



ANNO TRICESIMO TERTIO

ELIZABETHAE II REGINAE

A.D. 1984

No. 55 of 1984

An Act to amend the South Australian Health Commission Act, 1976, and to make consequential amendments to the Health Act, 1935.

[Assented to 24 May 1984]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

1. (1) This Act may be cited as the “South Australian Health Commission Act Amendment Act, 1984”. Short title.

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

2. (1) This Act shall 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 4 of the principal Act is amended by inserting after the item: Amendment of s. 4—

DIVISION V—HEALTH CENTRE FEES

the following item: Arrangement of Act.

PART IVA

PRIVATE HOSPITALS.

4. Section 6 of the principal Act is amended by inserting after the definition of “the Minister” the following definitions: Amendment of s. 6—

“private hospital” means a hospital other than a recognized hospital: Interpretation.

“recognized hospital” means—

(a) an incorporated hospital;

or

(b) a prescribed hospital.

Amendment of
s. 21—
Superannuation,
accrued leave
rights, etc.

5. Section 21 of the principal Act is amended by striking out from paragraph (b) of subsection (1) the word "full-time".

Amendment of
s. 31—
Superannuation,
accrued leave
rights, etc.

6. Section 31 of the principal Act is amended by striking out from paragraph (b) of subsection (1) the word "full-time".

Amendment of
s. 38—
By-laws.

7. Section 38 of the principal Act is amended by striking out from paragraph (g) of subsection (1) the passage "provide or regulate" and substituting the passage "prohibit or regulate".

Amendment of
s. 39—
Fixing of fees.

8. Section 39 of the principal Act is amended by striking out from subsection (1) the passage "incorporated hospital" and substituting the passage "recognized hospital".

Amendment of
s. 52—
Superannuation,
accrued leave
rights, etc.

9. Section 52 of the principal Act is amended by striking out from paragraph (b) of subsection (1) the word "full-time".

Insertion of new
Part IVA.

10. The following Part is inserted after Part IV of the principal Act:

PART IVA

PRIVATE HOSPITALS

Prohibition of
operating private
hospitals unless
licensed.

57b. (1) No health services shall 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 shall be guilty of an offence and liable to a penalty not exceeding five thousand dollars.

(3) This section does not apply in relation to premises licensed as a nursing home or rest home under the Health Act, 1935.

Application for
licence.

57c. (1) A person may apply to the Commission for a licence under this Part.

(2) An application for a licence must—

(a) be made in the prescribed manner and form;

(b) contain the prescribed information;

and

(c) be accompanied by the prescribed application fee.

Grant of licences.

57d. (1) Subject to this section, where application is made under this Part for a licence in respect of premises or premises as proposed, the Commission shall determine whether a licence should be granted having regard to—

- (a) the suitability of the applicant to be granted the licence;
 - (b) the standards of construction, facilities and equipment of the premises or premises as proposed;
 - (c) the scope and quality of the health services proposed to be provided in pursuance of the licence;
 - (d) the location of the premises or premises as proposed and their proximity to other facilities for the provision of health services;
 - (e) the adequacy of existing facilities for the provision of health services to persons in the locality;
 - (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;
 - (g) the requirements of economy and efficiency in the provision of health services within the State;
- and
- (h) any other relevant matter.

(2) Where the Commission determines under this section that the licence should be granted and, in the case of an application in respect of premises as proposed, subsequently is satisfied that the premises have been established substantially in accordance with proposals approved by the Commission, the Commission shall, upon payment of the prescribed fee, grant the licence to the applicant.

(3) Notwithstanding the other provisions of this section, where premises are licensed under the Health Act, 1935, as a private hospital, the Commission shall, upon application under this Part by the holder of the licence, grant the applicant a licence under this Part in respect of those premises.

57e. (1) A licence under this Part shall be subject to such conditions as the Commission may specify by notice in writing given to the holder of the licence.

Conditions of
licences.

(2) Without limiting the matters with respect to which conditions may be imposed, the Commission may impose conditions in respect of a licence under this Part—

- (a) limiting the kinds of health services that may be provided pursuant to the licence;
- (b) limiting the number of patients to whom health services may be provided on a live-in basis at any one time pursuant to the licence;
- (c) preventing the alteration or extension of the premises without the approval of the Commission;
- (d) preventing the installation or use of facilities or equipment of a specified kind either absolutely or without the approval of the Commission;
- (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 Commission may, by notice in writing given to the holder of a licence, vary or revoke a condition of the licence or impose a further such condition.

(4) Where the Commission imposes a further condition under subsection (3), the condition shall not take effect until the expiration of the period of thirty days after service of the notice imposing the condition.

Offence for licence holder to contravene Act or licence condition.

57f. The holder of a licence under this Part shall not contravene, or fail to comply with, a provision of this Act or a condition of the licence.

Penalty: Five thousand dollars.

Duration of licences.

57g. (1) A licence shall, subject to this Part, remain 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 shall, not later than the prescribed day in each year—

(a) pay to the Commission the prescribed annual licence fee; and

(b) lodge with the Commission an annual return containing the prescribed information.

(3) Where the holder of a licence fails to pay the annual licence fee or lodge the annual return in accordance with subsection (2), the Commission may, by notice in writing, require him to make good his default.

