

Act No. 120

**DRUG AND ALCOHOL REHABILITATION
ESTABLISHMENTS BILL 1987**

NEW SOUTH WALES



EXPLANATORY NOTE

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

This Bill is cognate with the Drug Offensive Bill 1987.

The objects of this Bill are—

- (a) to provide for the licensing and control of establishments (“residential rehabilitation establishments”) which provide residential accommodation in conjunction with the treatment or rehabilitation of persons suffering from drug or alcohol related problems;
- (b) to provide that the licensing of these establishments is to be the responsibility of the Director of the Drug Offensive;
- (c) to enable standards to be prescribed in respect of the conduct of residential rehabilitation establishments; and
- (d) to make various other provisions relating to the conduct or carrying on of the business or affairs of residential rehabilitation establishments.

PART 1—PRELIMINARY

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act will, with minor exceptions, commence on a day to be appointed by the Governor-in-Council.

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Clause 3 defines certain expressions and contains other interpretative provisions for the purposes of the proposed Act. Important definitions include the following:

“Director”, which means the Director of the Drug Offensive;

“resident”, which means, in relation to a residential rehabilitation establishment, a person who is residing at the establishment for the purpose of undergoing treatment or rehabilitation in connection with a drug or alcohol related problem;

“residential rehabilitation establishment” or “establishment”, which means premises at which residential accommodation for persons suffering from drug or alcohol related problems is provided in conjunction with the treatment or rehabilitation of such persons for those problems (whether the treatment or rehabilitation is provided there or elsewhere) but does not include public hospitals, nursing homes, private hospitals or various other premises;

“treatment”, which includes therapeutic counselling and any other activity or procedure declared by the regulations to be treatment for the purposes of the proposed Act.

Clause 4 provides that a reference in the proposed Act to a drug or alcohol related problem includes a reference to any personal, social, health or economic problem arising from or related to—

- (a) the use of a drug or alcohol;
- (b) the inhalation of any other substance; or
- (c) any other activity that involves physiological dependence and is behaviourally detrimental and that is of a kind prescribed by the regulations.

PART 2—LICENSING OF RESIDENTIAL REHABILITATION ESTABLISHMENTS

Clause 5 authorises standards to be prescribed by the regulations, in relation to the licensing of residential rehabilitation establishments, for or with respect to resident care, staffing, management or any other matter in connection with the conduct of those establishments. It also provides that a standard may also relate to any matter referred to in Schedule 1 to the proposed Act.

Clause 6 makes provision for the making of an application to the Director for a licence for a residential rehabilitation establishment. An application must be in the prescribed form and be accompanied by any prescribed particulars and the prescribed fee.

Clause 7 authorises the Director to issue a temporary licence pending the determination of an application for a licence for an existing residential rehabilitation establishment.

Clause 8 provides for the determination by the Director of an application for a licence. The Director shall, after considering the application, grant the application and issue a licence to the applicant, or refuse the application.

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Clause 9 specifies the circumstances in which an application may be refused by the Director. The Director may refuse an application if the applicant is not a fit and proper person to be a licensee (or any person who will be concerned in the management of the establishment at a senior level is not a fit and proper person to be so involved) or if the Director is satisfied that the establishment concerned does not comply with (or is not capable of being conducted in accordance with) the licensing standards applicable to it.

Clause 10 prescribes the form of a licence. It must specify the person to whom it is issued, the address of the establishment and the maximum number of residents who may be accommodated at any one time at the establishment (as determined by the Director).

Clause 11 authorises the Director to impose conditions on licences. These conditions may restrict the type of treatment or method of rehabilitation, limit the number of persons who may reside at the establishment if they are not undergoing treatment or rehabilitation, or prohibit certain persons from residing there altogether. A licence is also subject to any applicable conditions that are prescribed.

Clause 12 provides that a licence (other than a temporary licence) remains in force until cancelled or suspended.

Clause 13 requires the licensee of a residential rehabilitation establishment to pay a prescribed annual licence fee.

Clause 14 empowers the Director to transfer a licence for a residential rehabilitation establishment to the person who intends to conduct the establishment.

Clause 15 empowers the Director to amend a licence by increasing or decreasing the maximum number of residents permitted to be accommodated at the establishment and by revoking any condition (or attaching further conditions).

Clause 16 contains provisions relating to the manner of dealing with applications for licences. The Director, for example, may require that the applicant furnish the Director with such information as the Director may reasonably require for the purpose of determining the application. The clause also provides that the Director shall, before determining an application, cause it to be publicly advertised and take into consideration any representations made in relation to the application in the advertisement.

Clause 17 makes provision for the refusal of an application for a licence. The Director must notify the applicant of the refusal and the grounds on which the refusal is based. If the Director refuses the application on the ground that the applicant is not a fit and proper person to be a licensee, then the reasons why the Director is of that opinion must also be notified.

