



Health Care Act 2008

The Legal Framework
Duties, Responsibilities and
Accountabilities

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Introduction

The *Health Care Act 2008* (the HC Act) came into full effect on 1 July 2008. The HC Act creates a unified health system for South Australia and replaces the:

- *South Australian Health Commission Act 1976* (the SAHC Act)
- *Ambulance Services Act 1992*; and
- *Hospitals Act 1934*.

Objects of the HC Act¹

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
- c) to facilitate a scheme for health services to meet recognised standards.

Principles²

The following principles are to be applied in connection with the operation and administration of the HC 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
 - 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

¹ Section 4 of the HC Act.

² Section 5 of the HC Act.

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

Broad Governance Arrangements

The Minister

The HC Act sets out a number of functions of the Minister for Health with respect to the public health system.³ The HC Act makes it explicit that the Minister has the power to do anything necessary, expedient or incidental to performing the functions under the HC Act, administering the HC Act or furthering the objects of the HC Act. This includes the power to issue directions. The Minister is not however able to give a direction concerning the clinical treatment of a particular person.⁴ Section 8 of the HC Act enables the Minister to delegate a function or power conferred on him under the Act.

The Chief Executive

The powers and functions of the Chief Executive of the Department of Health (DH) under the HC Act include assisting the Minister in connection with the administration of the HC Act and to exercise statutory powers under the Act. Importantly, the HC Act also makes the Chief Executive DH responsible to the Minister for the overall management, administration and provision of health services within SA Health, to assume direct responsibility for the administration of incorporated hospitals and to ensure that the Department undertakes a leadership role in the administration of health services.⁵

The HC Act better enables the Chief Executive DH to fulfil his or her responsibilities under the HC Act by creating a more centralised governance process. Chief executive officers of hospitals incorporated under the Act and the chief executive officer of the SA Ambulance Service (SAAS) are appointed by the Chief Executive DH and are subject to the control and direction of the Chief Executive DH.

The incorporated hospitals and SAAS are public sector agencies for the purposes of the *Public Sector Management Act 1995* ("the PSM Act") and therefore must aim to:-

- manage all resources, effectively, prudently and in a fully accountable manner;
- continuously improve their performance in delivering services;
- provide responsive, effective and efficient services to the community and the Government.

Governance under the HC Act in more detail

Hospitals⁶

Incorporated hospitals may be established by the Governor by proclamation under section 29 of the HC Act.

The transitional provisions set out in Part 20 of Schedule 4 to the HC Act provide a mechanism for hospitals formerly incorporated under the SAHC Act to continue as incorporated hospitals under the HC Act. In general terms, any hospital incorporated under the SAHC Act continues as an incorporated hospital under the HC Act unless a proclamation issued by the Governor says otherwise.

³ Section 6 of the HC Act.

⁴ Section 6(3) of the HC Act.

⁵ Section 7 of the HC Act.

⁶ Part 5 of the HC Act.

Continued Hospitals

By proclamation dated 26 June 2008⁷, the following hospitals were continued as hospitals under the HC Act:

- Central Northern Adelaide Health Service Incorporated, comprising the sites or services listed in Attachment 1
- Children, Youth and Women's Health Service Incorporated, comprising the sites or services listed in Attachment 1
- Southern Adelaide Health Service Incorporated, comprising the sites or services listed in Attachment 1

A New Hospital

By the same proclamation dated 26 June 2008 Country Health SA Hospital Incorporated was established as a new hospital. It comprises those hospitals and health centres formerly incorporated under the SAHC Act that were dissolved by the HC Act, namely:

- Balaklava and Riverton Districts Health Service
- Barossa Area Health Services
- Bordertown Memorial Hospital
- Burra Clare Snowtown Health Service
- Ceduna District Health Services
- Ceduna Koonibba Aboriginal Health Service
- Coober Pedy Hospital And Health Services
- Eastern Eyre Health And Aged Care
- Eudunda & Kapunda Health Service
- Gawler Health Service
- Hawker Memorial Hospital
- Kangaroo Island Health Service
- Kingston Soliders' Memorial Hospital
- Leigh Creek Health Services
- Lower Eyre Health Services
- Loxton Hospital Complex
- Mallee Health Service
- The Mannum District Hospital
- Meningie and Districts Memorial Hospital And Health Services
- Mid North Health
- Mid-West Health
- Millicent and District Hospital And Health Services
- Mount Barker District Soldiers' Memorial Hospital
- Mount Gambier And Districts Health Service
- The Murray Bridge Soldiers' Memorial Hospital
- Naracoorte Health Service
- Northern Adelaide Hills Health Service
- Northern Yorke Peninsula Health Service
- Penola War Memorial Hospital
- Pika Wiya Health Service
- Port Augusta Hospital And Regional Health Services
- Port Broughton District Hospital And Health Services
- Port Lincoln Health Services
- Port Pirie regional Health service
- Quorn Health Services
- Renmark Paringa District Hospital
- Riverland Regional Health Service
- South Coast District Hospital
- Southern Flinders Health
- Strathalbyn & District Health Service

