

PRIVATE HOSPITALS AND DAY PROCEDURE CENTRES BILL 1988

NEW SOUTH WALES



EXPLANATORY NOTE

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

The Nursing Homes Bill 1988 and the Miscellaneous Acts (Private Health Establishments) Amendment Bill 1988 are cognate with this Bill.

The object of this Bill is to repeal the Private Health Establishments Act 1982 and to make provision for the licensing and control of private hospitals and day procedure centres presently dealt with in that Act. The Nursing Homes Bill 1988 provides for the licensing and control of nursing homes (which is also presently dealt with in the Private Health Establishments Act 1982).

Significant features of the Bill include—

- (a) provision for the Secretary of the Department of Health to approve in principle proposals for new private hospitals or day procedure centres;
- (b) revised criteria for determining whether licences should be granted (including the removal of restrictions related to the location of a proposed private hospital or day procedure centre);
- (c) restriction of licensing standards for private hospitals or day procedure centres to standards which deal with matters affecting the safety, care or quality of life of patients;
- (d) removal of the Secretary's control over the types of services and the facilities that are to be provided at private hospitals or day procedure centres; 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.

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Clause 3 defines certain terms for the purposes of the proposed Act. An “establishment” is a private hospital or a day procedure centre. A “day procedure centre” is a centre where patients are admitted for certain surgical or diagnostic procedures and discharged on the same day.

**PART 2—PRIVATE HOSPITALS AND DAY PROCEDURE CENTRES
ADVISORY COMMITTEE**

Clause 4 establishes the Private Hospitals and Day Procedure Centres Advisory Committee, whose members are to be appointed by the Minister and are to include representatives of the private hospital industry, the medical profession, the nursing profession, health insurance organisations and consumers.

Clause 5 provides that the function of the Advisory Committee is to provide advice to the Minister on the operation of the proposed Act, proposed regulations and any other matter referred to the Committee by the Minister.

Clause 6 enables the Advisory Committee to establish sub-committees.

PART 3—LICENSING OF ESTABLISHMENTS

Division 1—Licensing standards

Clause 7 enables licensing standards to be prescribed by regulation with respect to any matter relating to the safety, care or quality of life of patients at establishments.

Division 2—Applications for and issue of licences

Clause 8 enables a person who proposes to conduct a new establishment to apply to the Secretary of the Department of Health for a licence for that establishment. An applicant must indicate the size of the proposed private hospital or day procedure centre (in terms, respectively, of the maximum number of patients proposed to be accommodated at the hospital or the number of procedure rooms to be provided). An applicant must also provide with the application such documents or other information relating to the proposed establishment as is required by the prescribed application form.

Clause 9 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 establishment and submission to the Secretary of a development timetable. Clause 9 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 establishment is not capable of being conducted in accordance with relevant licensing standards; or

if the proposal does not meet criteria set out in any development guidelines prescribed by the regulations; or

if the Secretary is satisfied that the total number of patients who may be accommodated in private hospitals in New South Wales will be increased.

Clause 10 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.

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Clause 11 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 12 enables the Secretary to issue a temporary licence.

Division 3—Provisions relating to licences

Clause 13 provides for the regulations to prescribe classes of private hospitals and day procedure centres.

Clause 14 requires a licence to specify (among other matters) the class or classes of establishments in respect of which the licence is issued and, in the case of a private hospital, the maximum number of patients who may be accommodated overnight at the hospital at any one time (which is determined by the Secretary).

Clause 15 authorises the Secretary to impose conditions on licences.

Clause 16 provides that a licence (other than a temporary licence) remains in force until cancelled.

Clause 17 requires the licensee of an establishment to pay an annual licence fee.

Clause 18 empowers the Secretary to transfer a licence for an establishment to a person who intends to conduct the establishment.

Clause 19 makes it an offence to alter or extend an establishment without the approval of the Secretary.

Clause 20 empowers the Secretary to require repairs, maintenance, alterations, extensions or improvements to be made to an establishment. The maximum penalty for a failure to comply with a requirement of the Secretary is \$2,000.

Clause 21 authorises the Secretary to amend a licence for an establishment 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 22 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 23 requires the Secretary, when refusing an application under the proposed Act, to give written reasons for the refusal.

Clause 24 requires the Secretary to publicly advertise certain applications under the proposed Act before determining them.