Clause 18 authorises the issue of duplicate licences by the Director.

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Clause 19 specifies the circumstances in which the Director may cancel a licence. These include failure to pay the annual licence fee by the due date, if the licensee requests the Director to cancel it, if the premises to which the licence relates cease to be a residential rehabilitation establishment or, in the case of a temporary licence, if the Director thinks it is appropriate. Clause 19 (2) also provides that the Director may cancel a licence on the grounds that the licensee (and, in some of the following instances, if any person concerned in the management of the establishment at a senior level) is not a fit and proper person, is convicted in New South Wales of an offence (punishable by penal servitude or imprisonment for a period of 12 months or more), breaches any condition to which the licence relates or becomes bankrupt, or generally if the establishment has not been conducted in accordance with the licensing standards applicable to it. The Director must give notice to the licensee of the Director's intention to cancel a licence under clause 19 (2) and specify the reasons, as well as give the licensee a reasonable opportunity to make submissions in relation to the proposed cancellation. Under clause 19 (6) the Director is authorised to suspend a licence whose cancellation has not yet taken effect.

PART 3—CONDUCT OF RESIDENTIAL REHABILITATION ESTABLISHMENTS

Clause 20 makes it an offence to conduct a residential rehabilitation establishment without a licence.

Clause 21 makes transitional arrangements on the death of a licensee who is a natural person.

Clause 22 prevents a licensed residential rehabilitation establishment from being used for any other purpose except a purpose being the conduct of the establishment, a purpose permitted by a condition to which the licence is subject or a purpose prescribed by the regulations.

Clause 23 limits the number of persons accommodated at a residential rehabilitation establishment to the number specified in the licence for the establishment. A licensee is not guilty of an offence, however, if anything is done in the case of an emergency.

Clause 24 requires the appointment of a manager of a residential rehabilitation establishment who is responsible for the care of the residents of the establishment and who holds the appropriate qualifications (if any) specified in the licence.

Clause 25 provides for a register of residents at a residential rehabilitation establishment to be kept at the establishment and specifies the particulars that must be entered in the register. It is an offence to enter false particulars or fail to enter particulars that are required to be entered.

PART 4—REVIEW OF LICENSING DECISIONS

Clause 26 enables an applicant for a licence to request the Minister to review the Director's decision to refuse the application. That decision may be either confirmed or revoked by the Minister (in the latter case the Minister will direct the Director to grant the application).

Clause 27 enables a licensee to request the Minister to review the Director's decision to issue a licence subject to conditions and again the Minister may confirm or revoke the original decision.

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Clause 28 enables a licensee to request the Minister to review the Director's decision to amend a licence (under clause 15) and the Minister may confirm or revoke the original decision.

Clause 29 provides for appeals in certain circumstances to the District Court against a decision of the Director to cancel a licence.

PART 5—MISCELLANEOUS

Clause 30 empowers the Minister to grant exemptions from the operation of the proposed Act.

Clause 31 confers a power of entry and inspection (on a person authorised by the Director) in relation to residential rehabilitation establishments which are licensed or proposed to be licensed. A person authorised by the Director to enter and inspect an establishment may observe and converse with any person apparently residing there. An authorised person shall, if requested to do so, produce the certificate of his or her authority to the person apparently in charge of the establishment.

Clause 32 confers a power (on a person authorised by the Director under clause 31) to require the furnishing of information relating to the conduct of a residential rehabilitation establishment (such as the register of residents), to require the production of records of the establishment, to inspect those records and to take and retain those records in order to take copies of them.

Clause 33 provides for the admissibility as evidence in legal proceedings of copies or extracts taken from original records under clause 32.

Clause 34 makes it an offence to hinder, obstruct or delay a person exercising a function under the proposed Act or to fail to comply with a requirement to furnish information or produce records relating to a residential rehabilitation establishment.

Clause 35 makes it an offence to make false or misleading statements or furnish false or misleading information in connection with applications or inquiries under the proposed Act.

Clause 36 provides for the issue of certain evidentiary certificates by the Director.

Clause 37 provides for the manner in which the Director may give or serve notices or other documents under the proposed Act.

Clause 38 enables the Director to delegate functions to certain persons.

Clause 39 provides for offences under the proposed Act or regulations to be dealt with summarily before a Local Court.

Clause 40 provides that in certain circumstances a director of a corporation or person concerned in the management of a corporation is guilty of an offence if the corporation contravenes a provision of the proposed Act or regulations.

Clause 41 empowers the making of regulations.

Schedule 1 contains matters with respect to which licensing standards may be prescribed by the regulations in addition to the general matters referred to in clause 5.
