



ANNO TRICESIMO SEXTO

ELIZABETHAE II REGINAE

A.D. 1987

No. 41 of 1987

An Act to amend the South Australian Health Commission Act, 1976, and the Transplantation and Anatomy Act, 1983, and to make a consequential amendment to the Health Act, 1935.

[Assented to 30 April 1987]

The Parliament of South Australia enacts as follows:

1. (1) This Act may be cited as the “South Australian Health Commission Act Amendment Act, 1987”. Short title.

(2) The South Australian Health Commission Act, 1976, is in this Act referred to as “the principal Act”.

2. (1) This Act will come into operation on a day to be fixed by proclamation. Commencement.

(2) The Governor may, in a proclamation fixing a day for this Act to come into operation, suspend the operation of specified provisions of this Act until a subsequent day fixed in the proclamation, or a day to be fixed by subsequent proclamation.

3. Section 3 of the principal Act is amended by striking out paragraph (a) and substituting the following paragraph: Amendment of s. 3—
Objects of this Act.

(a) the provision of health care through a properly integrated network of hospitals and health centres;

4. Section 6 of the principal Act is amended—

(a) by striking out the definition of “board” and substituting the following definition: Amendment of s. 6—
Interpretation.

“board”, in relation to an incorporated hospital or incorporated health centre, means its board of directors;

(b) by striking out the definitions of “Government health centre” and “Government hospital”;

and

- (c) by striking out the definitions of "incorporated health centre" and "incorporated hospital" and substituting the following definitions:

"incorporated health centre" means a health centre incorporated under this Act:

"incorporated hospital" means a hospital incorporated under this Act.

Amendment of
s. 8—
Constitution of
Commission.

5. Section 8 of the principal Act is amended—

- (a) by striking out subsection (1) and substituting the following subsections:

(1) The Commission will consist of 5 members appointed by the Governor on the nomination of the Minister.

(1a) The Governor will appoint a member to be the Chairman and another member to be the Deputy Chairman of the Commission.;

- (b) by striking out subsection (3) and substituting the following subsection:

(3) A member of the Commission may be appointed either on a full-time or a part-time basis but there must not be more than 2 full-time members at any one time.;

and

- (c) by striking out "7" from paragraph (a) of subsection (4) and substituting "5".

Repeal of s. 9 and
substitution of
new section.

6. Section 9 of the principal Act is repealed and the following section is substituted:

Deputies.

9. (1) The Governor may appoint a suitable person to be a deputy to any member of the Commission.

(2) If a member of the Commission is absent from official duties the deputy appointed under subsection (1) may act as a member of the Commission.

(3) The Deputy Chairman will act as deputy to the Chairman only in the office of Chairman and a deputy appointed under subsection (1) will be the deputy to the Chairman in the Chairman's capacity as a member of the Commission.

Amendment of
s. 11—
Removal from,
and vacation of
office.

7. Section 11 of the principal Act is amended by striking out subsection (5).

Amendment of
s. 14—
Disclosure of
interests.

8. Section 14 of the principal Act is amended—

- (a) by striking out from subsection (2) "Penalty: \$1 000";

and

- (b) by inserting after subsection (2) the following subsection:

(3) A member of the Commission who contravenes or fails to comply with a requirement of this section is guilty of an offence.

Penalty: \$2 000.

9. Section 15 of the principal Act is amended by striking out the word "general".

Amendment of
s. 15—
Commission
subject to control
of the Minister.

10. Section 16 of the principal Act is amended by inserting after paragraph (fa) of subsection (1) the following paragraph:

Amendment of
s. 16—
Functions of the
Commission.

(fb) to ensure the proper allocation of resources between incorporated hospitals, incorporated health centres and health services established, maintained or operated by, or with the assistance of, the Commission;

11. Section 17 of the principal Act is repealed and the following section is substituted:

Repeal of s. 17
and substitution
of new section.

17. (1) The Commission may delegate any of its powers or functions—

Delegation.

(a) to a committee appointed by the Commission;

(b) to a member, officer or employee of the Commission;

or

(c) to any person holding or acting in an office or position specified in the instrument of delegation.

(2) The Commission should review each delegation at least once in each year.

(3) A delegation under this section—

(a) is revocable at will;

and

(b) does not derogate from the power of the Commission to act in any matter itself.

12. Section 19a of the principal Act is amended by striking out subsections (2), (3) and (4) and substituting the following subsection:

Amendment of
s. 19a—
The Chief
Executive Officer
and Deputy Chief
Executive Officer.

(2) The Chief Executive Officer and the Deputy Chief Executive Officer will not be Public Service employees.

