

NURSING HOMES BILL 1988

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

This Bill is cognate with the Private Hospitals and Day Procedure Centres Bill 1988.

The object of this Bill is to provide for the licensing and control of nursing homes which is presently dealt with in the Private Health Establishments Act 1982. That Act is to be repealed by the proposed Private Hospitals and Day Procedure Centres Act 1988.

Significant features of the Bill include—

- (a) provision for the Secretary of the Department of Health to approve in principle proposals for new nursing homes;
- (b) revised criteria for determining whether licences should be granted (including the removal of restrictions related to the location of a proposed nursing home and the adequacy of existing facilities);
- (c) restriction of licensing standards for nursing homes to standards which deal with matters affecting the safety, care or quality of life of residents;
- (d) removal of provisions which expressly enable the Secretary to control the types of services and the facilities that are to be provided at nursing homes; and
- (e) provision for applications to the Minister for review of decisions of the Secretary under the proposed Act to be referred to a Committee of Review for advice.

PART 1—PRELIMINARY

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 defines certain terms for the purposes of the proposed Act.

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PART 2—LICENSING OF NURSING HOMES**Division 1—Licensing standards**

Clause 4 enables licensing standards to be prescribed by regulation with respect to any matter relating to the safety, care or quality of life of residents at nursing homes.

Division 2—Applications for and issue of licences

Clause 5 enables a person who proposes to conduct a new nursing home to apply to the Secretary of the Department of Health for a licence for that nursing home. An applicant must provide with the application such documents or other information relating to the proposed nursing home as are required by the prescribed application form.

Clause 6 requires the Secretary to either approve the application for a licence in principle or refuse the application. The Secretary may, when granting approval in principle, impose conditions, including conditions relating to the construction and design of the proposed nursing home and submission to the Secretary of a development timetable. Clause 6 also provides that the Secretary may refuse an application for a licence—

- if an applicant is not a fit and proper person to be a licensee; or
- if the Secretary is satisfied that the nursing home is not capable of being conducted in accordance with relevant licensing standards.

Clause 7 provides that an approval of an application in principle is effective for a period of 1 year, but authorises the Secretary to extend the approval for further periods of up to 1 year.

Clause 8 provides for the Secretary to grant an application for a licence which the Secretary has approved in principle after the construction or alteration of any building to which the application relates has been completed. The Secretary may refuse an application at this stage only if the approval in principle has expired, any construction or alteration has not been carried out in accordance with that approval or a condition of the approval has not been complied with.

Clause 9 enables the Secretary to issue a temporary licence.

Division 3—Provisions relating to licences

Clause 10 provides for the regulations to prescribe classes of nursing homes.

Clause 11 requires a licence to specify (among other matters) the class or classes of nursing homes in respect of which the licence is issued and the maximum number of residents who may be accommodated overnight at the nursing home at any one time (which is determined by the Secretary).

Clause 12 authorises the Secretary to impose conditions on licences.

Clause 13 provides that a licence (other than a temporary licence) remains in force until cancelled.

Clause 14 requires the licensee of a nursing home to pay an annual licence fee.

Clause 15 empowers the Secretary to transfer a licence for a nursing home to a person who intends to conduct the nursing home.

Clause 16 makes it an offence to alter or extend a nursing home without the approval of the Secretary.

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Clause 17 empowers the Secretary to require repairs, maintenance, alterations, extensions or improvements to be made to a nursing home. The maximum penalty for a failure to comply with a requirement of the Secretary is \$2,000.

Clause 18 authorises the Secretary to amend a licence for a nursing home either on the written application of a licensee or if the Secretary considers it necessary.

Division 4—General provisions relating to applications for licences etc.

Clause 19 authorises the Secretary to require a person who makes an application under the proposed Act to provide the Secretary with additional information necessary to determine the application.

Clause 20 requires the Secretary, when refusing an application under the proposed Act, to give written reasons for the refusal.

Clause 21 requires the Secretary to publicly advertise certain applications under the proposed Act before determining them.

Clause 22 allows an applicant to amend an application under the proposed Act with the Secretary's approval.

Division 5—Review of decisions of Secretary

Clause 23 defines "decision of the Secretary" for the purposes of the proposed Division. The term includes a decision of the Secretary to refuse an application under the proposed Act, a determination of the conditions of a licence or the classes of nursing homes in respect of which a licence is issued, and a decision of the Secretary to require a licensee to carry out repairs or improvements to a nursing home.

Clause 24 provides for the appointment of a Chairperson of Committees of Review by the Minister. (The Chairperson is to be Chairperson of each Committee of Review required to be established by clause 25).

Clause 25 confers on a person adversely affected by a decision of the Secretary a right to apply to the Minister for a review of that decision. On receipt of such an application for review, the Minister must forward it to the Chairperson of Committees of Review who must establish a Committee of Review.

Clause 26 provides that a Committee of Review is to consist of the Chairperson of Committees of Review and 3 other persons appointed by the Chairperson to represent, respectively, the interests of the nursing home industry, the health care professions and consumers.

