximum penalty: $10 000.

Part 10A—Private day procedure centres

89—Preliminary

(1) In this Part—

conscious sedation means the sedation of a person by the intravenous administration of one or more drugs such that communication with the person may be maintained during the sedation;

declared day hospital means a hospital within the meaning of the *Private Health Insurance Act 2007* of the Commonwealth as at the prescribed date but does not include—

(a) an incorporated hospital; or

(b) premises in respect of which a licence is in force under Part 10 at the prescribed date;

prescribed date means the date of commencement of section 10 of the *Health Care (Miscellaneous) Amendment Act 2016*;

prescribed health service means—

(a) a health service that involves the administration of general, spinal, epidural or major regional block anaesthetic; or

(b) a health service that involves intravenous sedation (other than conscious sedation); or

(c) a health service that involves the administration of local anaesthetic; or

(d) a health service, or health service of a class, prescribed by the regulations for the purposes of this definition.

(2) Paragraph (c) of the definition of ***prescribed health service*** does not apply in relation to the following health services involving the administration of local anaesthetic:

(a) a health service provided by a medical practitioner in the course of practice as a general practitioner;

(b) a health service provided by a dentist in the course of general dentistry practice;

(c) a health service, or health service of a kind, prescribed by the regulations.

89A—Standards of construction, facilities and equipment

(1) The Minister may, by notice in the Gazette, establish standards of construction, facilities and equipment for premises for the purposes of this Part.

(2) In establishing standards under subsection (1) the Minister should consider any relevant codes, standards and guidelines.

(3) A notice published by the Minister under subsection (1)—

(a) may adopt, wholly or partially and with or without modification a code, standard, guideline or other document prepared or published by a body referred to in the notice (as in force at a particular time or from time to time); and

(b) may be of general or limited application.

(4) Standards established under subsection (1) do not apply to a declared day hospital except—

(a) in relation to the alteration or extension of the premises of the declared day hospital after the prescribed date; or

(b) where there is a change in the health services provided at the declared day hospital after the prescribed date.

89B—Prohibition on providing prescribed health services unless licensed

(1) A person must not provide a prescribed health service except at premises in respect of which a licence is in force under this Part.

Maximum penalty: $60 000.

(2) This section does not apply in relation to the provision of prescribed health services—

(a) at an incorporated hospital; or

(b) at premises authorised under Part 10 in respect of such services.

89C—Private day procedure centre licence

(1) A person may apply to the Minister for a licence authorising the provision of prescribed health services at specified premises (a ***private day procedure centre licence***).

(2) An application for a private day procedure centre licence must—

(a) conform to the requirements of the Minister about its form, contents and the manner in which it is made; and

(b) contain the information required by the Minister and conform with such other requirements determined by the Minister; and

(c) be accompanied by the fee fixed by the Minister.

(3) If the Minister determines under this section that the private day procedure centre licence should be granted and, in the case of an application in respect of proposed premises, subsequently is satisfied that the premises have been established substantially in accordance with proposals approved by the Minister, the Minister will, on payment of a fee fixed by the Minister, grant the licence to the applicant.

(4) An entity with responsibility for a declared day hospital is, at the date of commencement of this Part, taken to hold a private day procedure centre licence in respect of the declared hospital (the ***deemed licence***) and a provision of this Act that applies in relation to a day procedure licence applies in relation to the deemed licence.

89D—Conditions of licence

(1) Each private day procedure centre licence will be taken to be subject to the conditions prescribed by the regulations.

(2) The Minister may impose such other conditions on a private day procedure centre licence as the Minister thinks fit.

(3) The Minister may, on application or the Minister's own motion, vary or revoke a condition of a private day procedure licence imposed under subsection (2), or impose a further condition on such a licence, by notice in writing given to the holder of the licence.

(4) If the Minister imposes a further condition under subsection (3) on the Minister's own motion, the condition will not, except with the agreement of the licensee, take effect until the expiration of the period of 30 days after service of the notice imposing the condition.

89E—Offence for licence holder to contravene Act or licence condition

The holder of a private day procedure centre licence must not contravene, or fail to comply with, a provision of this Act or a condition of the licence.

Maximum penalty: $60 000.

89F—Duration of licences

(1) Subject to this Part, a private day procedure centre licence remains in force until—

(a) the licence is surrendered; or

(b) the holder of the licence dies or, in the case of a body corporate, is dissolved.

(2) The holder of a private day procedure centre licence must, not later than the prescribed day in each year—

(a) pay to the Minister the annual licence fee fixed by the Minister; and

(b) lodge with the Minister an annual return containing the prescribed information.

(3) If the holder of a private day procedure centre licence fails to pay the annual licence fee or lodge the annual return in accordance with subsection (2), the Minister may, by notice in writing, require the holder to make good the default.

(4) If the holder of a private day procedure centre licence fails to comply with a notice under subsection (3) within 14 days after service of the notice, the licence is, by force of this subsection, suspended until the holder complies with the notice.

(5) If a private day procedure centre licence has been suspended by virtue of subsection (4) for a continuous period of 6 months, the licence is, by force of this subsection, cancelled.

89G—Transfer of licence

(1) An application may be made to the Minister for the transfer of a private day procedure centre licence.

(2) An application for the transfer of a private day procedure centre licence must—

(a) conform to the requirements of the Minister about its form, contents and the manner in which it is made; and

(b) contain the information required by the Minister and conform with such other requirements determined by the Minister; and

(c) be accompanied by the fee fixed by the Minister.

(3) An applicant must furnish the Minister with such further information as the Minister may require to determine the application.

(4) The Minister will, on application under this section and payment of the fee fixed by the Minister, transfer the licence to the proposed transferee if the Minister is satisfied as to the suitability of the person to hold a licence under this Part.

89H—Surrender, suspension and cancellation of licences

(1) The holder of a private day procedure centre licence may, at any time, surrender the licence (and the licence then ceases to be of force or effect).

(2) The Minister may, after giving 30 days notice in writing to the holder of a private day procedure centre licence to show cause why the licence should not be suspended or cancelled, suspend or cancel the licence, if the Minister is satisfied—

(a) that the grant or transfer of the licence was obtained improperly; or

(b) that the holder of the licence has contravened, or failed to comply with, a provision of this Act or a condition of the licence.

(3) If the Minister suspends a private day procedure centre licence, the Minister may order that the suspension be for a specified period or until the fulfilment of stipulated conditions or until further order.

(4) If the Minister cancels a private day procedure centre licence, the Minister may order that the cancellation have effect at a specified future time and impose conditions as to the provision of health services in pursuance of the licence until that time.

(5) If a condition is imposed in relation to a private day procedure centre licence under subsection (4), the holder of the licence must not contravene, or fail to comply with, the condition.

Maximum penalty: $60 000.

(6) A private day procedure centre licence—

(a) that is suspended under subsection (2) ceases to be of force or effect for the period of the suspension; or

(b) that is cancelled under that subsection ceases to be of force or effect.

89I—Review of decision or order of Minister

(1) A decision or order of the Minister under this Part is reviewable by the Tribunal under section 34 of the *South Australian Civil and Administrative Tribunal Act 2013*.

(2) An application for review of a decision or order of the Minister under this Part must be made within 1 month of the making of the decision or order, but the Tribunal may, if it is satisfied that it is just and reasonable in the circumstances to do so, extend that period (whether or not it has already expired).

(4) The Minister must, if so required by a person affected by a decision or order made by the Minister under this Part, state in writing the reasons for the decision or order.

(5) If the reasons of the Minister are not given in writing at the time of making a decision or order and the applicant then requests the Minister to state the Minister's reasons in writing, the time for making the application for review runs from the time when the applicant receives the written statement of those reasons.

89J—Inspectors

(1) The Minister may appoint suitable persons to be inspectors for the purposes of this section.

(2) A person appointed as an inspector by the Minister under section 88 will be taken to be an inspector appointed under subsection (1).

(3) An inspector appointed under subsection (1) may, at any reasonable time, enter a private day procedure centre or premises reasonably suspected of being used in contravention of this Part and, while on the premises, may—

(a) inspect the premises or any equipment or other thing on the premises; and

(b) require any person to produce any documents or records; and

(c) examine any documents or records and take extracts from, or make copies of, any of them.

(4) A person must not refuse or fail to comply with a requirement made pursuant to this section.