⁷ Gazette, 26 June 2008, page 2566.

- Tailem Bend District Hospital
- Waikerie Health Services
- The Whyalla Hospital And Health Services
- Yorke Peninsula Health Service

Administration of hospitals under the Act

Formerly the administration of South Australian hospitals was governed by the provisions of the SAHC Act. Under these arrangements incorporated hospitals were administered by a board of directors. Under the HC Act, all of these boards have been dissolved.⁸ Instead, the Chief Executive DH has direct responsibility and accountability for managing South Australia's public health system.⁹

The Chief Executive DH is responsible for the administration of hospitals and may appoint a chief executive officer of each incorporated hospital, who reports directly to the Chief Executive DH and is subject to the direction and control of the Chief Executive DH, except in relation to clinical treatment of a particular patient.

If the Chief Executive DH appoints a person as the chief executive officer of an incorporated hospital, this appointment can be revoked any time and does not prevent the Chief Executive DH from acting personally in any matter.¹⁰

Anything done, or a decision made, by the Chief Executive DH or a person appointed as the chief executive officer of an incorporated hospital is an act or decision of the incorporated hospital.¹¹ For example, the chief executive officer has the legal capacity to negotiate and execute legal documents as the hospital.¹²

Incorporated hospitals are bodies corporate with a separate legal identity capable of holding property and of suing and being sued.¹³ At the same time, the HC Act makes it clear that they are instrumentalities of the Crown,¹⁴ hold their property for and on behalf of the Crown¹⁵ and are subject to direction by the Minister for Health.¹⁶

Incorporated hospitals have the ability to operate various sites and provide a range of services and facilities.¹⁷ They must keep accounts which are to be audited by the Auditor-General and must do an annual report to the Minister for Health who will table that report in Parliament. An incorporated hospital may delegate a power or function to a body or person occupying a position.¹⁸

An incorporated hospital is a:

- 'public sector agency' for the purposes of the *Public Sector Management Act 1995* (the PSM Act),
- 'public authority' under the *Public Finance and Audit Act 1987*, and
- 'public authority' under the *State Procurement Act 2004*.

Incorporated Hospitals – Employed Staff¹⁹

An incorporated hospital does not have the power to employ any person unless specifically authorised by the Minister.²⁰ As was the arrangement under the SAHC Act, after 1 April 2007, staff working at

⁸ Part 20, clause 34(3) of Schedule 4 to the HC Act.

⁹ Section 7 of the HC Act.

¹⁰ Section 33 of the HC Act.

¹¹ Section 33(5) of the HC Act.

¹² Subject of course to various legislative and policy requirements for approval e.g. under Treasurer's Instructions issued pursuant to the *Public Finance and Audit Act 1987*,

¹³ Section 31(1) of the HC Act.

¹⁴ Section 31(3) of the HC Act.

¹⁵ Section 31(4) of the HC Act.

¹⁶ Section 6 of the HC Act.

¹⁷ Sections 38 and 39 of the HC Act.

¹⁸ Section 41 of the HC Act.

¹⁹ Section 34 of the HC Act.

²⁰ Section 34(11) of the HC Act.

incorporated hospitals continue to be employed by the employing authority (the Chief Executive DH or any person designated by the Governor to be the employing authority) on behalf of the Crown. Powers and functions of the employing authority may be delegated. A person so employed 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 PSM Act. Terms and conditions of employment of the staff will be determined by the employing authority and approved by the Commissioner for Public Employment.

An employing authority may direct a person employed to work at a hospital to perform functions in connection with the operations or activities of another incorporated hospital or any other public sector agency.²¹ The definition of 'public sector agency' in the PSM Act means that a person working at an incorporated hospital could be directed to work in any other public hospital, the Department of Health or SAAS. Any person who is so directed is required to comply.