Clause 27 requires a Committee of Review, after investigating an application for review, to provide a written report to the Minister setting out its recommendation as to whether the Minister should allow the application and the reasons for its recommendation.

Clause 28 provides for the Minister, after considering the report of the Committee of Review, to confirm the Secretary's decision, or to revoke it and, in the case of a decision to refuse an application, direct the Secretary to grant the application concerned. The Secretary is required to give effect to the Minister's direction.

Clause 29 enables the Minister or a Committee of Review to require an applicant for review of a decision of the Secretary to undertake to provide any relevant additional information and to allow access to the licensed nursing home or proposed nursing home.

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Division 6—Cancellation of licences

Clause 30 authorises the Secretary to cancel the licence for a nursing home without holding an inquiry or giving notice to the licensee in the following circumstances:

the licensee requests that the Secretary cancel the licence;

the premises to which the licence relates are no longer being used as a nursing home of a class in respect of which the licence was issued;

the licence is a temporary licence.

Clause 31 authorises the Secretary to cancel the licence for a nursing home in other specified circumstances, but only after giving the licensee notice, reasons for the proposed cancellation and an opportunity to make submissions to the Secretary. The Secretary may appoint a person to hold an inquiry into the matter, before determining whether or not to cancel the licence.

Clause 32 confers on a licensee a right of appeal to the District Court against a decision of the Secretary to cancel the licensee's licence (except under clause 30).

PART 3—CONDUCT OF NURSING HOMES

Clause 33 makes it an offence (the maximum penalty for which is \$10,000) to conduct a nursing home without a licence.

Clause 34 makes transitional arrangements to apply on the death of a licensee.

Clause 35 prohibits a nursing home from being used for any purpose other than a purpose permitted by its licence or a purpose prescribed by the regulations.

Clause 36 makes it an offence for a licensee of a nursing home to allow the number of residents at the nursing home to exceed the maximum number specified in the licence.

Clause 37 requires the appointment in a nursing home of a chief nurse who is responsible for the care of residents. The licensee of the nursing home must notify the Secretary of the name and qualifications of the chief nurse.

Clause 38 makes it an offence for the licensee or an employee of a nursing home to use the title "matron" or "director of nursing" unless the licensee or employee is the chief nurse.

Clause 39 requires a licensee of a nursing home to ensure that a registered nurse is on duty at all times in the nursing home.

Clause 40 prohibits the licensee of a nursing home from using the title "hospital" in relation to the nursing home.

Clause 41 requires the licensee of a nursing home to ensure that a register of residents is kept at the nursing home and that certain particulars are recorded in the register.

Clause 42 requires the licensee of a nursing home to ensure that a copy of the proposed Act and regulations is available at all times to the chief nurse of the nursing home.

PART 4—MISCELLANEOUS

Clause 43 makes it an offence for a medical practitioner to refer a patient to, or provide treatment to a patient at, a nursing home in which he or she has a pecuniary interest without first disclosing that interest to the patient.

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Clause 44 empowers a person authorised by the Secretary to enter and inspect licensed nursing homes or premises proposed to be licensed. An authorised person must produce his or her certificate of authority if requested to do so by the person in charge of the premises concerned.

Clause 45 empowers a person authorised by the Secretary under clause 44 to inspect and take copies of certain records and registers of a nursing home.

Clause 46 makes it an offence to hinder, obstruct or delay persons in the exercise of their functions under the proposed Act.

Clause 47 makes it an offence to make false or misleading statements or provide any false or misleading information in connection with applications or inquiries under the proposed Act.

Clause 48 provides for the issue of certain evidentiary certificates.

Clause 49 prescribes the procedure for the giving or serving of notices or other documents by the Secretary.

Clause 50 provides that in certain circumstances a director of a corporation or a person concerned in the management of the corporation is guilty of an offence if the corporation contravenes a provision of the proposed Act or regulations.

Clause 51 provides for offences under the proposed Act or regulations to be dealt with summarily by a Local Court constituted by a Magistrate sitting alone.

Clause 52 provides for the making of regulations for the general purposes of the proposed Act. A maximum penalty of up to \$500 may be imposed for an offence against the regulations.

Clause 53 is a formal provision that gives effect to Schedule 3 which contains savings and transitional provisions.

SCHEDULE 1—PROVISIONS RELATING TO CHAIRPERSON OF COMMITTEES OF REVIEW

Schedule 1 contains provisions relating to the Chairperson of Committees of Review, dealing with matters such as appointment of a deputy of the Chairperson, vacation of office by the Chairperson and remuneration of the Chairperson.

SCHEDULE 2—PROVISIONS RELATING TO COMMITTEES OF REVIEW

Schedule 2 contains provisions relating to members of a Committee of Review and the procedure of such a Committee.

SCHEDULE 3—SAVINGS AND TRANSITIONAL PROVISIONS

Schedule 3 contains savings and transitional provisions. Part 1 authorises the making of savings and transitional regulations consequent on the enactment of the proposed Act. Part 2 contains provisions consequent on the enactment of the proposed Act, including provisions that save existing licences for nursing homes and pending applications relating to nursing homes under the Private Health Establishments Act 1982.