Maximum penalty: $10 000.

(5) A person must not hinder or obstruct an inspector in the exercise by the inspector of the powers conferred by this section.

Maximum penalty: $10 000.

89K—Vicarious liability

(1) For the purposes of this Part, an act or omission of an employee or agent will be taken to be the act or omission of the employer or principal unless it is proved that the act or omission did not occur in the course of the employment or agency.

(2) Where an agent or employee is convicted of an offence against this Part, the principal or employer is also guilty of an offence and liable to a penalty not exceeding the maximum prescribed for the offence committed by the agent or employee, unless it is proved that the principal or employer could not, by the exercise of reasonable diligence, have prevented the commission of the offence by the agent or employee.

(3) If a body corporate is guilty of an offence against this Part, each director of the body corporate is guilty of an offence and liable to the same penalty as is prescribed for the principal offence unless the director proves that he or she could not by the exercise of due diligence have prevented the commission of the offence.

Part 11—Miscellaneous

89L—Other staffing arrangements

(1) The employing authority may appoint such other officers or employees (in addition to the employees and officers of the Department and persons employed under Part 5) who have skills or experience in connection with the provision of health services and who, in the opinion of the employing authority, can—

(a) assist the Chief Executive in the performance of the Chief Executive's functions; or

(b) assist the Department in the performance of its functions,

(including functions that arise independently of this Act).

(2) The terms and conditions of employment of a person under subsection (1) will be fixed by the employing authority and approved by the Commissioner for Public Employment.

(3) A person employed under this section will be taken to be employed by or on behalf of the Crown (but will not be employed in the Public Service of the State unless brought into an administrative unit under the *Public Sector Act 2009*).

(4) The employing authority is, in acting under this section, subject to direction by the Minister.

(5) However, no Ministerial direction may be given by the Minister relating to the appointment, transfer, remuneration, discipline or termination of employment of a particular person.

(6) In addition, if the Chief Executive is not the employing authority, the employing authority must, in acting under this section, consult with the Chief Executive.

90—Recognised organisations

(1) The following organisations are recognised organisations for the purposes of this section:

(a) any organisation declared to be a recognised organisation by the regulations;

(b) any other organisation declared to be a recognised organisation under subsection (2).

(2) If an employing authority is of the opinion that an organisation (being an association registered under the *Fair Work Act 1994*) represents the interests of a significant number of persons employed under this Act, the employing authority must, by notice published in the Gazette, declare that organisation to be a recognised organisation for the purposes of this Act.

(3) Any such recognised organisation has the right to make submissions to the employing authority and incorporated hospitals on any matter arising out of, or in relation to, the performance or exercise of any of their functions or powers under this Act.

90A—Acquisition of property

(1) The Minister may, subject to and in accordance with the *Land Acquisition Act 1969*, acquire land if the Minister considers that the acquisition of the land is reasonably necessary for the purposes of the provision of health services.

(2) This section does not limit or affect the power of the Minister, a HAC, an incorporated hospital or SAAS to acquire land, or an interest in land, by agreement.

91—Duty of Registrar-General

(1) The Registrar-General must, on application by the Minister, an incorporated hospital or an incorporated HAC, and on being satisfied that an interest in land has vested in the Minister, an incorporated hospital or an incorporated HAC under this Act, and on production of duplicate certificates of title (if any) relating to the land, issue such new certificates of title, or make such entries and notations on existing certificates of title, as may be necessary to evidence vesting of the relevant interest.

(2) If an application has been made under this section, the Registrar-General may require the applicant to furnish—

(a) any instrument evidencing former title to the land or any existing or former interest in the land; and

(b) a plan of the land to which the application relates, certified by a licensed surveyor.

92—Conflict of interest

(1) If a conflict or possible conflict arises between a health employee's private interests and the duties of his or her employment, the health employee—

(a) must, as soon as practicable after becoming aware of the conflict or possible conflict, report the matter to the appropriate authority; and

(b) must not act further in the matter from which the conflict or possible conflict arises except as authorised by the appropriate authority.

(2) A health employee who contravenes or fails to comply with a requirement of subsection (1) is guilty of an offence.

Maximum penalty: $10 000.

(3) In this section—

appropriate authority, in relation to a health employee, means—

(a) the employee's employer; or

(b) some person authorised by the employer to act as the appropriate authority under this section;

health employee means—

(a) a person employed at an incorporated hospital or as a member of the staff of SAAS; or

(b) a person employed under section 89L.

93—Confidentiality

(1) For the purposes of this section, a person is engaged in connection with the operation of this Act if the person is—

(a) an officer or employee of the Department, or an attached office attached to the Department, engaged in the administration of this Act; or

(ab) a member of the governing board for an incorporated hospital; or

(b) a person employed by an employing authority under this Act; or

(c) a member of the staff of SAAS; or

(d) a person otherwise engaged to work at an incorporated hospital or in connection with the activities of SAAS.

(2) Subject to subsection (3), 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 except to the extent that he or she may be authorised or required to disclose that information—

(a) by the Chief Executive or his or her employer; or

(b) in the case of information obtained while working at an incorporated hospital or SAAS—by the hospital or SAAS (as the case requires).

Maximum penalty: $10 000.

(3) Subsection (2) does not prevent a person from—

(a) disclosing information as required or authorised by or under law; or

(b) disclosing information at the request, or with the consent, of—

(i) the person to whom the information relates; or

(ii) a guardian of the person to whom the information relates; or

(iii) a medical agent of the person to whom the information relates; or

(iv) a substitute decision-maker for the person to whom the information relates (within the meaning of the *Advance Care Directives Act 2013*); or

(c) disclosing information to a relative, carer or friend of the person to whom the information relates if—

(i) the disclosure is reasonably required for the treatment, care or rehabilitation of the person; and

(ii) there is no reason to believe that the disclosure would be contrary to the person's best interests; or

(d) subject to the regulations (if any)—

(i) disclosing information to a health or other service provider if the disclosure is reasonably required for the treatment, care or rehabilitation of the person to whom the information relates; or

(ii) disclosing information by entering the information into an electronic records system established for the purpose of enabling the recording or sharing of information between persons or bodies involved in the provision of health services; or

(iii) disclosing information to such extent as is reasonably required in connection with the management or administration of the Department, an attached office attached to the Department, a hospital or SAAS (including for the purposes of charging for a service);

(e) disclosing information if the disclosure is reasonably required to lessen or prevent a serious threat to the life, health or safety of a person, or a serious threat to public health or safety; or

(f) disclosing information for medical or social research purposes if the research methodology had been approved by an ethics committee and there is no reason to believe that the disclosure would be contrary to the person's best interests; or

(g) disclosing information in accordance with the regulations.

(4) Subsection (3)(c) does not authorise the disclosure of personal information in contravention of a direction given by the person to whom the information relates.

(5) Subsection (4) does not apply to a person who is subject to an order under the *Mental Health Act 2009*.

(6) In this section—

personal information means information or an opinion, whether true or not, relating to a natural person or the affairs of a natural person whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

95—General defence

It is a defence to a charge of an offence against this Act (the ***general defence***) if the defendant proves that the alleged offence was not committed intentionally and did not result from any failure on the part of the defendant to take reasonable care to avoid the commission of the offence.

96—Evidentiary provision

In any proceedings for an offence against this Act, an allegation in the complaint—

(a) that a specified person was, or was not, the holder of a licence under this Act at a specified time; or

(b) that a specified provision was, at a specified time, a condition imposed in relation to a licence under this Act held by a specified person; or

(c) that a specified person was, or was not, an authorised person or inspector under this Act at a specified time,

will, in the absence of proof to the contrary, be taken to have been proved.

97—Administrative acts

(1) No liability attaches to the Minister by virtue of the fact that the Minister has issued a licence, authorised an activity or granted an exemption under this Act.

(2) No liability attaches to SAAS by virtue of the fact that SAAS has issued a direction, made a request or granted an authorisation under this Act.

98—Forms of Ministerial approvals

(1) The Minister may give an approval under this Act—

(a) in relation to a specific case or circumstance; or

(b) in relation to a class of cases or circumstances specified by the Minister.

(2) The Minister may give an approval subject to such conditions as the Minister thinks fit.

(3) The Minister may, as the Minister thinks fit, vary or revoke an approval previously given under this Act.

