

YOUTH AND COMMUNITY SERVICES (AMENDMENT) BILL, 1979

EXPLANATORY NOTE

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

The Child Welfare (Amendment) Bill, 1979, is cognate with this Bill.

The objects of this Bill are—

- (a) to define the expression “residential centre for handicapped persons” and certain other expressions for the purposes of the Youth and Community Services Act, 1973 (“the Principal Act”), to empower the Minister to declare certain premises to be residential centres for handicapped persons and to permit an appeal to the District Court against any such declaration (Schedule 1 (4) and (5));
- (b) to empower the Minister, after inquiry, to grant licences to proprietors or intending proprietors of residential centres for handicapped persons (Schedule 1 (10)—proposed sections 11 and 12);
- (c) to provide that prescribed conditions and conditions imposed by the Minister apply to a licence and to empower the Minister to revoke or vary any condition imposed on a licence by him or to impose further conditions on a licence (Schedule 1 (10)—proposed sections 16 and 17);
- (d) to empower the Department Head of the Department of Youth and Community Services (“the Director”) to suspend or revoke licences on grounds prescribed by the proposed legislation, subject to an appeal to the District Court against any decision so to do (Schedule 1 (10)—proposed sections 18 and 24);
- (e) to enable the Minister to issue permits in respect of unlicensed residential centres for handicapped persons so that those centres may be operated pursuant to a permit for a maximum period of 2 years (Schedule 1 (10)—proposed section 19);
- (f) to provide that the Minister may authorise a person to have the conduct of a residential centre for handicapped persons at licensed premises during an absence from the premises of the person who is authorised so to do by the licence for the premises (Schedule 1 (10)—proposed section 20);

- (g) to create offences relating to a person's being the proprietor of unlicensed premises that comprise a residential centre for handicapped persons or a person's having the conduct of any such centre at unlicensed premises or otherwise than under the authority of a licence and relating to breaches of licence conditions (Schedule 1 (10)—proposed sections 21 and 22);
- (h) to empower the Minister to give exemptions to persons from compliance with the provisions failure to observe which would otherwise give rise to the offences referred to in paragraph (g) (Schedule 1 (10)—proposed section 23);
- (i) to provide a power of entry to licensed premises, premises subject to an application for a licence and other premises that, upon reasonable grounds, are suspected of being residential centres for handicapped persons, which power may be exercised by an officer or a temporary employee of the Department of Youth and Community Services ("the Department") or any officer, temporary employee or member of the Health Commission of New South Wales accompanied by a member of the police force and a medical practitioner but, in certain circumstances, only under the authority of a warrant (Schedule 1 (10)—proposed section 25);
- (j) to create an offence if a person who is the licensed manager of licensed premises fails to notify the police and the Director if a handicapped person dies at those premises or fails to notify the Director if a handicapped person who has been residing at the licensed premises absents himself from the premises for more than 24 hours where the licensed manager does not know his intended whereabouts (Schedule 1 (10)—proposed section 26);
- (k) to enable an officer or a temporary employee of the Department to require the parents, guardian or custodian of a handicapped person under the age of 18 years to remove the person from any unlicensed residential centre for handicapped persons at which he is residing and to provide that, if he is not so removed, he may be dealt with as a neglected child within the meaning of Part XIV of the Child Welfare Act, 1939 (Schedule 1 (10)—proposed section 27);
- (l) to provide that proceedings for the offences referred to in paragraphs (g) and (j) shall be taken in courts of petty sessions and to enable certain evidence to be presented for the purposes of those proceedings in the form of a certificate (Schedule 1 (10)—proposed sections 28 and 29);
- (m) to enable a handicapped person and the Director to recover expenses of removing the handicapped person from unlicensed premises where the proprietor of the premises has been convicted of an offence in relation to those unlicensed premises being a residential centre for handicapped persons (Schedule 1 (10)—proposed section 31);
- (n) to enable regulations to be made under the Principal Act with respect to licensed residential centres for handicapped persons (Schedule 1 (10)—proposed section 32);

- (o) to provide that the Minister and the Director may delegate any of their powers, authorities, duties and functions under the Principal Act (Schedule 1 (10)—proposed section 33);
 - (p) to provide for the service of orders and notices under the Principal Act (Schedule 1 (10)—proposed section 34); and
 - (q) to make other provisions of a minor, consequential or ancillary nature.
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Act No. 1979

**YOUTH AND COMMUNITY SERVICES
(AMENDMENT) BILL, 1979**

No. , 1979.

A BILL FOR

**An Act to amend the Youth and Community Services Act, 1973,
so as to provide for the licensing of certain premises at which
handicapped persons reside; and for certain other purposes.**

[MR JACKSON—13 September, 1979.]

See also Child Welfare (Amendment) Bill, 1979.

Youth and Community Services (Amendment).

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

5 **1.** This Act may be cited as the "Youth and Community Services (Amendment) Act, 1979". Short title.

2. (1) This section and section 1 shall commence on the date of assent to this Act. Commence-
ment.

10 (2) Except as provided in subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

3. The Youth and Community Services Act, 1973, is referred to in this Act as the Principal Act. Principal
Act.

15 **4.** This Act contains the following Schedules :— Schedules.