Clause 25 allows an applicant to amend an application under the proposed Act with the Secretary's approval.

Division 5—Review of decisions of Secretary

Clause 26 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 and the classes of establishment 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 an establishment.

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Clause 27 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 28).

Clause 28 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 29 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 private hospital industry, the health care professions and consumers.

Clause 30 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 31 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 32 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 establishment or proposed establishment.

Division 6—Cancellation of licences

Clause 33 authorises the Secretary to cancel the licence for an establishment 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 an establishment of a class in respect of which the licence was issued;
- the licence is a temporary licence.

Clause 34 authorises the Secretary to cancel the licence for an establishment 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 35 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 33).

PART 4—CONDUCT OF ESTABLISHMENTS

Clause 36 makes it an offence (the maximum penalty for which is \$10,000) to conduct a private hospital without a licence.

Clause 37 makes it an offence (the maximum penalty for which is \$10,000) to conduct a day procedure centre without a licence. The clause makes it clear that a private hospital is not required to separately license any day procedure centre operated by it.

Clause 38 makes transitional arrangements to apply on the death of a licensee.

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Clause 39 prohibits an establishment from being used for any purpose other than a purpose permitted by its licence or a purpose prescribed by the regulations.

Clause 40 makes it an offence for a licensee of a private hospital to allow the number of patients at the hospital to exceed the maximum number specified in the licence.

Clause 41 requires the appointment in an establishment of a chief nurse who is responsible for the care of patients. The licensee of the establishment must notify the Secretary of the name and qualifications of the chief nurse.

Clause 42 makes it an offence for the licensee or an employee of an establishment to use the title "matron" or "director of nursing" unless the licensee or employee is the chief nurse.

Clause 43 requires a licensee of an establishment to ensure that a registered nurse is on duty at all times in the establishment.

Clause 44 requires the licensee of an establishment to ensure that a register of patients is kept at the establishment and that certain particulars are recorded in the register.

Clause 45 requires the licensee of an establishment to ensure that a copy of the proposed Act and regulations is available at all times to the chief nurse of the establishment.

PART 5—MISCELLANEOUS

Clause 46 makes it an offence for a medical practitioner or a dentist to refer a patient to, or provide treatment to a patient at, an establishment in which he or she has a pecuniary interest without first disclosing that interest to the patient.

Clause 47 empowers a person authorised by the Secretary to enter and inspect licensed establishments 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 48 empowers a person authorised by the Secretary under clause 47 to inspect and take copies of certain records and registers of an establishment.

Clause 49 makes it an offence to hinder, obstruct or delay persons in the exercise of their functions under the proposed Act.

Clause 50 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 51 provides for the issue of certain evidentiary certificates.

Clause 52 prescribes the procedure for the giving or serving of notices or other documents by the Secretary.

Clause 53 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 54 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 55 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.

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Clause 56 repeals the Private Health Establishments Act 1982, certain other Acts that have amended that Act and the Private Health Establishments (Private Hospitals and Nursing Homes) Regulation 1988.

Clause 57 is a formal provision that gives effect to Schedule 4 which contains savings and transitional provisions.

SCHEDULE 1—PROVISIONS RELATING TO MEMBERS AND PROCEDURE OF THE PRIVATE HOSPITALS AND DAY PROCEDURE CENTRES ADVISORY COMMITTEE

Schedule 1 contains provisions relating to the membership and procedure of the Private Hospitals and Day Procedure Centres Advisory Committee established by clause 4.

SCHEDULE 2—PROVISIONS RELATING TO CHAIRPERSON OF COMMITTEES OF REVIEW

Schedule 2 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 3—PROVISIONS RELATING TO COMMITTEES OF REVIEW

Schedule 3 contains provisions relating to members of a Committee of Review and the procedure of such a Committee.

SCHEDULE 4—SAVINGS AND TRANSITIONAL PROVISIONS

Schedule 4 contains savings and transitional provisions. Part 1 authorises the making of savings and transitional regulations consequent on the enactment of the proposed Act and the Miscellaneous Acts (Private Health Establishments) Amendment Act 1988. Part 2 contains provisions consequent on the enactment of the proposed Act, including provisions that—

- abolish the Private Hospitals and Day Procedure Centres Advisory Committee established by the Private Health Establishments Act 1982; and
 - save existing licences for establishments and pending applications under the 1982 Act.
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