13. Section 27 of the principal Act is amended by striking out subsection (3a) and substituting the following subsections:

Amendment of
s. 27—
Incorporation.

(3a) An incorporated hospital will not be established to take over functions from any other body (apart from the Commission) unless—

(a) the other body consents to the establishment of the incorporated hospital and agreement has been reached between the Commission and the other body on the terms of the constitution under which the incorporated hospital is to operate;

or

(b) (i) the other body is declared under subsection (3b) to be a public hospital;

(ii) the Commission has approved the terms of the constitution under which the incorporated hospital is to operate;

and

- (iii) the constitution does not allow for the appointment or nomination of a majority of the members of the board of the hospital by the Crown or a Minister, agency or instrumentality of the Crown.

(3b) Where—

- (a) a body that provides health services derives the major proportion of its revenue from public funding;

and

- (b) it is, in the Governor's opinion, appropriate that the services should be provided by an incorporated hospital,

the Governor may, by notice in the *Gazette*, declare that body to be a public hospital.

(3c) An incorporated hospital will not be established to take over functions from any other incorporated hospital or from an incorporated health centre pursuant to subsection (3a) (b).

(3d) A notice under subsection (3b)—

- (a) must be laid before both Houses of Parliament;
- (b) may be disallowed by resolution of either House of Parliament in pursuance of a notice of motion given within 14 sitting days of the date on which the notice was laid before the House;

(c) takes effect—

- (i) if no notice of motion for disallowance is given within that period—when the period for giving such notice expires;
- (ii) if such a notice of motion is given—when the motion is defeated or is withdrawn or lapses.

(3e) The constitution of an incorporated hospital that is established to take over the functions of another body pursuant to subsection (3a) (b) must include, as far as is practicable, provisions similar to those of the constitution of the other body.

Amendment of
s. 29—
Management of
hospital.

14. Section 29 of the principal Act is amended by striking out from subsection (1) "management" and substituting "directors".

Amendment of
s. 29a—
Disclosure of
interest.

15. Section 29a of the principal Act is amended—

- (a) by striking out from subsections (1) and (2) "of management".

- (b) by striking out from subsection (2) "Penalty: \$1 000";

and

- (c) by inserting after subsection (2) the following subsection:

(3) A member of the board who contravenes or fails to comply with a requirement of this section is guilty of an offence.

Penalty: \$2 000.

16. The following section is inserted in Division I of Part III of the principal Act after section 29a:

Insertion of new s. 29b.

29b. No liability attaches to a member of the board of an incorporated hospital for any act or omission by the member or the hospital in good faith and in the exercise, or purported exercise, of the member's or the hospital's powers or functions, or in the discharge, or purported discharge, of the member's or the hospital's duties under the hospital's constitution or this Act.

Immunity of members of board.

17. Section 30 of the principal Act is amended by striking out subsection (3) and substituting the following subsection:

Amendment of s. 30—
Officers and employees.

(3) The following provisions govern the appointment or dismissal of a chief executive officer by the board of an incorporated hospital—

(a) where a majority of the members of the board are appointed by the Minister—the board must not appoint or dismiss a chief executive officer except with the approval of the Commission;

or

(b) in any other case—the board must consult the Commission before appointing or dismissing a chief executive officer.

18. Section 36 of the principal Act is amended by inserting after subsection (2) the following subsection:

Amendment of s. 36—
Budget and staffing plans.

(3) Information furnished under subsection (2) must include all particulars required in the notice.

19. Section 37 of the principal Act is repealed.

Repeal of s. 37.

20. Section 48 of the principal Act is amended by striking out subsection (3a) and substituting the following subsections:

Amendment of s. 48—
Incorporation.

(3a) An incorporated health centre will not be established to take over functions from any other body unless—

(a) the other body consents to the establishment of the incorporated health centre and agreement has been reached between the Commission and the other body on the terms of the constitution under which the incorporated health centre is to operate;

or

(b) (i) the other body is declared under subsection (3b) to be a public health centre;

(ii) the Commission has approved the terms of the constitution under which the incorporated health centre is to operate;

and

(iii) the constitution does not allow for the appointment or nomination of a majority of the members of the board of the health centre by the Crown or a Minister, agency or instrumentality of the Crown.

(3b) Where—

(a) a body that provides health services derives the major proportion of its revenue from public funding;

and

(b) it is, in the Governor's opinion, appropriate that the services should be provided by an incorporated health centre, the Governor may, by notice in the *Gazette*, declare that body to be a public health centre.