99—Gift funds established by Minister

The Minister may, as the Minister thinks fit—

(a) establish 1 or more *gift funds* in connection with the provision or support of health services within the State;

(b) subject to the regulations (if any), make any provision with respect to the management, operation or winding up of any gift fund established by the Minister.

99A—Fees

(1) The Minister may, by notice in the Gazette, set fees and charges for the purposes of this Act.

(2) The Minister may remit, reduce, waive or refund a fee (or part of a fee) payable under this Act as the Minister sees fit.

100—Regulations

(1) The Governor may make such regulations as are contemplated by this Act or as are necessary or expedient for the purposes of this Act.

(2) Without limiting the generality of subsection (1), the regulations may—

(a) prescribe conditions under which research in the field of health and health services is to be conducted under this Act; and

(b) require any hospital or private day procedure centre to collect, and furnish the Minister or the Department with, data and statistics in relation to health and health services; and

(c) require any hospital or private day procedure centre to make prescribed inquiries with a view to ascertaining the requirements of the public, or any section of the public, in relation to any aspect of health care, and to furnish the Minister or the Department with the results of those inquiries; and

(d) prescribe rules relating to the management, operation or winding up of any gift fund, or other funds or accounts; and

(e) prescribe conditions under which financial or technical assistance may be given by the Minister for the establishment, maintenance or operation of a health service; and

(f) regulate the publication and dissemination of information by the Minister or the Department in relation to health and health services; and

(g) provide for the reporting of cases of specified diseases and disabilities to the Minister or the Department; and

(h) prescribe any course of education, training or instruction in professional or other fields of knowledge or expertise related to health services provided, or to be provided, by the Minister, the Department or any hospital; and

(i) prescribe standards to be observed by the Minister, the Department and hospitals in providing services for the prevention of disease, the improvement of health, the care and rehabilitation of the sick or the general well-being of the public; and

(j) provide for the establishment and operation of policies, protocols or practices in order to assess the clinical competencies of any health care provider and to determine the appropriate scope of a health care provider's practice in a particular setting or circumstance; and

(k) in relation to RCA teams—make provision for or with respect to—

(i) the functions of RCA teams;

(ii) the procedures of RCA teams, and the manner in which they are to exercise their functions;

(iii) the ability for RCA teams to act in relation to various entities, including so that a RCA team appointed by one entity may act in relation to an incident that involves another entity; and

(m) prescribe standards to be observed by private hospitals and private day procedure centres in the provision of health services; and

(n) prescribe the records to be kept by private hospitals and private day procedure centres; and

(p) prescribe fines not exceeding $10 000 for contravention of any regulation.

(3) The regulations may—

(a) make different provision according to the persons, things or circumstances to which they are expressed to apply; and

(b) be of general or limited application; and

(c) provide that a matter or thing is to be determined, dispensed with, regulated or prohibited according to the discretion of the Minister or another prescribed authority.

102—Review of Act

(1) The Minister must, on or before 1 July 2021, appoint an independent person to conduct a review of, and prepare a report on—

(a) the operation of this Act, including the extent to which—

(i) the objects of this Act have been attained; and

(ii) the principles of this Act have been applied; and

(b) any other matters determined by the Minister to be relevant to a review of this Act.

(2) A person appointed to conduct a review and prepare a report under this section must have expertise in health care administration or health service delivery.

(3) A review and report by a person appointed under this section must be completed within 6 months of the person's appointment and the report must be published as soon as practicable.

(4) The Minister must, within 12 sitting days after receipt of a report under this section, cause a copy of the report to be laid before both Houses of Parliament.

Schedule 1—Health Performance Council

1—Chairperson and Deputy Chairperson

(1) The Governor is to appoint 2 of the members of HPC (by their respective instruments of appointment or by other instruments executed by the Governor) as Chairperson and Deputy Chairperson of HPC, respectively.

(2) The Governor may remove a member from the office of Chairperson or Deputy Chairperson of HPC at any time.

(3) A person holding office as Chairperson or Deputy Chairperson of HPC vacates that office if the person—

(a) is removed from that office by the Governor; or

(b) resigns by written notice to the Minister; or

(c) ceases to be a member of HPC.

2—Deputies

(1) The Governor may, from time to time, appoint a suitable person to be the deputy of a member of HPC, and the Governor may revoke any such appointment.

(2) In the absence of a member, the member's deputy—

(a) is, if available, to act in the place of the member; and

(b) while so acting, has all the functions of the member and is taken to be a member.

(3) The deputy of a member who is Chairperson or Deputy Chairperson of HPC does not (because of this clause) have the member's functions as Chairperson or Deputy Chairperson.

3—Term of office

(1) Subject to this Schedule, a member of HPC holds office for such period (not exceeding 4 years) as may be specified in the member's instrument of appointment and is eligible for reappointment at the expiration of a term of office.

(2) However, a member may not hold office for consecutive terms that exceed 8 years in total.

4—Allowances

A member of HPC is entitled to fees, allowances and expenses approved by the Governor.

5—Vacancy in office of member

(1) The Governor may remove a member from office—

(a) for breach of, or non-compliance with, a condition of appointment; or

(b) for neglect of duty; or

(c) for mental or physical incapacity to carry out duties of office satisfactorily; or

(d) for dishonourable conduct; or

(e) if serious irregularities have occurred in the conduct of HPC's affairs or HPC has failed to carry out its functions satisfactorily and the Minister considers that HPC should be reconstituted for that reason.

(2) The office of a member of HPC 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) becomes an insolvent under administration within the meaning of the *Corporations Act 2001* of the Commonwealth; or

(e) is convicted in South Australia of an offence that is punishable by imprisonment for a term of 12 months or more, or is convicted elsewhere than in South Australia of an offence that, if committed in South Australia, would be an offence so punishable; or

(f) is removed from office under subclause (1).

(3) If the office of a member of HPC becomes vacant, a person may, subject to this Act, be appointed to fill the vacancy.

6—Procedures of HPC

(1) The procedure for the calling of meetings of HPC and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by HPC.

(2) The quorum for a meeting of HPC is a majority of its members for the time being.

(3) The Chairperson or, in the absence of the Chairperson, the Deputy Chairperson or, in the absence of both, another member elected to chair the meeting by the members present, is to preside at a meeting of HPC.

(4) A conference by telephone or other electronic means between the members of HPC will, for the purposes of this Act, be taken to be a meeting of HPC at which the participating members are present if—

(a) notice of the conference is given to all members in the manner determined by the members of HPC for that purpose; and

(b) each participating member is capable of communicating with every other participating member during the conference.

7—Committees and subcommittees

(1) HPC may establish committees or subcommittees as HPC thinks fit to advise HPC on any aspect of its functions, or to assist HPC in the performance of its functions.

(2) A committee or subcommittee established under subclause (1) may, but need not, consist of, or include, members of HPC.

(3) The procedures to be observed in relation to the conduct of business of a committee or a subcommittee will be—

(a) as prescribed by regulation; or

(b) insofar as the procedure is not prescribed by regulation—as determined by HPC; or

(c) insofar as the procedure is not prescribed by regulation or determined by HPC—as determined by the relevant committee or subcommittee.

Schedule 2—Health Advisory Councils

1—Term of office

Subject to this Schedule, a member of a HAC holds office for such period (not exceeding 3 years) as may be determined by the constitution or rules of the HAC and is eligible for reappointment at the expiration of a term of office.

2—Vacancy in office of member

(1) The Minister may remove a member from office—

(a) for breach of, or non-compliance with, a condition of appointment; or

(b) for neglect of duty; or

(c) for mental or physical incapacity to carry out duties of office satisfactorily; or

(d) for dishonourable conduct; or

(e) if serious irregularities have occurred in the conduct of the HAC's affairs or the HAC has failed to carry out its functions satisfactorily and the Minister considers that the HAC should be reconstituted for that reason; or

(f) on any other ground specified by the constitution or rules of the HAC.

(2) The office of a member of a HAC 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) becomes an insolvent under administration within the meaning of the *Corporations Act 2001* of the Commonwealth; or

(e) is convicted in South Australia of an offence that is punishable by imprisonment for a term of 12 months or more, or is convicted elsewhere than in South Australia of an offence that, if committed in South Australia, would be an offence so punishable; or

(f) is removed from office under subclause (1).

(3) If the office of a member of a HAC becomes vacant, a person may, subject to this Act, be appointed to fill the vacancy.