SCHEDULE 1.—AMENDMENTS TO THE PRINCIPAL ACT.

**SCHEDULE 2.—APPLICATION OF CERTAIN REGULATIONS
UNDER THE CHILD WELFARE ACT, 1939.**

20 **5.** The Principal Act is amended in the manner set forth in Schedule 1. Amend-
ment of
Act No.
90, 1973.

6. (1) Schedule 2 has effect.

(2) A regulation may be made under the Principal Act, as amended by this Act, repealing Schedule 2. Trans-
itional
applica-
tion of
regulations.

Youth and Community Services (Amendment).

SCHEDULE 1.

Sec. 5.

AMENDMENTS TO THE PRINCIPAL ACT.

(1) (a) Long title—

5

Omit “to change the title of the Department of Child Welfare and Social Welfare;”.

(b) Long title—

After “performed;”, insert “to provide for the licensing of certain premises at which handicapped persons reside;”.

10 (2) Part I, heading—

Before section 1, insert :—

PART I.

PRELIMINARY.

(3) Section 2A—

15

After section 2, insert :—

2A. This Act is divided as follows :—

PART I.—PRELIMINARY—ss. 1–5.

**PART II.—YOUTH AND COMMUNITY SERVICES
GENERALLY—ss. 6–10.**

20

**PART III.—LICENSING OF RESIDENTIAL CENTRES
FOR HANDICAPPED PERSONS—ss. 11–27.**

PART IV.—MISCELLANEOUS—ss. 28–34.

SCHEDULE.

Arrange-
ment.

Youth and Community Services (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(4) (a) Section 3, definitions of “Director”, “handicapped person”, “licence”, “licensed manager”, “licensed premises”, “licensee”—

After the definition of “Department”, insert :—

“Director” means the Department Head of the Department or any person acting as Department Head of the Department;

“handicapped person” means a person who is senile, temporarily or permanently incapacitated for work, mentally ill, intellectually handicapped, physically handicapped, sensorily handicapped, chronically ill, of advanced age or suffering from any medical condition prescribed by the regulations, or any combination of those disabilities, and who requires supervision or social habilitation;

“licence” means a licence that is in force after having been granted under Part III;

“licensed manager” means the person for the time being specified under section 13 (1) (c) in a licence;

“licensed premises” means premises licensed for the purposes of Part III;

“licensee” means the person to whom a licence has been granted;

(b) Section 3, definition of “permanent head”—

Omit the definition.

Youth and Community Services (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(c) Section 3, definitions of “permit”, “premises”, “proprietor”—

5 Before the definition of “regulations”, insert :—

“permit” means a permit that is in force after having
been issued under Part III;

“premises” means any place, vehicle or vessel;

“proprietor” means—

10 (a) in relation to premises that are not
leased—the owner or any joint owner
of the premises; or

15 (b) in relation to premises that are leased
—the lessee or any joint lessee who is
entitled to immediate possession of the
premises;

(d) Section 3, definition of “regulations”—

Omit “Act.”, insert instead “Act;”.

20 (e) Section 3, definitions of “relative”, “residential centre
for handicapped persons”—

After the definition of “regulations”, insert :—

“relative”, in relation to a person, means—

25 (a) a husband, wife, parent, step-parent,
son, daughter, step-son, step-daughter,
grandparent, grandchild, brother,
sister, step-brother, step-sister, uncle,

*Youth and Community Services (Amendment).*SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(d) comprise or form part of—

- 5 (i) a private hospital or nursing home licensed under the Private Hospitals Act, 1908;
- 10 (ii) an admission centre, an authorised hospital or a mental hospital within the meaning of the Mental Health Act, 1958;
- 15 (iii) an incorporated hospital or a separate institution within the meaning of the Public Hospitals Act, 1929, premises controlled by an associated organisation within the meaning of that Act or a hospital specified in the Fifth Schedule to that Act; or
- 20 (iv) premises exempted from the operation of Part III by an order in force under section 3B.

(5) Sections 3A, 3B—

After section 3, insert :—

- 25 3A. (1) The Minister may, by order in writing served on the proprietor or occupier of premises comprising or of the nature of lodgings or a boarding house, home or hostel, declare those premises to be a residential centre for handicapped persons if he considers that 2 or more handicapped persons reside at the premises—
- 30

(a) whether or not subject to the payment of a fee or the giving of some other consideration; and

Declara-
tion of
residen-
tial centres.

Youth and Community Services (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

5 (b) otherwise than with a person who is a relative of each of those persons, is of or above the age of 18 years and is not a handicapped person.

10 (2) An owner, an occupier or a lessee of any premises in respect of which an order made under subsection (1) is in force may, at any time, appeal to the District Court against the declaration of those premises as a residential centre for handicapped persons.

(3) An appeal under this section may be made only on the grounds—

15 (a) that the premises to which the declaration relates are not being used as a place of residence for 2 or more handicapped persons; or

(b) that all of the handicapped persons residing at those premises reside there with a relative of them who is of or above the age of 18 years but is not a handicapped person.