(4) Where the holder of a licence fails to comply with a notice under subsection (3) within fourteen days after service of the notice, his licence shall, by force of this subsection, be suspended until he complies with the notice.

(5) Where a licence has been suspended by virtue of subsection (4) for a continuous period of six months, the licence shall, by force of this subsection, be cancelled.

Transfer of licences.

57h. (1) An application may be made to the Commission for the transfer of a licence under this Part.

(2) An application for the transfer of a licence must—

(a) be made in the prescribed manner and form;

(b) contain the prescribed information;

and

(c) be accompanied by the prescribed application fee.

(3) An applicant must furnish the Commission with such further information as the Commission may require to determine the application.

(4) The Commission shall, upon application under this section and payment of the prescribed fee, transfer the licence to the proposed transferee if the Commission is satisfied as to the suitability of the person to hold a licence under this Part.

57i. (1) The holder of a licence under this Part may at any time surrender the licence, and the licence shall thereupon cease to be of any force or effect.

Surrender,
suspension and
cancellation of
licences.

(2) The Commission may, after giving thirty days notice in writing to the holder of a licence to show cause why the licence should not be suspended or cancelled, suspend the licence or cancel the licence, if it 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) Where the Commission suspends a licence under subsection (2), it may order that the suspension be for a specified period or until the fulfilment of stipulated conditions or until further order.

(4) Where the Commission cancels a licence under subsection (2), it 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) Where a condition is imposed in relation to a licence under subsection (4), the holder of the licence shall not contravene, or fail to comply with, the condition.

Penalty: Five thousand dollars.

(6) A licence—

(a) that is suspended under subsection (2) shall cease to be of force or effect for the period of the suspension;

or

(b) that is cancelled under that subsection shall cease to be of any force or effect.

57j. (1) A right of appeal to the Supreme Court shall lie against any decision or order of the Commission under this Part.

Appeal against
decision or order
of Commission.

(2) The appeal must be instituted within one month of the making of the decision or order appealed against, but the Supreme Court may, if it is satisfied that it is just and reasonable in the circumstances to do so, dispense with the requirement that the appeal should be so instituted.

(3) The Supreme Court may, on the hearing of the appeal, do one or more of the following, according to the nature of the case:

- (a) affirm, vary or quash the decision or order appealed against, or substitute, or make in addition, any decision or order that should have been made in the first instance;
- (b) remit the subject matter of the appeal to the Commission for further consideration;
- (c) make any further or other order as to costs or any other matter that the case requires.

(4) The Commission shall, if so required by any person affected by a decision or order made by it, state in writing the reasons for its decision or order.

(5) If the reasons of the Commission are not given in writing at the time of making a decision or order and the appellant then requested the Commission to state its reasons in writing, the time for instituting the appeal shall run from the time when the appellant receives the written statement of those reasons.

(6) Where the Commission or the Supreme Court is satisfied that an appeal against an order of the Commission has been instituted, or is intended, the Commission or the Supreme Court may suspend the operation of the order until the determination of the appeal.

(7) Where the Commission has suspended the operation of an order under subsection (6) of this section, the Commission may terminate the suspension and, where the Supreme Court has done so, the Supreme Court may terminate the suspension.

Inspectors.

57k. (1) The Commission 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 he may—

- (a) inspect the premises or any equipment or other thing on the premises;
- (b) require any person to produce any documents or records; and
- (c) examine any documents or records and take extracts from any of them or make copies of any of them.

(3) A person shall not refuse or fail to comply with a requirement made of him pursuant to this section.

Penalty: Five hundred dollars.

(4) A person shall not hinder or obstruct an inspector in the exercise by the inspector of the powers conferred by this section.

Penalty: Five hundred dollars.

Insertion of new
ss. 64a, 64b and
64c.

11. The following sections are inserted after section 64 of the principal Act:

64a. A notice or document required or authorized to be given or served under this Act may be given or served personally or by post. Service of notices.

64b. Where a body corporate is guilty of an offence against this Act, every member of the governing body of the body corporate shall be guilty of an offence and liable to the same penalty as is prescribed for the principal offence unless he proves that he could not by the exercise of reasonable diligence have prevented the commission of that offence. Offences by bodies corporate.

64c. In any proceedings for an offence against this Act, an allegation in the complaint— Evidentiary provision.

(a) that a specified person was or was not the holder of a licence under Part IVA at a specified time;

or

(b) that a specified provision was at a specified time a condition imposed in relation to a licence under Part IVA held by a specified person,

shall, in the absence of proof to the contrary, be deemed to be proved.

12. Section 66 of the principal Act is amended by inserting after paragraph (g) of subsection (2) the following paragraphs: Amendment of s. 66— Regulations.

(ga) prescribe standards of construction, facilities and equipment for the premises of private hospitals;

(gb) prescribe standards to be observed by private hospitals in the provision of health services;

(gc) prescribe the records to be kept by private hospitals;

(gd) provide for an exemption by the Commission (which may be conditional or unconditional) from any provision of this Act relating to private hospitals;

13. The Health Act, 1935, is amended— Amendment of the Health Act, 1935.

(a) by striking out section 146;

and

(b) by striking out paragraph (f1) of subsection (1) of section 147.

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

D. B. DUNSTAN, Governor