By-laws

The transitional provisions in the HC Act make it clear that a by-law made by the board of a hospital formerly incorporated under the SAHC Act immediately before the commencement of the HC Act continues to have effect as a by-law under the HC Act.

Delegations

The HC Act confers a number of powers on the Minister for Health and the Chief Executive DH. Some of the Minister's powers have been delegated to the Chief Executive DH.

The Chief Executive DH in turn has delegated his powers as employing authority of all SA Health staff (save pathology staff, whose employing authority is the CEO of CNAHS) to the chief executive officers of the hospitals and the chief executive officer of SAAS in relation to their respective staff members.

The Chief Executive DH is made responsible by the HC Act for the administration of an incorporated hospital. It is not necessary for the Chief Executive DH to delegate standard operational powers to the chief executive officers of the hospitals. Section 33(5) of the HC Act states that an act of the chief executive officer of a hospital in the administration of the hospital is an act of the hospital. Therefore, the chief executive officer of a hospital can exercise the powers and have the capacity conferred on the hospital by section 31. Examples are the ability to enter into contracts, to hold & deal with property & assets and to hold a licence.

Health Performance Council²²

The Health Performance Council (the HPC) is a body established under section 9 of the HC Act to provide high-level advice to the Minister on the performance of the health system, health outcomes for South Australians and specific population groups and the effectiveness of community and individual engagement.

There may be up to 15 members of the HPC appointed by the Governor on the recommendation of the Minister. The HPC is not a body corporate and is not a public sector agency. However the HPC is an 'advisory body' for the purpose of the PSM Act. This means that the members of the HPC are required to comply with the various duties set out in Division 4 of the PSM Act. These include the duty of advisory body members to act honestly and to comply with the requirements of the Act regarding the management of conflicts of interest.

Schedule 1 to the HC Act contains provisions relating to membership, procedures and the establishment of committees and subcommittees of the HPC.

The functions of the HPC are set out in section 11 of the HC Act and include providing advice to the Minister on the operation of the health system, reporting to the Minister in accordance with the HC Act and advising the Minister on matters referred to it by the Minister. The HPC cannot give directions to the Chief Executive DH, the department, a hospital or a Health Advisory Council.²³

²¹ Section 34(4) of the HC Act.

²² Part 3 of the HC Act.

²³ Section 11(6) of the Act.

The HPC must provide four yearly reports for tabling in Parliament by the Minister, which assess the health of South Australians and changes in health outcomes over the reporting period²⁴, as well as annual reports on the operations of the HPC during the financial year.²⁵ After the third year anniversary of the commencement of the HC Act, the HPC is also required to review the operations of the HACs established in relation to any incorporated hospitals established to provide services in country areas of the State and report to the Minister.²⁶

Health Advisory Councils²⁷

The Minister may, by notice in the Gazette, establish Health Advisory Councils (HACs) under section 15 of the HC Act, to undertake an advocacy role on behalf of the community, to provide advice and to perform other functions, as determined under the Act, in relation to the Minister, the Chief Executive DH, an incorporated hospital, SAAS or any other body involved in the delivery of health services in connection with the HC Act.

The functions of a HAC may include 1 or more of the matters listed in section 18 of the HC Act. Schedule 2 to the HC Act contains provisions relating to membership, procedures and the establishment of committees and subcommittees of HACs. HACs must submit a report to the Minister on the operations of the HAC for each financial year. This report is required to be tabled in Parliament²⁸.

A HAC is an instrumentality of the Crown²⁹ and therefore falls within the definition of a 'public sector agency' for the purposes of the PSM Act.

HACs may be incorporated or unincorporated bodies depending upon whether they need the ability to hold and manage assets. HACs may make use of the staff, services or facilities of the Department of Health or another public sector instrumentality³⁰.

Incorporated HACs

Incorporated HACs have a constitution determined by the Minister to address the appointment of members to the HAC and the functions of a HAC³¹. Incorporated HACs have the capacity to hold assets. This capacity may be limited by the provisions of tax legislation and rulings of the Commissioner for Taxation (Cth).³²

Incorporated HACs must, with respect to the entity in relation to which they are established (in the case of HACs in country SA this is Country Health SA Hospital Incorporated):-

- Support and foster the activities and objects of the entity; and
- Subject to the HC Act, hold its assets for the benefit, purpose and use of the entity on terms and conditions determined or approved by the Minister.³³

The Minister has determined a set of terms and conditions under the HC Act with which incorporated HACs are required to comply. A copy of these terms and conditions has been provided to each incorporated HAC.