20 (4) An appeal under this section shall not be heard until the expiration of 21 days after the appellant has lodged a notice stating his intention to appeal and the grounds of his appeal with—

(a) the Director; and

25 (b) the registrar of the District Court at the registry of that Court nearest the premises to which the appeal relates.

30 (5) Subject to subsections (2), (3) and (4), an appeal under this section shall be made in accordance with the rules of the District Court.

Youth and Community Services (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(6) When the District Court hears an appeal under this section, it shall—

- 5 (a) if it finds the grounds of the appeal not to have been established by the appellant—dismiss the appeal; or
- 10 (b) if it finds the grounds of the appeal to have been established by the appellant—by its order, revoke the order in respect of which the appeal was brought.

(7) When an order declaring premises to be a residential centre for handicapped persons is revoked, that order ceases to be in force.

15 3B. (1) The Minister may, by order in writing served on the proprietor or occupier of premises, exempt those premises, absolutely or subject to terms or conditions specified in the order, from the operation of Part III. Order exempting premises.

20 (2) Where premises are exempted under subsection (1) from the operation of Part III subject to a condition, the premises are so exempted only while the condition is not breached.

(6) Section 5—

25 Omit “permanent head” wherever occurring, insert instead “Department Head of the Department”.

(7) Part II, heading—

After section 5, insert :—

PART II.

YOUTH AND COMMUNITY SERVICES GENERALLY.

Youth and Community Services (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(8) Section 8 (1)—

Omit “permanent head”, insert instead “Director”.

5 (9) Section 9—

Omit the section.

(10) Parts III, IV—

After section 10, insert :—

PART III.

10 LICENSING OF RESIDENTIAL CENTRES FOR HANDICAPPED
PERSONS.

15 11. (1) A person who is, or who intends to become, the proprietor of premises may apply to the Minister in writing and in or to the effect of the prescribed form for a licence—

(a) to enable the premises to be used as a residential centre for handicapped persons; and

20 (b) to authorise a person specified in the application to have the conduct of a residential centre for handicapped persons at the premises.

25 (2) When he receives an application under subsection (1), the Minister shall cause an inquiry to be made with respect to the application by representatives from the Department and the Health Commission of New South Wales and a report on the application to be made and furnished to him by an officer of the Department.

Youth and Community Services (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

5 (3) A person shall not, in an application for a licence or in connection with an inquiry under subsection (2)—

(a) make a statement; or

(b) furnish information,

that he knows to be false or misleading in a material particular.

10 Penalty for an offence against this subsection: \$500.

12. (1) Upon receiving a report under section 11 (2) on an application for a licence, the Minister shall— Grant or refusal of licence.

(a) grant the licence to the applicant; or

15 (b) cause to be served on the applicant for the licence a notice stating that, when 28 days have expired after service of the notice, the Minister intends to refuse the licence on the grounds specified in the notice unless it has been established to his satisfaction that the licence should not be refused.

20 (2) When 28 days have expired after a notice has been served under subsection (1) (b) on an applicant for a licence, the Minister shall, after considering any submissions made to him during that period by the applicant—

25 (a) grant the licence to the applicant; or

(b) refuse the licence and cause to be served on the applicant a notice stating the grounds on which the licence has been refused.

*Youth and Community Services (Amendment).*SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

13. (1) A licence granted under this Part shall specify—
- 5 (a) the person to whom it is granted;
- (b) the premises to which it relates; and
- (c) the person who is authorised by the licence to have the conduct of a residential centre for handicapped persons at those premises.
- 10 (2) Notwithstanding subsection (1) (a), a licence may specify that it is granted to an unincorporated association but, in any such case, the applicant for the licence shall be deemed, for the purposes of this Act, to be the person to whom the licence was granted, unless a further
- 15 person who has been appointed by the association to be the licensee gives written notice to the Minister of his appointment and of his full name and address, in which case, from the time the notice is received by the Minister, the further person so appointed shall be deemed, for the purposes of this Act, to be the person to whom the licence was granted.
- 20 14. (1) A licensee of licensed premises may apply in writing and in or to the effect of the prescribed form for the Minister's consent to the replacement of the licensed manager for the time being of the licensed premises by another person.
- 25 (2) When he receives an application under subsection (1), the Minister shall, by notice served on the applicant, the licensed manager for the time being of the licensed premises to which the application relates and the other person specified in the application—
- 30 (a) if he considers the other person suitable to have the conduct of a residential centre for handicapped persons at the licensed premises— consent to the other person becoming the licensed manager of those premises; or

Licence to specify certain particulars.

Change of licensed manager.