3—Application of Public Sector (Honesty and Accountability) Act

The *Public Sector (Honesty and Accountability) Act 1995* applies to a member of a HAC that has not been incorporated under this Act as if the HAC were an advisory body and the Minister responsible for the administration of this Act were the relevant Minister.

4—Presiding member

The Minister must appoint a member of a HAC to be the presiding member of the HAC.

5—Procedures

(1) The procedure for the calling of meetings of a HAC and for the conduct of business at those meetings is, subject to this Act and the constitution or rules of the HAC, to be as determined by the HAC.

(2) A conference by telephone or other electronic means between the members of a HAC will, for the purposes of this Act, be taken to be a meeting of the HAC at which the participating members are present if—

(a) notice of the conference is given to all members in the manner determined by the members of the HAC for that purpose; and

(b) each participating member is capable of communicating with every other participating member during the conference.

6—Committees and subcommittees

(1) A HAC may establish committees or subcommittees as the HAC thinks fit to advise the HAC on any aspect of its functions, or to assist HPC in the performance of its functions.

(2) A committee or subcommittee established under subclause (1) may, but need not, consist of, or include, members of the HAC.

(3) The procedures to be observed in relation to the conduct of business of a committee or a subcommittee will be—

(a) as determined by the HAC; or

(b) insofar as the procedure is not determined by the HAC—as determined by the relevant committee or subcommittee.

7—Interpretation

A reference in this Schedule to a member of a HAC will, in the case of a HAC that has been incorporated under this Act, be taken to be a reference to a member of the governing body of a HAC (unless the contrary intention appears).

Schedule 3—Governing boards for incorporated hospitals

1—Chairperson and Deputy Chairperson

(1) The Minister is to appoint 1 of the members of a governing board (by the member's instrument of appointment or by other instrument executed by the Minister) as Chairperson of the board.

(2) The Minister may appoint 1 of the members of a governing board (by the member's instrument of appointment or by other instrument executed by the Minister) as Deputy Chairperson of the board and, if a member is so appointed, that member will, in the absence of the Chairperson, act in the office of the Chairperson.

(3) The Minister may remove a member from the office of Chairperson or Deputy Chairperson of a governing board at any time.

(4) A person holding office as Chairperson or Deputy Chairperson of a governing board vacates that office if the person—

(a) is removed from that office by the Minister; or

(b) resigns by written notice to the Minister; or

(c) ceases to be a member of the board.

2—Term of office

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

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

(b) holds office for such period (not exceeding 3 years) as may be specified in the member's instrument of appointment; and

(c) is eligible for reappointment at the expiration of a term of office.

(2) A member of a governing board may not hold office for more than 9 consecutive years.

(3) A member of a governing board whose term of office expires (other than by the resignation of the member or removal by the Minister) without a person having been appointed to fill the vacancy continues in office until whichever of the following occurs first:

(a) a person is appointed to fill the vacancy;

(b) a period of 3 months elapses after the expiry of the term of office.

3—Remuneration

(1) A member of a governing board is entitled to remuneration, allowances and expenses determined by the Minister.

(2) The Minister must cause the remuneration, allowances and expenses determined under this clause to be published on a website determined by the Minister that is accessible by the public at no charge.

(3) The Chairperson of a governing board must ensure that travel or entertainment expenses incurred by the board in respect of the performance by a member of the member's functions and duties are disclosed on a website accessible to the public at no charge not more than 60 days after the day on which they are paid for by the board (whether directly or by reimbursement to the member).

4—Removal from office

The Minister may remove a member of a governing board 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.

5—Vacancy in office of member

(1) The office of a member of a governing board 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

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

(d) becomes an insolvent under administration within the meaning of the *Corporations Act 2001* of the Commonwealth; or

(e) is convicted in South Australia of an offence that is punishable by imprisonment for a term of 12 months or more, or is convicted elsewhere than in South Australia of an offence that, if committed in South Australia, would be an offence so punishable; or

(f) is removed from office under clause 4.

(2) If the office of a member of a governing board becomes vacant, a person may, subject to this Act, be appointed to fill the vacancy.

5A—Requirement to publish

The Minister must—

(a) within 14 days of an appointment of a member of a governing board; or

(b) within 14 days of a removal of a member of a governing board,

publish a notice in the Gazette setting out the appointment or removal (as the case requires).

6—Validity of acts

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

7—Public meetings

(1) A governing board must hold an annual public meeting between 1 October and 31 December in each year at which—

(a) the annual report of the incorporated hospital for the previous financial year is presented to members of the public; and

(b) any member of the public in attendance at the meeting is entitled to address the meeting.

(2) The holding of the meeting under subclause (1) is to be advertised in at least 1 newspaper circulating generally in the area of the incorporated public hospital and by such other means (including on a website accessible by the public at no charge) as the governing board determines.

8—Procedures

(1) A quorum of a governing board consists of a majority of its members for the time being.

(2) The agenda for a meeting of a governing board must, at least 7 days before the meeting is to be held, be published on a website accessible by the public at no charge.

(3) The Chairperson or, in the absence of the Chairperson, the Deputy Chairperson (if any) or, in the absence of both, another member elected to chair the meeting by the members present, is to preside at a meeting of a governing board.

(4) A decision carried by a majority of the votes cast by the members present at a meeting of a governing board is a decision of the board.

(5) A conference by telephone or other electronic means between the members of a governing board will, for the purposes of this clause, be taken to be a meeting of the board at which the participating members are present if—

(a) notice of the conference is given to all members in the manner determined by the board 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 a governing board becomes a valid decision of the board despite the fact that it is not voted on at a meeting of the board if—

(a) notice of the proposed resolution is given to all members in accordance with procedures determined by the board; and

(b) a majority of the members express concurrence in the proposed resolution by letter, fax, email or other written communication setting out the terms of the resolution.

(7) A governing board must have accurate minutes kept of its meetings and must publish the approved minutes of the meeting within 7 days of the meeting at which the minutes were approved on a website accessible by the public at no charge.

(8) Subject to this Act and the regulations, a governing board may determine its own procedures.

9—Committees and subcommittees

(1) A governing board may establish committees or subcommittees as the board thinks fit to advise the board on any aspect of its functions, or to assist the board in the performance of its functions.

(2) A committee or subcommittee established under subclause (1) may, but need not, consist of, or include, members of the governing board.

(3) The procedures to be observed in relation to the conduct of business of a committee or a subcommittee established by a governing board will be—

(a) as prescribed by regulation; or

(b) insofar as the procedure is not prescribed by regulation—as determined by the board; or

(c) insofar as the procedure is not prescribed by regulation or determined by the board—as determined by the relevant committee or subcommittee.

(4) A member of a committee or subcommittee established under this clause is entitled to remuneration, allowances and expenses determined by the governing board with the approval of the Minister.

10—Appointment of advisers

(1) The Minister may appoint a person to be an ***adviser*** to a governing board if the Minister considers that the adviser may assist the board to improve the performance of—

(a) the board; or

(b) the incorporated hospital governed by the board.

(2) The Minister must not appoint more than 2 persons to be advisers to a governing board at the same time.

(3) In deciding whether to appoint an adviser to a governing board, the Minister may have regard to the performance of the board or the incorporated hospital governed by the board in relation to the following:

(a) the safety and quality of health services being provided by the incorporated hospital;

(b) the compliance of the board with this Act and any service agreement applying to the board;

(c) the financial management of the incorporated hospital.

(4) An adviser holds office for the period (not exceeding 1 year) specified in the adviser's instrument of appointment.

(5) An adviser to a governing board is entitled to remuneration, allowances and expenses determined by the Minister.

11—Functions of advisers

(1) An adviser is to provide advice to, and otherwise assist, a governing board in the performance of its functions and, for that purpose, is entitled—

(a) to receive notice of any meeting of the board; and

(b) to have access to papers provided to members of the board for the purposes of any meetings; and

(c) to attend, and participate in, any meeting of the board (but has no entitlement to vote and must not be present at the time that a vote is taken).

(2) An adviser must, as required by the Minister, provide reports to the Minister and the Chief Executive on any matter relating to the operation of the governing board and the incorporated hospital under the management, administration and control of the board.

12—Dismissal of governing board

(1) The Minister may, at any time, dismiss all the members of a governing board if satisfied that—

(a) the board has failed to perform its functions effectively; or

(b) the board has failed to comply with a provision of this Act; or

(c) the board has failed to comply with a direction of the Minister or the Chief Executive.