Incorporated HACs are required to keep proper accounts and financial statements which must be audited at least once a year by an auditor approved by the Auditor-General.³⁴ Incorporated HACs must include the audited accounts and financial statements of the HAC for the financial year in their annual report to the Minister.

²⁴ Section 13 of the HC Act.

²⁵ Section 12 of the HC Act.

²⁶ Section 101 of the HC Act.

²⁷ Part 4 of the HC Act.

²⁸ Section 22 of the HC Act.

²⁹ Section 16(3) of the HC Act.

³⁰ Section 23 of the HC Act.

³¹ Section 17(1) of the Act.

³² Presently gifts and bequests of Incorporated HACs are held by Country Health SA Hospital Incorporated on behalf of the Incorporated HACs until negotiations with ATO relating to the deductible gift recipient status of Incorporated HACs are resolved.

³³ Section 18(3) of the HC Act.

³⁴ Section 21 of the HC Act.

Members of incorporated HACs are 'corporate agency members' for the purposes of the PSM Act and are bound therefore by the duties outlined in Part 2, Division 3 of the PSM Act. Duties of corporate agency members include:

- Duty to exercise care and diligence
- Duty to act honestly
- Duty not to be involved in unauthorised transactions with agency or subsidiary
- Duty not to have unauthorised interest in agency or subsidiary
- Duties with respect to conflict of interest.

Section 6H of the PSM Act imposes a duty on each member of an incorporated HAC to take certain steps when he or she has a direct or indirect personal or pecuniary interest in a matter, or when an associate of the member has an interest in the matter. Those steps include:

- as soon as reasonably practicable, disclose in writing to the HAC full and accurate details of the interest;
- not take part in any discussion by the HAC in relation to the matter;
- not vote in relation to the matter;
- leave the meeting room when any such discussion or voting is taking place.

The disclosure must also be recorded in the minutes of the meeting and be communicated to the Minister. There is no scope in section 6H for a HAC to determine that a conflict declared by a member is immaterial or to resolve that a member can remain in a meeting.

Unincorporated HACs

Unincorporated HACs have a set of rules determined by the Minister to address the appointment of members to a HAC and the functions of a HAC³⁵. Unincorporated HACs do not have the capacity to hold assets.

Members of unincorporated HACs are 'advisory body members' for the purposes of the PSM Act and are therefore bound by the duties outlined in Part 2 Division 4 of the PSM Act. Duties of advisory body members include:

- Duty to act honestly
- Duties with respect to conflict of interest.

Section 6L of the PSM Act sets out a duty of each member of an unincorporated HAC to take certain steps when he or she has a direct or indirect personal or pecuniary interest in a matter, or when an associate of the member has an interest in the matter. Those steps include:

- as soon as reasonably practicable, disclose in writing to the HAC full and accurate details of the interest;
- not take part in any discussion by the HAC in relation to the matter;
- not vote in relation to the matter;
- leave the meeting room when any such discussion or voting is taking place.

There is no scope in section 6L for an unincorporated HAC to determine that a conflict declared by a member is immaterial or to resolve that a member can remain in a meeting.

SA Ambulance Service³⁶

SA Ambulance Service Inc (SAAS) continues in existence as the same body corporate but is constituted under the Act³⁷ rather than under the *Associations Incorporation Act 1985*. The HC Act specifically provides that SAAS is an 'agency of the Crown' and therefore is a 'public sector agency' for the purposes of the PSM Act.

Section 51 of the HC Act sets out the functions and powers of SAAS. The functions of SAAS are to:-

- provide ambulance services in accordance with the HC Act (making use of the services of both volunteer staff and employed staff); and

³⁵ Section 17(3) of the HC Act.

³⁶ Part 6, Division 1 of the HC Act.

³⁷ Section 49 of the HC Act.

- carry out any other functions assigned or conferred to SAAS by or under the HC Act or any other Act.

SAAS may exercise powers or functions inside or outside of the State.

SAAS will remain the provider of emergency ambulance services across South Australia. The Minister is able to issue exemptions for other relevant providers to provide emergency ambulance services and regulations may prescribe circumstances or a person/class of persons who may provide emergency ambulance services³⁸.