*Youth and Community Services (Amendment).*SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

- (b) refuse the application.
- 5 (3) When the Minister has consented under subsection (2) to another person becoming the licensed manager of licensed premises—
- 10 (a) any person who was the licensed manager of the licensed premises immediately before the consent was given ceases to be the licensed manager of those premises; and
- (b) the other person shall be deemed to be the person who is specified under section 13 (1) (c) in the licence for the licensed premises.
- 15 (4) A notice served for the purpose of giving a consent under subsection (2) shall specify any conditions, other than prescribed conditions, that are in force when the notice is served and to which the licence to which it relates is subject.
- 20 15. While a licence granted under this Part is in force— Effect of licence.
- (a) the premises specified in the licence under section 13 (1) (b) are licensed premises for the purposes of this Part; and
- 25 (b) the licensed manager of the premises to which the licence relates is authorised to have the conduct of a residential centre for handicapped persons at those premises.
16. A licence is subject to— Conditions of licence.
- (a) any condition prescribed for all licences or for a class of licences to which it belongs;

*Youth and Community Services (Amendment).*SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

- 5 (b) the condition, which shall be specified in it, in relation to the maximum number of persons who may, at the one time, reside at the premises to which it relates; and
- 10 (c) any other unrevoked condition as in force for the time being, being a condition that the Minister thought fit to impose on the licence and that was—
- (i) specified in the licence when it was issued; or
- (ii) subsequently imposed on the licence under section 17.
- 15 17. (1) If he intends to revoke or vary any condition of a licence or to impose a further condition on the licence, the Minister shall cause to be served on—
- Revocation, variation or addition of conditions.
- (a) the licensee; and
- (b) the licensed manager,
- 20 a notice stating that, when 28 days have expired after service of the notice, the Minister intends to revoke or vary a condition of the licence specified in the notice or to impose on the licence a further condition specified in the notice, as the case may be, unless it has been established
- 25 to his satisfaction that he should not do so.
- (2) When 28 days have expired after a notice has been served under subsection (1) on a licensee and licensed manager, the Minister may, after considering any submissions made to him during that period by either or both
- 30 of those persons—
- (a) revoke or vary the condition specified in the notice; or

Youth and Community Services (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(b) impose the further condition specified in the notice on the licence to which the notice relates,
5 by a further notice served on those persons.

(3) Notwithstanding subsections (1) and (2), where a licensee has requested that a condition of his licence be revoked or varied or that a further condition be imposed on his licence, the Minister may, by notice served
10 on the licensee and the licensed manager—

- (a) revoke or vary the condition; or
 - (b) impose the further condition,
- as the case may require.

18. (1) For the purposes of this section, the prescribed
15 grounds, in relation to the suspension or revocation of a licence, are—

Suspension
and revoca-
tion of
licence.

- (a) that the licensee has requested that the licence be suspended or revoked;
- 20 (b) that either the licensee or the licensed manager is no longer a fit and proper person to be concerned in the conduct of a residential centre for handicapped persons;
- 25 (c) that either of those persons has contravened or failed to comply with a provision of this Part or of the regulations that is applicable to him or that the premises to which the licence relates do not comply with any such provision or a condition of the licence applicable to them;
- 30 (d) that the premises to which the licence relates are not being used as a residential centre for handicapped persons;

Youth and Community Services (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

- (e) that the licensee is not the proprietor of the premises to which the licence relates; or
- 5 (f) that neither the licensed manager nor a person authorised so to do under section 19 (5) (b) or 20 (2) (a) is conducting a residential centre for handicapped persons at the premises to which the licence relates.
- 10 (2) If he intends to suspend or revoke a licence, the Director shall cause to be served on—
- (a) the licensee; and
- (b) the licensed manager,
- 15 a notice stating that, when 28 days have expired after service of the notice, the Director intends to suspend the licence for a period (not exceeding 6 months) specified in the notice or to revoke the licence, as the case may be, on the prescribed grounds specified in the notice, unless it
- 20 has been established to his satisfaction that he should not do so.
- (3) When 28 days have expired after a notice has been served under subsection (2) on a licensee and licensed manager, the Director may, after considering any
- 25 submissions made to him during that period by either or both of those persons—
- (a) suspend the licence to which the notice relates for the period (not exceeding 6 months) specified in the notice; or
- (b) revoke the licence to which the notice relates,
- 30 by a further notice served on those persons, which further notice shall specify the prescribed grounds on which the licence is suspended or revoked, as the case may be.

Youth and Community Services (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

5 (4) Notwithstanding subsections (2) and (3), where a licensee has requested that his licence be suspended or revoked, the Director may, by notice served on the licensee and the licensed manager—

- (a) suspend the licence for the period (not exceeding 6 months) specified in the notice; or
 - (b) revoke the licence,
- 10 as the case may require.

(5) A licence is deemed not to be in force for any period for which it is suspended.

15 (6) Where a licence has been suspended under subsection (3) or (4) for a period, the Director may, at any time during that period, restore the licence by serving on both the licensee and the licensed manager a notice stating that the licence is restored.

19. (1) Where—

Permits.

- 22 (a) the Minister refuses a licence under section 12 (2) (b); or
- (b) the Director suspends or revokes a licence under section 18,

25 the Minister may issue a permit to the applicant for the licence or the person who was the licensee immediately before his licence was suspended or revoked, as the case may require.