(3c) An incorporated health centre will not be established to take over functions from any other incorporated health centre or from an incorporated hospital pursuant to subsection (3a) (b).

(3d) A notice under subsection (3b)—

(a) must be laid before both Houses of Parliament;

(b) may be disallowed by resolution of either House of Parliament in pursuance of a notice of motion given within 14 sitting days of the date on which the notice was laid before the House;

(c) takes effect—

(i) if no notice of motion for disallowance is given within that period—when the period for giving such notice expires;

(ii) if such a notice of motion is given—when the motion is defeated or is withdrawn or lapses.

(3e) The constitution of an incorporated health centre that is established to take over the functions of another body pursuant to subsection (3a) (b) must include, as far as is practicable, provisions similar to those of the constitution of the other body.

Amendment of
s. 50—
Management of
health centre.

21. Section 50 of the principal Act is amended—

(a) by striking out from subsection (1) “management committee” and substituting “board of directors”;

and

(b) by striking out from subsections (2) and (3) “management committee” wherever it occurs and substituting, in each case, “board”.

Amendment of
s. 50a—
Disclosure of
interests.

22. Section 50a of the principal Act is amended—

(a) by striking out from subsections (1) and (2) “management committee” wherever it occurs and substituting, in each case, “board”;

(b) by striking out from subsection (2) “Penalty: \$1 000”;

and

(c) by inserting after subsection (2) the following subsection:

(3) A member of the board who contravenes or fails to comply with a requirement of this section is guilty of an offence.

Penalty: \$2 000.

23. The following section is inserted in Division I of Part IV of the principal Act after section 50a:

Insertion of new s. 50b.

50b. No liability attaches to a member of the board of an incorporated health centre for any act or omission by the member or the health centre in good faith and in the exercise, or purported exercise, of the member's or the health centre's powers or functions, or in the discharge, or purported discharge, of the member's or the health centre's duties under the health centre's constitution or this Act.

Immunity of members of board.

24. Section 51 of the principal Act is amended—

Amendment of s. 51—

(a) by striking out from subsections (1) and (3) "management committee" wherever it occurs and substituting, in each case, "board";

Officers and employees.

and

(b) by inserting after subsection (2) the following subsection:

(2a) The following provisions govern the appointment or dismissal of a chief executive officer by the board of an incorporated health centre—

(a) where a majority of the members of the board are appointed by the Minister—the board must not appoint or dismiss a chief executive officer except with the approval of the Commission;

or

(b) in any other case—the board must consult the Commission before appointing or dismissing a chief executive officer.

25. Section 52 of the principal Act is amended by striking out from subsection (3) "the management committee of the health centre and subject to such conditions as may be imposed by that committee" and substituting "the board of the health centre and subject to such conditions as may be imposed by the board".

Superannuation, accrued leave rights, etc.

26. Section 56 of the principal Act is amended by striking out from subsection (1) "management committee" and substituting "board".

Amendment of s. 56—
Annual report.

27. Section 57 of the principal Act is amended—

(a) by striking out from subsection (1) "management committee" wherever it occurs and substituting "board" in each case;

Amendment of s. 57—
Budget and staffing plans.

(b) by striking out from subsection (2) "a management committee" and substituting "the board of an incorporated health centre";

and

(c) by inserting after subsection (2) the following subsection:

(3) Information furnished under subsection (2) must include all particulars required in the notice.

28. Section 57aa of the principal Act is repealed and the following section is substituted:

Repeal of s. 57aa and substitution of new section.

57aa. (1) The board of an incorporated health centre may make, alter and repeal by-laws for all or any of the following purposes:

By-laws.

- (a) to prohibit persons from trespassing on the grounds of the health centre;
- (b) to define parts of the grounds of the health centre 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 health centre;
- (d) to regulate the speed at which vehicles may be driven within the grounds of the health centre;
- (e) to prohibit dangerous or careless driving of vehicles within the grounds of the health centre;
- (f) to prescribe the routes to be followed by traffic within the grounds of the health centre;
- (g) to prohibit or regulate the standing, parking or ranking of vehicles within the grounds of the health centre and to provide for the removal of vehicles from the grounds;
- (h) to require drivers of vehicles within the grounds of the health centre to comply with traffic directions;
- (i) generally to regulate traffic of all kinds within the grounds of the health centre;
- (j) to prohibit disorderly or offensive behaviour within the health centre or the grounds of the health centre;
- (k) to regulate, restrict or prohibit the consumption of alcoholic liquor within the health centre or the grounds of the health centre;
- (l) to prevent undue noise within the health centre or the grounds of the health centre;
- (m) to prescribe any other matters necessary or expedient for the maintenance of good order, the protection of property of the health centre or the prevention of hindrance to, or interference with, any activities conducted within the health centre or its grounds;

and

- (n) to prescribe fines not exceeding \$50 for contravention of any by-law.