SAAS will have a constitution determined by the Minister. The Chief Executive DH will be responsible for the administration of SAAS and may appoint a person as the chief executive officer of SAAS. An act or decision of the Chief Executive DH or person appointed as the chief executive officer of SAAS is an act or decision of SAAS³⁹. Even if the Chief Executive, DH appoints a person as the chief executive officer of SAAS, this appointment can be revoked any time and does not prevent the Chief Executive DH from acting personally in any matter.

The staff of SAAS is constituted by persons employed under the HC Act to perform functions in connection with the operations or activities of SAAS, as well as volunteers appointed by SAAS. SAAS does not have the power to employ any person unless specifically authorised by the Minister.⁴⁰ The employing authority (the Chief Executive DH or any person designated by the Governor to be the employing authority) may employ persons to perform functions in connection with the operation or activities of SAAS, who will be staff members of SAAS. A person so employed 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 PSM Act. Terms and conditions of employment of the staff will be determined by the employing authority and approved by the Commissioner for Public Employment.

Section 52(3) of the HC Act provides that the employing authority may direct a person employed under the section to perform functions in connection with the operation or activities of an incorporated hospital or any other public sector agency specified by the employing authority. Any person so directed is required to comply.

Quality Improvement and Research⁴¹

Section 63(2) of the Act states that:

The purpose of this part⁴² 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-

- where the purpose of any such activity is wholly or predominantly to improve the quality and safety of health services; and
- 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.

Part 7 gives the Minister power to declare, by notice in the Gazette, an activity to be an authorised quality improvement activity or an authorised research activity⁴³. Section 65 of the Act allows information, including confidential information, to be disclosed for the purposes of an authorised activity without breaching any law or principle of professional ethics. Part 7 also protects the information gained as a result of or in connection with an authorised activity⁴⁴.

³⁸ Section 57 HC Act.

³⁹ Section 50(5) of the HC Act.

⁴⁰ Section 52(11) of the HC Act.

⁴¹ Part 7 of the HC Act.

⁴² Part 7 of the Act.

⁴³ Section 64 of the HC Act.

⁴⁴ Section 66 of the HC Act.

Authorisations under section 64D of the SAHC Act in force immediately before the commencement of the HC Act are continued as if they were authorisations under Part 7 of the HC Act⁴⁵.

Analysis of adverse incidents⁴⁶

An 'adverse incident' is defined in section 68 of the Act as 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 DH by notice in the Gazette.⁴⁷

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 Part 8 of the HC Act⁴⁸. Information, including confidential information, may be disclosed to an RCA team without the breach of any law or principle of professional ethics⁴⁹.

Provision is made in section 72 of the Act for two reports to be prepared by an RCA team, one that may be released publicly and one that may only be released to certain persons in accordance with section 72(3) of the Act. Information disclosed to or in connection with the activities of an RCA team and documents brought in to existence for the purposes of the activities of an RCA team are protected in accordance with section 73.

Testamentary gifts and trusts⁵⁰

Part 9 of the HC Act provides a mechanism to ensure that testamentary gifts and trusts do not fail in the event that an entity to which a testamentary disposition has been made or for whose benefit a trust has been created, is dissolved⁵¹.

Testamentary Disposition made for benefit of a particular entity

For practical purposes this aims to provide, for example, that if a person dies (either before or after the commencement of the HC Act) and leaves a piece of land to a hospital or health centre previously incorporated as a hospital under the SAHC Act the trust will not fail. The effect of Part 9 of the HC Act is that the testamentary disposition will be taken to have been made in favour of one of two entities:-

1. The relevant incorporated hospital (which in the case of country SA would be Country Health SA Hospital Incorporated); or
2. An incorporated HAC, as long as the constitution of that HAC provides that the HAC is to assume the benefit of any testamentary disposition in substitution for a hospital named in the constitution. [In the case of all of the incorporated HACs in country SA, each constitution provides that the relevant HAC will assume the benefit of any testamentary disposition in substitution for Country Health SA Hospital Incorporated.]