(2) A permit issued under subsection (1) shall specify—

- (a) the person to whom it is issued;

Youth and Community Services (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

- (b) the premises to which it relates;
- 5 (c) the person who is authorised by the permit to have the conduct of a residential centre for handicapped persons at those premises; and
- 10 (d) the conditions to which it is subject, including a condition in relation to the maximum number of persons who may, at the one time, reside at the premises to which it relates.
- (3) Subject to subsection (4), a permit—
- (a) is in force for such period (not exceeding 6 months) as is specified in the permit; and
- 15 (b) may be extended, from time to time, by the Minister by notice served on the person to whom the permit was issued for a period (not exceeding 6 months) specified in the notice, but not so that it is in force for a total period of more than 2 years.
- 20 (4) The Minister may, by notice served on the person to whom a permit was issued and the person specified in the permit under subsection (2) (c), revoke the permit—
- 25 (a) if either of those persons breaches a condition of the permit; or
- (b) for any other reason he considers sufficient.
- (5) While a permit is in force—
- 30 (a) the premises specified in the permit under subsection (2) (b) shall be deemed to be licensed premises for the purposes of this Part; and

Youth and Community Services (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

5 (b) the person specified in the permit under subsection (2) (c) is authorised to have the conduct of a residential centre for handicapped persons at those premises.

(6) When a permit that has been issued in respect of premises by reason of—

10 (a) the Minister's refusing a licence under section 12 (2) (b); or

(b) the Director's revoking a licence under section 18,

ceases to be in force, the Minister shall—

(c) grant a licence for the premises; or

15 (d) refuse a licence for the premises and cause to be served on the applicant for the licence a notice stating the grounds on which the licence has been refused.

20 20. (1) The Minister may, by an instrument in writing, authorise a person specified in the instrument to have the conduct of a residential centre for handicapped persons at licensed premises for a period so specified that occurs during an absence from the premises (by reason of illness or otherwise) of the person who is authorised by a licence or permit for the premises to have the conduct of a residential centre for handicapped persons at those premises. Authority during absences.

25

Youth and Community Services (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

5 (2) While a person is authorised by an instrument referred to in subsection (1) to have the conduct of a residential centre for handicapped persons at any premises—

10 (a) the person so authorised shall, for the purposes of section 22 (1) (b), be deemed to be authorised to have the conduct of a residential centre for handicapped persons at those premises by the licence or permit for those premises; and

15 (b) the conditions of the licence or permit applicable to the person in respect of whose absence he was so authorised shall, for the purposes of section 22 (2), be deemed to be applicable to him as if he were so authorised by the licence or permit.

20 (3) The Minister may, at any time and for any reason he considers sufficient, revoke the authority given to a person by an instrument referred to in subsection (1) by notice served on the person and stating that the authority has been revoked.

21. (1) In subsection (3), “proprietor”, in relation to licensed premises, includes the licensee for the time being of the premises. Obligations of proprietor.

25 (2) Subject to section 23, the proprietor of a residential centre for handicapped persons is guilty of an offence if the premises are not licensed for the purposes of this Part.

Youth and Community Services (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(3) Subject to section 23, a proprietor of licensed premises is guilty of an offence if—

- 5 (a) the premises do not comply with any condition of the licence or permit for the premises, being a condition applicable to them; or
- 10 (b) he contravenes or fails to comply with any condition of the licence or permit for the premises, being a condition applicable to him.

(4) A person who is guilty of an offence under subsection (2) or (3) is liable to a penalty not exceeding \$500 and, in addition, where the offence continues, to a penalty not exceeding \$200 for each day the offence continues.

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(5) Subject to section 23, the licensee of licensed premises shall cause the licence for the premises to be exhibited in a conspicuous position at the premises for so long as the licence is in force.

20 Penalty for an offence against this subsection : \$200.

22. (1) Subject to section 23, a person shall not have the conduct of a residential centre for handicapped persons unless— Obligations of manager.

- 25 (a) the premises are licensed premises; and
- (b) he is authorised so to do by a licence or permit.

(2) Subject to section 23, a person who is authorised by a licence or permit to have the conduct of a residential centre for handicapped persons shall not contravene or fail to comply with the conditions of the licence or permit, being conditions applicable to him.

30

Youth and Community Services (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

5 (3) A person who is guilty of an offence under subsection (1) or (2) is liable to a penalty not exceeding \$500 and, in addition, where the offence continues, to a penalty not exceeding \$200 for each day the offence continues.

10 (4) For the purposes of subsection (1), but without affecting the generality of that subsection, a person who is in charge of a residential centre for handicapped persons at any premises shall be deemed to have the conduct of the residential centre at those premises.

15 23. (1) The Minister may, by notice served on a person, *Exemptions.* exempt the person, absolutely or subject to conditions specified in the notice, from the operation of all or any of—

- (a) the provisions of sections 21 (2), (3) and (5) and 22 (1) and (2); or
- (b) the conditions of a licence or permit.

20 (2) Where a person is exempted from the operation of any provision or condition under subsection (1) subject to a condition, he is so exempted only while he does not contravene or fail to comply with the condition.

25 (3) If he intends to revoke an exemption given under subsection (1), the Minister shall cause to be served on the person to whom the exemption was given a notice stating that, when 28 days have expired after service of the notice, the Minister intends to revoke the exemption on the grounds specified in the notice unless it has been established to his satisfaction that the exemption should not be revoked.