(2) Every by-law made under this section must be sealed with the seal of the health centre and submitted to the Commission for approval.

(3) Upon approval of a by-law made under this section, the by-law must be transmitted to the Governor for confirmation and, upon confirmation by the Governor, will come 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 an incorporated health centre will be accepted as 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 accepted as proved in the absence of proof to the contrary;
- (c) where it is proved that a vehicle was parked within the grounds of a health centre 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) Where it is alleged that a person has committed an offence against a by-law relating to vehicular traffic, or the parking of motor vehicles, within the grounds of an incorporated health centre, the board may cause to be served personally or by post upon that person a notice to the effect that he or she may expiate the offence by payment to the incorporated health centre of an amount specified in the notice (being an amount fixed by the by-law) within a time specified in the notice and, if the offence is so expiated, no proceedings will be commenced in any court in respect of the alleged offence.

29. Section 58 of the principal Act is repealed and the following sections are substituted:

Repeal of s. 58
and substitution
of new sections.

58. (1) Subject to subsection (3), where, in the opinion of the Commission, an incorporated hospital or incorporated health centre has failed in a particular instance properly to perform the functions for which it was established, the Commission may give such directions to the hospital or health centre as are necessary to remedy the failure.

Provision where
incorporated
hospital or health
centre fails in a
particular instance
to properly
discharge its
functions.

(2) The board of the hospital or health centre must comply with the Commission's directions.

(3) The Commission must not give a direction under subsection (1) in relation to a nursing home for which the Commonwealth provides funding under the *Nursing Homes Assistance Act 1974* of the Commonwealth.

58a. (1) Where the board of an incorporated hospital or an incorporated health centre—

Provision where
incorporated
hospital or health
centre fails
persistently to
properly discharge
its functions.

(a) contravenes, or fails to comply with, a provision of this Act or of its approved constitution;

or

(b) has, in the opinion of the Governor, persistently failed properly to perform the functions for which it was established,

the Governor may, by proclamation, remove all members of the board from office.

(2) The Governor may, by a proclamation under subsection (1) or a subsequent proclamation, appoint a person, on conditions determined by the Governor, to administer the hospital or health centre until the appointment of a new board.

(3) An administrator appointed under subsection (2) will have all the powers conferred on the board by this Act or by its approved constitution.

(4) The administrator must arrange for a new board of the hospital or health centre to be constituted within 4 months after the removal of the previous board and, for that purpose, the administrator may call a meeting to elect new members to the board.

Insertion of new
s. 63a.

30. The following section is inserted after section 63 of the principal Act:

Conflict of
interest.

63a. (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 authorized 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.

Penalty: \$2 000.

(3) In this section—

“appropriate authority”, in relation to a health employee, means—

(a) the employee's employer;

or

(b) some person authorized by the employer to act as the appropriate authority under this section:

“health employee” means an officer or employee of the Commission, an incorporated hospital or incorporated health centre.

Amendment of
s. 64—
Duty to maintain
confidentiality.

31. Section 64 of the principal Act is amended by striking out “Penalty: \$2 000 or imprisonment for 6 months” and substituting “Penalty: \$5 000”.

Insertion of new
s. 64d.

32. The following section is inserted after section 64c of the principal Act:

Authorization of
research into
mortality and
morbidity.

64d. (1) The Governor may authorize a person, or a class of persons, to conduct research into the causes of mortality and morbidity in the State.

(2) Confidential information relating to any patient may be disclosed to a person so authorized and, with the approval of the person authorized, to any person assisting in that research, without breach of any law or any principle of professional ethics.

(3) A person shall not divulge confidential information obtained in the course of research authorized under this section except to another person to whom information may be disclosed under this section.

Penalty: \$5 000.

33. Section 66 of the principal Act is amended by inserting after paragraph (e) of subsection (2) the following paragraph:

Amendment of
s. 66—
Regulations.

(ea) provide for the reporting of cases of specified diseases and disabilities to the Commission;

34. Part IXc of the Health Act, 1935, is repealed.

Amendment of
Health Act, 1935.

35. The Transplantation and Anatomy Act, 1983, is amended by striking out from section 6 and subsection (4) of section 24 "the Director-General of Medical Services or his delegate" and substituting, in each case, "the South Australian Health Commission or its delegate."

Amendment of
Transplantation
and Anatomy
Act, 1983.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

D. B. DUNSTAN, Governor