Testamentary Disposition made for the benefit of the patients or residents of a prescribed entity

If a testamentary disposition is made for the benefit of patients or residents of an entity which no longer exists, for example the patients or residents of a hospital formerly incorporated under the SAHC Act the trust will not fail. This is so even though the formerly incorporated hospital no longer exists as a separate legal entity. The effect of Part 9 of the HC Act is that the testamentary disposition will be taken to have been made in favour of the patients of the Country Health SA Hospital Incorporated. This is because under the new governance arrangements, the functions of the former incorporated hospital have been transferred to Country Health SA Hospital Incorporated.

⁴⁵ Clause 38, Schedule 4 to the HC Act.

⁴⁶ Part 8 of the HC Act.

⁴⁷ See SA Government Gazette dated 26/06/08, p2476.

⁴⁸ Section 69 of the HC Act.

⁴⁹ Section 71 of the HC Act.

⁵⁰ Part 9 of the HC Act.

⁵¹ Section 78 of the HC Act.

Part 9 of the HC Act also ensures that testamentary dispositions and trusts are administered for purpose for which they were provided, as far as that is reasonably practicable.

Private Hospitals⁵²

Part 10 of the HC Act provides for private hospital licensing. The HC Act does not alter the practices for private hospital licensing that existed under the SAHC Act.

Confidentiality and Disclosure of Information

Section 93 of the HC Act deals with confidentiality and disclosure of information. The section applies to:-

1. an officer or employee of the Department of Health engaged in the administration of the Act;
2. a person employed by an employing authority under the Act;
3. a member of the staff of SAAS;
4. a person otherwise engaged to work at an incorporated hospital or in connection with the activities of SAAS.

A person engaged or formerly engaged in connection with the operation of the HC Act must not disclose personal information relating to a person that has been obtained while so engaged except to the extent that the person may be authorised or required to disclose that information:-

1. By the Chief Executive of DH or his or her employer; or
2. If the information is obtained while a person is working in an incorporated hospital or in connection with the activities of SAAS, then by the hospital or SAAS.

'**personal information**' is defined in the HC Act to mean, 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.⁵³

The HC Act makes it clear that section 93(2) does not prevent the disclosure of information in specified circumstances. These circumstances include⁵⁴:-

1. disclosing information as required by law, or as required for the administration of the HC Act or a law of another State or Territory of the Commonwealth; or
2. disclosing information at the request, or with the consent, of the person to whom the information relates or a guardian or medical agent of the person; or disclosing information to a relative, carer or friend of the person to whom the information relates if:-
 - a. the disclosure is reasonably required for the treatment, care or rehabilitation of the person; and
 - b. there is no reason to believe that the disclosure would be contrary to the person's best interests; or
 - c. disclosing the 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.

These exceptions do not apply if the person to whom the information relates has given a direction that the information not be disclosed⁵⁵, unless that person is subject to an order under the *Mental Health Act 1993*.

A breach of section 93(2) is a criminal offence. The maximum penalty is \$10,000. If a body corporate, for example, an incorporated hospital or SAAS, is guilty of an offence against the HC Act, every person who is a member of the governing body of the body corporate is guilty of an offence and liable to the same penalty as is prescribed for the principal offence unless the person establishes the general defence under the HC Act.

⁵² Part 10 of the HC Act.

⁵³ Section 93(6) of the HC Act.

⁵⁴ Section 93(3) of the HC Act.

⁵⁵ Section 93(4) of the HC Act.

ATTACHMENT 1

Sites/Services of incorporated hospitals

Central Northern Adelaide Health Service Incorporated:

- BreastScreen SA
- Glenside Hospital
- Lyell McEwin Hospital
- Modbury Hospital
- Primary Health Care Services – East
- Primary Health Care Services – North
- Primary Health Care Services – West
- Royal Adelaide Hospital
- St Margaret's Rehabilitation Hospital
- South Australian Dental Service
- The Queen Elizabeth Hospital
- SA Pathology¹

Children, Youth and Women's Health Service Incorporated:

- Child and Youth Health
- Women's and Children's Hospital

Southern Adelaide Health Service Incorporated:

- Drug & Alcohol Services South Australia
- Flinders Medical Centre
- Noarlunga Health Services
- Repatriation General Hospital²

¹ SA Pathology is a site of CNAHS and comprises three government laboratory services – the IMVS, SouthPath, and the Women's and Children's Hospital Division of Laboratory Medicine. Although it is part of SA Pathology, the business name 'IMVS' has been retained given the well-known status of the brand.

² The Repatriation General Hospital is no longer a separately incorporated hospital in its own right but rather now is a site of Southern Adelaide Health Service Inc.