Youth and Community Services (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

5 (4) When 28 days have expired after a notice has been served on a person pursuant to subsection (3), the Minister may, after considering any submissions made to him during that period by the person on whom the notice was served, revoke the exemption by a further notice served on that person.

10 24. (1) Where the Director has, under section 18 (3), suspended or revoked a licence, the licensee or former licensee, as the case may be, may appeal to the District Court against the suspension or revocation of his licence, unless the licence was suspended or revoked at the request of the licensee or former licensee. Appeal against suspension or revocation of licence.

15 (2) A person may appeal under this section only if, within 21 days after the date of service on him of the notice effecting the suspension or revocation against which he wishes to appeal, he lodges a notice stating his intention to appeal and the general grounds of his appeal with—

- 20 (a) the Director; and
(b) the registrar of the District Court at the registry of that Court nearest the premises to which the appeal relates.

25 (3) Subject to subsection (2), an appeal under this section shall be made in accordance with the rules of the District Court.

(4) When the District Court hears an appeal under this section, it shall review the decision of the Director in respect of which the appeal was brought and may order—

- 30 (a) that the decision of the Director be confirmed; or

Youth and Community Services (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

5 (b) that a licence be granted or restored subject to the conditions to which the licence was subject immediately before it was revoked or suspended, as the case may be.

10 (5) An order of the District Court under subsection (4) (b) shall be carried into effect by the Minister's granting a licence or the Director's restoring a licence, as the case may require.

(6) The Minister may grant a licence to give effect to an order under subsection (4).

15 (7) An appeal under this section does not affect the decision in respect of which it is brought unless and until the District Court makes an order under subsection (4) (b).

20 25. (1) In this section, "officer" means an officer or a temporary employee of the Department or an officer or a temporary employee or member of the Health Commission of New South Wales. ^{Power of entry.}

(2) Subject to subsection (5), for the purposes of—

(a) making an inquiry under section 11 (2) in respect of any premises;

25 (b) ensuring that this Part and the regulations are being complied with on licensed premises, together with the conditions of the licence or permit for the premises;

30 (c) ensuring that the conditions, if any, of an exemption in force under section 23 are being complied with; or

Youth and Community Services (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

5 (d) ascertaining whether a breach of this Part or the regulations is being committed with respect to unlicensed premises,

any officer may, at any time, enter the premises and inspect them and observe and converse with any person apparently residing at the premises.

10 (3) In exercising his powers under subsection (2), an officer may be accompanied by a medical practitioner or medical practitioners or a member or members of the police force and any such medical practitioner or medical practitioners may inspect the premises and observe, examine and converse with any person apparently
15 residing at the premises.

(4) Nothing in this section authorises the examination of a person against his will.

20 (5) A person may not enter or inspect unlicensed premises pursuant to the power granted him by subsection (2) or (3) unless he does so—

(a) for the purpose of making an inquiry under section 11 (2); or

(b) under the authority of a warrant issued under subsection (7).

25 (6) A person shall not—

(a) refuse or fail to admit an officer or other person exercising his power of entry under subsection (2) or (3); or

30 (b) wilfully obstruct or delay an officer or other person exercising any of his powers under subsection (2) or (3).

Penalty : \$500.

*Youth and Community Services (Amendment).*SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

5 (7) Upon complaint made on oath by an officer that
 the officer suspects on reasonable grounds that a provision
 of this Part or the regulations has been or is being
 contravened within any premises, a stipendiary magistrate
 may issue a warrant authorising an officer or officers named
 in the warrant, together with any medical practitioner or
 10 medical practitioners so named (each of whom may, if the
 warrant so provides, be accompanied by any member or
 members of the police force) at any time or times within
 14 days from the date of issue of the warrant to enter, if
 need be by the use of reasonable force, the premises
 described in the warrant, and to inspect the premises for
 15 evidence of such a contravention.

(8) Nothing in subsection (3) or (7) affects the
 operation of section 21 (b) of the Interpretation Act, 1897,
 in respect of this Act.

20 26. (1) If a handicapped person dies at licensed premises, the licensed manager of the premises shall
 forthwith give notice of the death to— Notification of certain deaths and absences.

- (a) the member of the police force in charge of the police station nearest the licensed premises; and
- (b) the Director.

25 (2) If a handicapped person who has been residing
 at licensed premises absents himself from those premises at
 any time for more than 24 hours without advising the
 licensed manager of his intended whereabouts at the end
 of that period of 24 hours, the licensed manager shall,
 30 upon the expiration of that period, notify the Director of
 the name of the handicapped person and of his absence
 from the premises.

Penalty : \$200.

Youth and Community Services (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

- 5 27. Any handicapped person under the age of 18 years who resides at a residential centre for handicapped persons that is not licensed for the purposes of this Part— Removal of certain handicapped persons.
- 10 (a) shall, if the whereabouts of his parents, guardian or custodian are known, be forthwith removed therefrom by, or by a person on behalf of, his parents, guardian or custodian on the request of an officer or employee of the Department; and
- 15 (b) if he is not so removed, or if the whereabouts of his parents, guardian or custodian are unknown, shall be deemed to be a neglected child within the meaning of Part XIV of the Child Welfare Act, 1939, and may be dealt with in accordance with the provisions of that Part.