(2) If the Minister dismisses all the members of a governing board under subclause (1), the office of each member of the board becomes vacant.

(3) The Minister must, within 12 sitting days after the dismissal of a governing board under this clause, cause notice of the dismissal to be laid before both Houses of Parliament.

13—Administrators

(1) If the members of a governing board are dismissed under clause 12 or for some other reason there are no members of a governing board at any time, the Minister may appoint the Chief Executive or other qualified person to administer and perform the functions of the board subject to any conditions specified in the instrument of appointment.

(2) An act done or decision made by an administrator in administering and performing the functions of a governing board is an act or decision of the board.

(3) An administrator is entitled to remuneration, allowances and expenses determined by the Minister.

(4) The Minister may revoke the appointment of an administrator for any reason before the term of appointment expires, either to appoint a different person as administrator or to appoint new members of a governing board.

(5) In this clause—

qualified person means a person the Minister considers has the necessary qualifications and experience to perform the functions of a governing board.

14—Use of facilities etc

A governing board may, with the approval of the responsible Minister or, if relevant, a responsible public sector instrumentality, make use of the staff, services or facilities of an administrative unit or another public sector instrumentality.

Schedule 3A—Dissolution of Health Advisory Councils

1—Preliminary

In this Schedule—

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

2—Dissolution of Health Advisory Councils

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

(a) the Women's and Children's Health Network Health Advisory Council Incorporated;

(b) the Northern Adelaide Local Health Network Health Advisory Council Incorporated;

(c) the Central Adelaide Local Health Network Health Advisory Council Incorporated;

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

3—HAC members

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

4—Property to be transferred

(1) The Minister may, by notice in the Gazette—

(a) transfer the assets, rights and liabilities of a dissolved HAC (either as a whole or in separate parcels specified in the notice)—

(i) to a Minister; or

(ii) to another Health Advisory Council; or

(iii) to an incorporated hospital; or

(iv) to SA Ambulance Service Inc; or

(v) to the Crown, or to another agent or instrumentality of the Crown; or

(vi) with the agreement of the person or body—to a person or body that is not an agent or instrumentality of the Crown; and

(b) make other provisions in relation to the property of the dissolved HAC that in the opinion of the Minister are necessary or expedient in the circumstances.

(2) A Ministerial notice made under subclause (1) takes effect from a date specified in the notice (which may be earlier than the date of the notice's publication even though the HAC from which the assets are transferred was dissolved prior to the publication of the Ministerial notice).

(3) The Minister may, by further notice in the Gazette, transfer any asset, right or liability acquired or assumed by the Minister under subclause (1) to another person or body if that other person or body consents to the transfer.

5—General provisions

(1) Nothing done under this Schedule—

(a) constitutes a breach of, or default under, an Act or other law; or

(b) constitutes a breach of, or default under, a contract, agreement, understanding or undertaking; or

(c) constitutes a breach of a duty of confidence (whether arising by contract, in equity or by custom or in any other way); or

(d) constitutes a civil or criminal wrong; or

(e) —

(i) terminates an agreement or obligation; or

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

(iii) gives rise to, or allows any person to exercise, any other right or remedy; or

(f) releases a surety or other obligee wholly or in part from an obligation.

(2) The Registrar-General or another authority required or authorised under a law of the State to register or record transactions affecting assets, rights or liabilities, or documents relating to such transactions, must, on application under this subclause, register or record in an appropriate manner a transfer and vesting under this Schedule.

(3) The Governor may, by regulation, make any other provision of a saving or transitional nature consequent on the enactment of this Act.

(4) The Minister may, by notice in the Gazette, declare that a reference in an Act, instrument, contract, agreement or other document to a dissolved HAC will have effect as if it were a reference to another person or body specified by the Minister in the notice.

Schedule 4—Transitional provisions

Part 20—Transitional provisions

34—Incorporated hospitals

(1) In this clause—

SAHC hospital means an incorporated hospital under the *South Australian Health Commission Act 1976* in existence immediately before the commencement of this clause.

(2) Subject to this clause, a SAHC hospital continues as an incorporated hospital under this Act (without affecting any function, power, accreditation or other aspect of the operations of the hospital).

(3) To avoid doubt, the board of directors of a SAHC hospital under section 29 of the *South Australian Health Commission Act 1976* will be dissolved on the commencement of this clause.

(4) The Governor may, by proclamation, designate a SAHC hospital as an incorporated hospital that is not to continue under this Act.

(5) If the Governor designates a hospital under subclause (4)—

(a) the hospital is dissolved by force of this clause; and

(b) the undertaking of the hospital, including its assets, rights and liabilities—

(i) will vest in or attach to a body, or will be divided between 2 or more bodies, specified by the Governor by proclamation (according to the terms of the proclamation);

(ii) to the extent that any assets, rights or liabilities do not fall within the ambit of a proclamation under subparagraph (i)—will vest in or attach to the Minister.

(6) If a hospital is dissolved under subclause (5), the Governor may, by proclamation, provide for the continuity of employment of persons employed to perform functions in connection with the operations or activities of the hospital (and the proclamation will have effect according to its terms).

(7) Nothing that takes effect under this clause—

(a) constitutes a breach of, or default under, an Act or other law; or

(b) constitutes a breach of, or default under, a contract, agreement, understanding or undertaking; or

(c) constitutes a breach of a duty of confidence (whether arising by contract, in equity or by custom) or in any other way; or

(d) constitutes a civil or criminal wrong; or

(e) terminates an agreement or obligation or fulfils any conditions that allows a person to terminate an agreement or obligation, or give rise to any other right or remedy; or

(f) releases a surety or any other obligee wholly or in part from an obligation.

35—Incorporated health centres

(1) In this clause—

SAHC health centre means an incorporated health centre under the *South Australian Health Commission Act 1976* in existence immediately before the commencement of this clause.

(2) A SAHC health centre is dissolved by force of this clause.

(3) The undertaking of a SAHC health centre, including its assets, rights and liabilities—

(a) will vest in or attach to a body, or will be divided between 2 or more bodies, specified by the Governor by proclamation (according to the terms of the proclamation);

(b) to the extent that any assets, rights or liabilities do not fall within the ambit of a proclamation under paragraph (a)—will vest in or attach to the Minister.

(4) The Governor may, by proclamation, provide for the continuity of employment of persons employed to perform functions in connection with the operations or activities of a SAHC health centre (the proclamation will have effect according to its terms).

(5) Nothing that takes effect under this clause—

(a) constitutes a breach of, or default under, an Act or other law; or

(b) constitutes a breach of, or default under, a contract, agreement, understanding or undertaking; or

(c) constitutes a breach of a duty of confidence (whether arising by contract, in equity or by custom) or in any other way; or

(d) constitutes a civil or criminal wrong; or

(e) terminates an agreement or obligation or fulfils any conditions that allows a person to terminate an agreement or obligation, or give rise to any other right or remedy; or

(f) releases a surety or any other obligee wholly or in part from an obligation.

36—By-laws

(1) A by-law made by the board of an incorporated hospital under section 38 of the *South Australian Health Commission Act 1976* in force immediately before the commencement of this subclause will continue as a by-law under this Act (and may then be altered or repealed under the provisions of this Act).

(2) Subclause (1) does not apply to any by-laws excluded from the ambit of that subclause by proclamation.

(3) Subject to subclauses (4), (5) and (6), any by-law of a designated health centre under section 57AA of the *South Australian Health Commission Act 1976* in force immediately before the dissolution of the health centre (including a dissolution before the commencement of this subclause) will have full force and effect pursuant to the provisions of this clause.

(4) The Minister may, by notice in the Gazette, alter or repeal a by-law under subclause (3), or make a substitute or new by-law in connection with any aspect of the former undertaking of the relevant designated health centre (and may by subsequent notice in the Gazette alter or repeal a by-law made under this subclause).

(5) Section 57AA of the *South Australian Health Commission Act 1976* will continue to apply to any by-laws under subclause (3) or (4) subject to such modifications as may be prescribed by the regulations (and the regulations will have effect according to their terms).

(6) A by-law in force under subclause (3) or (4) will expire by force of this subclause on the second anniversary of the commencement of this subclause unless sooner repealed by the Minister under subclause (4).