PART IV.

MISCELLANEOUS.

- 20 28. (1) Proceedings for an offence against this Act or the regulations shall— Proceedings for offences.
- (a) be taken and prosecuted only by a person acting with the authority of the Minister; and
- 25 (b) be disposed of summarily before a court of petty sessions constituted by a stipendiary magistrate sitting alone.
- (2) In proceedings for any such offence, an authority to prosecute, purporting to have been signed by the Minister, shall be evidence of the authority of the Minister without proof of the Minister's signature.

*Youth and Community Services (Amendment).*SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(3) Any such proceedings may be commenced by information laid within 12 months after the time when the offence is alleged to have been committed.

29. In proceedings for an offence against this Act or the regulations, a certificate purporting to be signed by the Director or another prescribed officer or temporary employee of the Department and to certify—

- (a) that a licence or permit was, or was not, in force in respect of any person or premises specified in the certificate on any date, or during any period, so specified;
- (b) that the matter appearing on a licence or permit described in the certificate is identical to matter set out in, or in an instrument appended to, the certificate; or
- (c) that a licence or permit described in the certificate was suspended during a specified period or revoked on a specified date,

is evidence of the facts so certified and, in the absence of evidence to the contrary, is proof of those facts.

30. In any proceedings brought against a person for an offence against this Act or the regulations in which it is alleged that the premises to which the offence relates were a residential centre for handicapped persons at any time by reason of an order in force under section 3A, the premises shall be deemed not to have been a residential centre for handicapped persons at that time if the person satisfies the court—

- (a) that no, or only one, handicapped person resided at the premises at that time; or
- (b) that all of the handicapped persons who resided at the premises at that time resided there with a relative of them who was of or above the age of 18 years but not a handicapped person.

*Youth and Community Services (Amendment).*SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

31. (1) In this section, “court” means a court of petty sessions. Assessment
of certain
removal
expenses.

5 (2) Where a person has been convicted of the offence under section 21 (2) of being the proprietor of a residential centre for handicapped persons that is unlicensed premises—

- (a) a handicapped person—
- 10 (i) who resided at the unlicensed premises when the offence was committed; and
- (ii) who has, on or within 28 days after the date of the offence, moved from the premises to another residence; and
- 15 (b) the Director, if the Department has incurred expense in connection with the removal of a handicapped person from the unlicensed premises to another residence,
- 20 may, within 12 months after the date of the conviction, apply to a court for an assessment of removal expenses under subsection (3).

25 (3) The court to which an application is made under subsection (2) may make an assessment of an amount that to the court seems a just and reasonable sum to compensate for the removal expenses and any other expense in connection with the removal of the handicapped person incurred by the applicant or the Department, as the case may be, when the handicapped person moved from the unlicensed premises to another residence.

30 (4) Where a court makes an assessment under subsection (3), the assessment shall be deemed to be a judgment of the court for the amount in favour of the applicant for the assessment and against the person who was convicted of the offence in respect of which the

35 application was made.

Youth and Community Services (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

5 32. (1) The Governor may make regulations, not Regulations.
inconsistent with this Act, for or with respect to any matter
that by this Act is required or permitted to be prescribed
or that is necessary or convenient to be prescribed for
carrying out or giving effect to this Act.

10 (2) Without prejudice to the generality of
subsection (1), the Governor may make regulations for or
with respect to—

- 15 (a) the procedures to be observed by councils,
committees and other advisory bodies constituted
by the Minister under this Act;
- (b) standards to be observed and facilities to be
provided to ensure the health, comfort, safety
and proper care of handicapped persons residing
at licensed premises;
- 20 (c) the qualifications and experience of persons
employed at licensed premises;
- (d) the making and keeping of records and the
furnishing of returns in respect of licensed
premises;
- (e) the inspection of licensed premises; and
- 25 (f) the form of applications under this Act and of
licences and permits.

(3) A regulation may—

- 30 (a) apply differently according to such factors as are
specified in the regulation;
- (b) authorise any thing to be from time to time
determined, applied or regulated by a specified
person;
- (c) provide that the Minister may exempt persons,
either absolutely or subject to conditions, from
any provision of the regulations; and
- 35 (d) impose a penalty not exceeding \$500 for any
contravention of a regulation.

Youth and Community Services (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

5 33. (1) The Minister may delegate to any specified ^{Delegation.} officer or temporary employee of the Department the exercise or performance of such of the powers (other than this power of delegation), authorities, duties or functions conferred or imposed on him by or under this Act as may be specified in the instrument of delegation.

10 (2) The Director may delegate to any specified officer or temporary employee of the Department the exercise or performance of such of the powers, authorities, duties or functions (other than this power of delegation or the exercise or performance of a power, authority, duty or function delegated to him under this section by the Minister) conferred or imposed on him by or under this Act as may be specified in the instrument of delegation.

15 (3) A delegation under this section shall be by instrument in writing and may be made subject to such conditions or such limitations as to the exercise or performance of any of the powers, authorities, duties or functions delegated, or as to time or circumstances, as may be specified in the instrument of delegation.

20 (4) A power, authority, duty or function, the exercise or performance of which has been delegated under this section may, while the delegation remains unrevoked, be exercised or performed from time to time in accordance with the terms of the delegation.

25 (5) Notwithstanding any delegation made under this section, the Minister or Director, as the case may be, may continue to exercise or perform all or any of the powers, authorities, duties or functions delegated.

30 (6) Any thing done or suffered by a delegate while acting in the exercise of a delegation made under this section shall have the same force or effect as if the thing done or suffered had been done or suffered by the Minister

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*Youth and Community Services (Amendment).*SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

5 or Director, as the case may be, and shall be deemed to have been done or suffered by the Minister or the Director, as the case may be.

(7) The Minister or Director may by instrument in writing revoke either wholly or in part any delegation made by him under this section.

10 34. Any order or notice required or authorised by this Act to be served on a person is sufficiently served if the order or notice (or a copy thereof) is— Service of orders and notices.

(a) delivered personally to the person;

15 (b) delivered at, or sent by prepaid post to, the last address of the person known to the Director; or

(c) left with a person who is apparently—

(i) of or above the age of 16 years; and

(ii) not a handicapped person,

20 at the premises to which the order or notice relates,

and, where it is sent by post as referred to in paragraph (b), it shall be deemed to have been served at the time it would be delivered in the ordinary course of post.

Youth and Community Services (Amendment).

SCHEDULE 2.

Sec. 6 (1).

APPLICATION OF CERTAIN REGULATIONS UNDER THE CHILD WELFARE ACT, 1939.

The provisions of the Child Welfare Regulations, 1940, as in force on the date of assent to this Act that are specified in the Table to this Schedule apply to and in respect of a licence under Part III of the Principal Act, as amended by this Act, in the same way as they apply to and in respect of a licence under section 29 of the Child Welfare Act, 1939, and they so apply as if—

- 10 (a) a reference wherever occurring in those provisions—
- (i) to a child or children (except in the expressions “child care centre” and “children’s depot”) were respectively a reference to a handicapped person or handicapped persons;
 - 15 (ii) to any licence under section 29 of the Child Welfare Act, 1939, were a reference to a licence under Part III of the Principal Act, as amended by this Act;
 - (iii) to conditions and requirements of a licence under section 29 of the Child Welfare Act, 1939, were a reference to conditions of a licence under Part III of the Principal Act, as amended by this Act;
 - 20 (iv) to a child care centre (except in Regulation 47A (v) (vi)) or to a children’s depot, home or hostel or a private foster home were a reference to a residential centre for handicapped persons; and
 - 25 (v) to “the Regulations” (except in Regulation 47A (u) (viii)) were a reference to the provisions of the Child Welfare Regulations, 1940, applied by this Schedule;
- (b) (i) a reference in Regulation 39 (1) (h) and (m) to the person licensed to conduct the premises were a reference to the licensed manager of licensed premises; and
- 30 (ii) a reference in Regulation 39 (1) (l) to the person licensed to control the premises were a reference to the licensee of licensed premises;
- (c) the words “of single storey” were omitted from Regulation 40
- 35 (2) (a) (i); and
- (d) (i) the words “of sufficient area to permit of the playing of indoor games” were omitted from Regulation 47A (g) and the words “of such an area as is satisfactory to the Minister” were inserted instead;

Youth and Community Services (Amendment).

SCHEDULE 2—*continued.*APPLICATION OF CERTAIN REGULATIONS UNDER THE CHILD WELFARE
ACT, 1939—*continued.*

- 5 (ii) the words “under the age of 16 years” were inserted before the words “shall be provided” in Regulation 47A (h);
- (iii) the words “be provided with” wherever occurring were omitted from Regulation 47A (n) and the words “have at his disposal” were inserted instead;
- (iv) the word “toys,” was omitted from Regulation 47A (t);
- 10 (v) the words “under the age of 16 years” were inserted before the words “to receive” in Regulation 47A (u) (iii);
- (vi) the words “parent or guardian” wherever occurring were omitted from Regulation 47A (u) (iv) and the words “next of kin” were inserted instead;
- 15 (vii) the words “under the age of 16 years” were inserted before the words “shall be” in Regulation 47A (u) (v);
- (viii) the words “under the age of 16 years” were inserted before the words “in accordance” in Regulation 47A (v) (viii);
- 20 (ix) the words “under the age of 16 years” were inserted before the word “shall” in Regulation 47A (v) (xi); and
- (x) a reference in Regulation 47A (w) (i) to the person licensed to conduct a children’s depot, home or hostel were a reference to the licensed manager of licensed premises.
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Youth and Community Services (Amendment).

TABLE.

Regulation 39 (1) (paragraphs (b), (c) and (g) excepted).

Regulation 40 (2) (paragraphs (a) (ii) and (iii) and (b) (i) excepted).

Regulation 47A (paragraphs (c), (s), (u) (xii), (v) (iii), (v) (x) and
5 (w) (vi) excepted).

Forms 20G-20K in the Schedule to the Regulations.

BY AUTHORITY

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