(7) In this clause—

designated health centre means a health centre (including a health centre dissolved before the commencement of this clause) designated by the Governor by proclamation as a designated health centre for the purposes of this clause.

37—Private hospitals

(1) A licence in force under Part 4A of the *South Australian Health Commission Act 1976* immediately before the commencement of this clause will continue in force as a licence under Part 10 of this Act (and will then be subject to the provisions of this Act).

(2) An application under Part 4A of the *South Australian Health Commission Act 1976* that has not been finally determined under that Part before the commencement of this clause will be taken to be an application under Part 10 of this Act (and will be dealt with from the point reached at the time of commencement).

38—Disclosure of confidential information

(1) An authorisation under section 64D of the *South Australian Health Commission Act 1976* in force immediately before the commencement of this clause will be taken to be an authorisation under Part 7 of this Act on that commencement (even if not within the ambit of a declaration of the Minister under that Part and including for the purposes of any other Act).

(2) An authorisation that continues under this Act by virtue of subclause (1) will expire on a day fixed by the Minister by notice in the Gazette.

(3) The Minister may, in acting under subclause (2)—

(a) fix different days for different authorisations, or classes of authorisations; and

(b) publish a series of notices for the purposes of fixing different days that are to apply under that subclause.

(4) An authorisation that does not expire under the terms of a notice under subclauses (2) and (3) will expire in any event by force of this subclause on the third anniversary of the commencement of this clause.

(5) The Minister may, by notice in the Gazette, determine that a specified provision of Part 7 of this Act will not apply to an authorisation during its continuation under this clause (and the determination will have effect according to its terms).

39—SAAS

(1) SAAS ceases to be an association under the *Associations Incorporation Act 1985* on the commencement of this clause.

(2) The Governor may, by proclamation, provide for the continuity of employment of persons employed to perform functions in connection with the operations or activities of SAAS (and the proclamation will have effect according to its terms).

40—Licences—ambulances

(1) A licence in force under the *Ambulance Services Act 1992* immediately before its repeal by this Act will remain in force for 12 months after the repeal of that Act.

(2) A licence referred to in subclause (1)—

(a) will be subject to those provisions of this Act prescribed by the regulations, with any necessary or prescribed modifications; and

(b) will authorise the holder of the licence to continue to provide services under the terms and conditions of the licence while the licence remains in force; and

(c) unless surrendered at an earlier time by the holder of the licence, will expire at the expiration of 12 months after the commencement of this clause.

(3) An application for a licence under Part 2 of the *Ambulance Services Act 1992* that has not been finally determined under that Part before the commencement of this clause will be taken to be an application under Part 6 of this Act (and that Part will apply in relation to the application subject to such modifications as may be prescribed by the regulations).

(4) SAAS will not require a licence under this Act.

41—Public and environmental health

(1) A notice, application, decision, determination, authorisation or other act of the Commission under the PEH Act will continue to have full force and effect as if given, made or taken by the Chief Executive under that Act as amended by this Act.

(2) Any right of action or proceedings vested in or commenced by the Commission under the PEH Act may be pursued or continued by the Chief Executive under that Act as amended by this Act.

(3) The Chief Executive may perform any other function or exercise any other power of the Commission conferred on or vested in the Commission under the PEH Act before its amendment by this Act.

(4) In this clause—

Chief Executive means the Chief Executive under the PEH Act, as amended by this Act;

Commission means the South Australian Health Commission;

PEH Act means the *Public and Environmental Health Act 1987*.

42—Other provisions

(1) The Governor may, by regulation, make additional provisions of a saving or transitional nature consequent on the enactment of this Act.

(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.

(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.

(4) The *Acts Interpretation Act 1915* will, except to the extent of any inconsistency with the provisions of this Schedule (or regulations made under this Schedule), apply to any amendment or repeal effected by this Act.

Legislative history

Notes

- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Legislation repealed by principal Act

The *Health Care Act 2008* repealed the following:

Ambulance Services Act 1992

Hospitals Act 1934

South Australian Health Commission Act 1976

Legislation amended by principal Act

The *Health Care Act 2008* amended the following:

Children's Protection Act 1993

Chiropractic and Osteopathy Practice Act 2005

Controlled Substances Act 1984

Coroners Act 2003

Dental Practice Act 2001

Drugs Act 1908

Family and Community Services Act 1972

Health and Community Services Complaints Act 2004

Institute of Medical and Veterinary Science Act 1982

Local Government Act 1934

Medical Practice Act 2004

Occupational Therapy Practice Act 2005

Optometry Practice Act 2007

Physiotherapy Practice Act 2005

Podiatry Practice Act 2005

Public and Environmental Health Act 1987

Supported Residential Facilities Act 1992

Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
2008	3	*Health Care Act 2008*	13.3.2008	10.4.2008 (*Gazette 10.4.2008 p1294*) except Pt 4 Div 1, s 29 & Sch 2—15.5.2008 (*Gazette 15.5.2008 p1645*) and except ss 18, 19, 26 & 27—5.6.2008 (*Gazette 5.6.2008 p1869*) and except Pt 2, ss 11—14, ss 20—25, 28, 30—32, 33(1)—(5), Pt 5 Divs 3—9, Pts 6—10, ss 89—99, 101 & Sch 4—1.7.2008 (*Gazette 26.6.2008 p2563*) and except s 33(6) & Sch 3—13.3.2010 (s 7(5) *Acts Interpretation Act 1915*)
2008	24	*Statutes Amendment and Repeal (Institute of Medical and Veterinary Science) Act 2008*	26.6.2008	Pt 2 (ss 4—9)—1.7.2008 (*Gazette 26.6.2008 p2553*)
2009	29	*Statutes Amendment (Public Health Incidents and Emergencies) Act 2009*	25.6.2009	Pt 7 (s 23)—25.6.2009
2009	84	*Statutes Amendment (Public Sector Consequential Amendments) Act 2009*	10.12.2009	Pt 75 (ss 176—180)—1.2.2010 (*Gazette 28.1.2010 p320*)
2011	21	*South Australian Public Health Act 2011*	16.6.2011	Sch 1 (cl 9)—16.9.2012 (*Gazette 30.8.2012 p3945*)
2011	36	*Statutes Amendment (Directors' Liability) Act 2011*	22.9.2011	Pt 11 (s 13)—1.1.2012 (*Gazette 15.12.2011 p4988*)
2015	20	*Health Care (Administration) Amendment Act 2015*	17.9.2015	1.9.2016 (*Gazette 25.8.2016 p3418*)
2016	23	*Health Care (Miscellaneous) Amendment Act 2016*	2.6.2016	1.12.2016 except ss 4—6, 10, 12(1), (2), (4) & (5)—1.5.2018—date varied (*Gazette 7.6.2017 p2043*)
2016	34	*Mental Health (Review) Amendment Act 2016*	14.7.2016	Sch 1 (cl 2)—5.6.2017 (*Gazette 30.5.2017 p1982*)
2018	8	*Health Care (Governance) Amendment Act 2018*	2.8.2018	1.7.2019 (*Gazette 2.8.2018 p2987*)
2019	14	*Statutes Amendment (SACAT) Act 2019*	11.7.2019	Pt 15 (ss 100 to 104)—2.12.2019 (*Gazette 21.11.2019 p3928*)
2020	39	*Health Care (Safe Access) Amendment Act 2020*	19.11.2020	17.12.2020 (*Gazette 17.12.2020 p5743*)
2021	21	*Health Care (Governance) Amendment Act 2021*	17.6.2021	Pt 2 (ss 4 to 18)—23.8.2021 (*Gazette 29.7.2021 p2915*)
2022	**23**	***Health Care (Acquisition of Property) Amendment Act 2022***	**8.12.2022**	**8.12.2022**

Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Long title	amended by 24/2008 s 4	1.7.2008
	amended under *Legislation Revision and Publication Act 2002*	1.1.2012
Pt 1		
s 2	*omitted under Legislation Revision and Publication Act 2002*	*1.1.2012*
s 3		
s 3(1)		
Department	substituted by 8/2018 s 4(1)	1.7.2019
governing board	inserted by 8/2018 s 4(2)	1.7.2019
health service	amended by 24/2008 s 5	1.7.2008
private day procedure centre	inserted by 23/2016 s 4	1.5.2018
private day procedure centre licence	inserted by 23/2016 s 4	1.5.2018
Tribunal	inserted by 14/2019 s 100	2.12.2019
s 4	amended by 24/2008 s 6	1.7.2008
	amended by 8/2018 s 5	1.7.2019
s 5	amended by 8/2018 s 6	1.7.2019
	amended by 21/2021 s 4	23.8.2021
Pt 2		
s 6		
s 6(1)	amended by 24/2008 s 7(1), (2)	1.7.2008
s 7		
s 7(1)	amended by 24/2008 s 8	1.7.2008
	amended by 8/2018 s 7(1), (2)	1.7.2019
	amended by 21/2021 s 5(1)	23.8.2021
s 7(1a)	inserted by 21/2021 s 5(2)	23.8.2021
Pt 3		
s 11		
s 11(2)	amended by 8/2018 s 8(1)	1.7.2019
s 11(6)	amended by 8/2018 s 8(2)	1.7.2019
Pt 4		
s 18		
s 18(1)	amended by 8/2018 s 9	1.7.2019
Pt 4A	inserted by 21/2021 s 6	23.8.2021
Pt 5		
Pt 5 Div 1		

s 29		
s 29(1)	amended by 20/2015 s 4	1.9.2016
s 30	amended by 8/2018 s 10	1.7.2019
s 31		
s 31(1a)	inserted by 24/2008 s 9	1.7.2008
	amended by 84/2009 s 176	1.2.2010
Pt 5 Div 1A	inserted by 20/2015 s 5	1.9.2016
Pt 5 Div 2		
s 33	substituted by 8/2018 s 11	1.7.2019
s 33(2)	amended by 21/2021 s 7	23.8.2021
ss 33A—33F	inserted by 8/2018 s 11	1.7.2019
s 33A		
s 33A(2)	amended by 21/2021 s 8(1)	23.8.2021
s 33A(3a) and (3b)	inserted by 21/2021 s 8(2)	23.8.2021
s 33B		
s 33B(5)	amended by 21/2021 s 9(1)	23.8.2021
	(b) deleted by 21/2021 s 9(2)	23.8.2021
s 33E		
s 33E(3)	amended by 21/2021 s 10	23.8.2021
Pt 5 Div 3		
s 34		
s 34(2)	amended by 21/2021 s 11(1)	23.8.2021
s 34(2a)	inserted by 21/2021 s 11(2)	23.8.2021
s 34(3)	amended by 84/2009 s 177	1.2.2010
s 34(8a)	inserted by 21/2021 s 11(3)	23.8.2021
s 34(14)		
public sector agency	amended by 84/2009 s 177	1.2.2010
Pt 5 Div 5		
s 40	***deleted by 23/2022 s 2***	***8.12.2022***
Pt 5 Div 10	inserted by 8/2018 s 12	1.7.2019
Pt 5A	inserted by 39/2020 s 4	17.12.2020
Pt 6		
s 49		
s 49(5)	*deleted by 20/2015 s 6*	*1.9.2016*
s 50		
s 50(4)	amended by 21/2021 s 12	23.8.2021
s 51		
s 51(2)	substituted by 29/2009 s 23	25.6.2009
	amended by 21/2011 Sch 1 cl 9	16.9.2012
s 52		
s 52(3)	amended by 84/2009 s 178	1.2.2010
s 52(13)		

public sector agency	amended by 84/2009 s 178	1.2.2010
s 52A	inserted by 21/2021 s 13	23.8.2021
s 58		
s 58(17)	amended by 14/2019 s 101	2.12.2019
s 59		
s 59(1)	substituted by 20/2015 s 7(1)	1.9.2016
s 59(6)	inserted by 20/2015 s 7(2)	1.9.2016
Pt 7		
s 63		
s 63(1)		
prescribed health-sector body	amended by 23/2016 s 5	1.5.2018
Pt 8		
s 68		
s 68(1)		
designated authority	amended by 34/2016 Sch 1 cl 2	5.6.2017
health services entity	amended by 23/2016 s 6	1.5.2018
Pt 9		
s 78		
s 78(1)	amended by 21/2021 s 14(1)—(3)	23.8.2021
s 78(1a)	inserted by 21/2021 s 14(4)	23.8.2021
s 78(3)	amended by 21/2021 s 14(5)—(7)	23.8.2021
s 78(3a)	inserted by 21/2021 s 14(8)	23.8.2021
Pt 10		
s 79		
s 79(3)	substituted by 23/2016 s 7	1.12.2016
s 81		
s 81(1)	(g) deleted by 23/2016 s 8(1)	1.12.2016
s 81(2)	substituted by 23/2016 s 8(2)	1.12.2016
s 81(2a) and (2b)	inserted by 23/2016 s 8(2)	1.12.2016
s 82		
s 82(3)—(5)	substituted by 23/2016 s 9	1.12.2016
s 82(6)	inserted by 23/2016 s 9	1.12.2016
s 87		
s 87(1) and (2)	substituted by 14/2019 s 102(1)	2.12.2019
s 87(3)	*deleted by 14/2019 s 102(2)*	*2.12.2019*
s 87(5)	amended by 14/2019 s 102(3), (4)	2.12.2019
s 87(6) and (7)	*deleted by 14/2019 s 102(5)*	*2.12.2019*
Pt 10A	inserted by 23/2016 s 10	1.5.2018
Pt 11		
s 89	*deleted by 84/2009 s 179*	*1.2.2010*

s 89I		
s 89I(1) and (2)	substituted by 14/2019 s 103(1)	2.12.2019
s 89I(3)	*deleted by 14/2019 s 103(2)*	*2.12.2019*
s 89I(5)	amended by 14/2019 s 103(3), (4)	2.12.2019
s 89I(6) and (7)	*deleted by 14/2019 s 103(5)*	*2.12.2019*
s 89L	s 89 inserted by 20/2015 s 8	1.9.2016
	s 89 redesignated as s 89L under *Legislation Revision and Publication Act 2002*	1.5.2018
s 90A	**inserted by 23/2022 s 3**	**8.12.2022**
s 92		
s 92(3)		
health employee	substituted by 20/2015 s 9	1.9.2016
	reference to s 89L (formerly s 89) revised under *Legislation Revision and Publication Act 2002*	1.5.2018
s 93		
s 93(1)	amended by 8/2018 s 13	1.7.2019
	amended by 21/2021 s 15(1)	23.8.2021
s 93(3)	amended by 20/2015 s 10(1), (2)	1.9.2016
	amended by 21/2021 s 15(2)	23.8.2021
s 93(5)	amended by 21/2021 s 15(3)	23.8.2021
s 94	*deleted by 36/2011 s 13*	*1.1.2012*
s 99A	inserted by 23/2016 s 11	1.12.2016
s 100		
s 100(2)	(l) deleted by 23/2016 s 12(3)	1.12.2016
	(o) deleted by 23/2016 s 12(6)	1.12.2016
	amended by 23/2016 s 12(1), (2), (4) & (5)	1.5.2018
s 101	*deleted by 21/2021 s 16*	*23.8.2021*
s 102	inserted by 8/2018 s 14	1.7.2019
Sch 2		
cl 3	substituted by 84/2009 s 180	1.2.2010
Sch 3	substituted by 8/2018 s 15	1.7.2019
cl 2		
cl 2(1)	substituted by 21/2021 s 17(1)	23.8.2021
cl 5		
cl 5(1)	amended by 21/2021 s 17(2)	23.8.2021
cl 5A	inserted by 21/2021 s 17(3)	23.8.2021
cl 8		
cl 8(7)	amended by 21/2021 s 17(4)	23.8.2021
Sch 3A	inserted by 21/2021 s 18	23.8.2021
Sch 4		
Parts 1—19	*omitted under Legislation Revision and Publication Act 2002*	*1.1.2012*

Transitional etc provisions associated with Act or amendments

Statutes Amendment and Repeal (Institute of Medical and Veterinary Science) Act 2008, Sch 1—Transitional provisions

1—Interpretation

In this Schedule, unless the contrary intention appears—

asset includes a present or contingent interest;

CYWHS means the Children, Youth and Women's Health Service Incorporated;

IMVS means the Institute of Medical and Veterinary Science;

liability includes a contingent liability;

RGH means the Repatriation General Hospital Incorporated;

SAHS means the Southern Adelaide Health Service Incorporated;

WCHDLM means the Women's and Children's Hospital Division of Laboratory Medicine.

2—Staff

(1) A person who, immediately before the commencement of this subclause, was employed by IMVS, or was employed by an employing authority pursuant to section 17 of the *Institute of Medical and Veterinary Science Act 1982*, will, on that commencement, be taken to be employed by—

(a) an employing authority under the *Health Care Act 2008*; or

(b) an incorporated hospital under the *Health Care Act 2008*,

designated by the Governor by proclamation made for the purposes of this subclause.

(2) The Governor may, by proclamation, transfer the employment of any person employed to perform functions in connection with the operations or activities of CYWHS, RGH or SAHS that relate to the provision of pathology services, or other services declared to be within the ambit of this subclause by the proclamation, to employment by—

(a) an employing authority under the *Health Care Act 2008*; or

(b) an incorporated hospital under the *Health Care Act 2008*,

designated by the Governor by proclamation made for the purposes of this subclause.

(3) An employment arrangement effected by subclause (1) or (2)—

(a) will be taken to provide for continuity of employment without termination of the relevant employee's service; and

(b) will not affect—

(i) existing conditions of employment or existing or accrued rights to leave; or

(ii) a process commenced for variation of those conditions or rights.

3—Dissolution of IMVS

IMVS is dissolved by force of this clause.

4—Property—IMVS

(1) Subject to this Schedule, all assets (including any shares in any body corporate held by IMVS and any business name registered under the *Business Names Act 1996*), rights and liabilities of IMVS are transferred to an incorporated hospital specified by the Governor by proclamation.

(2) The transfer of assets, rights and liabilities under this clause operates by force of this clause and despite the provisions of any other law.

5—References—IMVS

(1) Subject to subclause (2), all references in any instrument or contract, agreement or other document to IMVS will have effect as if it were a reference to an incorporated hospital specified by the Governor by proclamation.

(2) Subclause (1) does not apply to any reference excluded by the Minister by notice in the Gazette.

(3) Subclause (1) has effect despite the provisions of any other law or instrument.

6—Procedures and proceedings—IMVS

Any procedure or proceedings commenced by or against IMVS before the commencement of this clause but which had not been finally determined at the commencement of this clause may be continued or completed by an incorporated hospital or by the Minister (as determined by the Minister).

7—Property—SouthPath

(1) Subject to this Schedule, all assets (including any shares in any body corporate held by SAHS or RGH and any business name registered under the *Business Names Act 1996* but not including any real property), rights and liabilities of SAHS and RGH related to the provision of medical pathology services under the name *SouthPath* are transferred to an incorporated hospital specified by the Governor by proclamation.

(2) The transfer of assets, rights and liabilities under this clause operates by force of this clause and despite the provisions of any other law.

8—References—SouthPath

(1) Subject to subclause (2), all references in any instrument or contract, agreement or other document to SAHS or RGH related to the provision of medical pathology services under the name SouthPath will have effect as if it were a reference to an incorporated hospital specified by the Governor by proclamation.

(2) Subclause (1) does not apply to any reference excluded by the Minister by notice in the Gazette.

(3) Subclause (1) has effect despite the provisions of any other law or instrument.

9—Property—WCHDLM

(1) Subject to this Schedule, all assets (including any shares in any body corporate held by CYWHS and any business name registered under the *Business Names Act 1996* but not including any real property), rights and liabilities of CYWHS related to the provision of medical pathology services under the name WCHDLM are transferred to an incorporated hospital specified by the Governor by proclamation.

(2) The transfer of assets, rights and liabilities under this clause operates by force of this clause and despite the provisions of any other law.

10—References—WCHDLM

(1) Subject to subclause (2), all references in any instrument or contract, agreement or other document to CYWHS related to the provision of medical pathology services under the name WCHDLM will have effect as if it were a reference to an incorporated hospital specified by the Governor by proclamation.

(2) Subclause (1) does not apply to any reference excluded by the Minister by notice in the Gazette.

(3) Subclause (1) has effect despite the provisions of any other law or instrument.

11—Property

(1) The Minister may, at any time after the commencement of this Schedule, by notice in the Gazette, transfer an asset, right or liability transferred to an incorporated hospital under clause 4, 7 or 9 to—

(a) the Crown; or

(b) the Minister; or

(c) another agency or instrumentality of the Crown; or

(d) with the agreement of the person or body—to a person or body that is not an agency or instrumentality of the Crown.

(2) The transfer of assets, rights and liabilities under this clause operates by force of this clause and despite the provisions of any other law.

12—Other provisions

(1) Nothing done under this Schedule—

(a) constitutes a breach of, or default under, an Act or other law; or

(b) constitutes a breach of, or default under, a contract, agreement, understanding or undertaking; or

(c) constitutes a breach of a duty of confidence (whether arising by contract, in equity or by custom or in any other way); or

(d) constitutes a civil or criminal wrong; or

(e) —

(i) terminates an agreement or obligation; or

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

(iii) gives rise to, or allows any person to exercise, any other right or remedy; or

(f) releases a surety or other obligee wholly or in part from an obligation.

(2) The Registrar-General or another authority required or authorised under a law of the State to register or record transactions affecting assets, rights or liabilities, or documents relating to such transactions, must, on application under this subclause, register or record in an appropriate manner a transfer and vesting under this Schedule.

(3) The Governor may, by regulation, make any other provision of a saving or transitional nature consequent on the enactment of this Act.

(4) The *Acts Interpretation Act 1915* will, except to the extent of any inconsistency with the provisions of this Schedule, apply with respect to the amendments effected by this Act.

Health Care (Administration) Amendment Act 2015, Sch 1—Transitional provisions

1—Employment

(1) In this clause—

Chief Executive has the same meaning as in the principal Act;

Department has the same meaning as in the principal Act;

principal Act means the *Health Care Act 2008*.

(2) The Chief Executive may, by instrument in writing, determine that a person employed in the Department immediately before the commencement of this clause will be taken to be employed under section 89 of the principal Act, as enacted by this Act, on terms and conditions specified by the Chief Executive and approved by the Commissioner for Public Employment.

(3) A determination under subclause (2) does not constitute a breach of a contract of employment or termination of the person's employment, or affect the continuity of the person's employment for any purpose (but will have effect so that the person is no longer employed in the Department).

2—Cancellation of incorporation etc of certain associations

(1) This clause applies in relation to the following associations:

(a) Lumeah Homes Inc;

(b) Miroma Place Hostel Inc;

(c) Peterborough Aged and Disabled Accommodation Inc.

Note—

The functions of these associations were taken over under the *South Australian Health Commission Act 1976*.

(2) Despite the provisions of the *Associations Incorporation Act 1985*, the Governor may, by proclamation—

(a) cancel the incorporation of an association to which this clause applies; and

(b) transfer the assets of an association to which this clause applies (either as a whole or in separate parcels specified in the proclamation) to a HAC; and

(c) make such other provisions in relation to an association to which this clause applies as the Governor thinks fit.

(3) A proclamation under this section may take effect on a day that is earlier than the day on which the proclamation is made.

(4) In this clause—

HAC has the same meaning as in the *Health Care Act 2008*.

Statutes Amendment (SACAT) Act 2019, Pt 15

104—Transitional provisions

(1) A right of appeal under section 58, 87 or 89I of the principal Act in existence before the relevant day (but not exercised before that day) will be exercised as if this Part had been in operation before that right arose, so that the relevant proceedings may be commenced before the Tribunal rather than the Supreme Court or District Court.

(2) Nothing in this section affects any proceedings before the Supreme Court or District Court commenced before the relevant day.

(3) In this section—

principal Act means the *Health Care Act 2008*;

relevant day means the day on which this Part comes into operation;

Tribunal means the South Australian Civil and Administrative Tribunal established under the *South Australian Civil and Administrative Tribunal Act 2013*.

Health Care (Acquisition of Property) Amendment Act 2022, Sch 1

1—Transitional provision

A process to acquire land for the purposes of an incorporated hospital commenced under section 40 of the *Health Care Act 2008* before the repeal of that section by section 2 of this Act may be continued and completed in accordance with section 40 as if it had not been repealed.

Historical versions

1.7.2008
25.6.2009
1.2.2010
13.3.2010
1.1.2012
16.9.2012
1.9.2016
1.12.2016
5.6.2017
1.5.2018
1.7.2019

2.12.2019

17.12.2020

23.8.2021