

CONCURRENCE COPY

PRIVATE HEALTH ESTABLISHMENTS BILL, 1982

EXPLANATORY NOTE

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

The following Bills are cognate with this Bill:—

- Medical Practitioners (Private Health Establishments) Amendment Bill, 1982;
- Community Welfare (Private Health Establishments) Amendment Bill, 1982.

The objects of this Bill are—

- (a) to provide for the licensing and control of private hospitals and nursing homes and of residential centres for handicapped persons which are part of, or adjoin, private hospitals or nursing homes;
- (b) to require pecuniary interests of medical practitioners in private hospitals or nursing homes to be disclosed; and
- (c) to repeal the Private Hospitals Act, 1908.

The Bill contains the following provisions:—

PART I.—PRELIMINARY.

Clause 1. Short title.

Clause 2. Commencement.

Clause 3. Arrangement.

Clause 4. Interpretation. In the proposed Act a private hospital or nursing home, or a residential centre for handicapped persons that is part of, or adjoins, a private hospital or nursing home, is referred to as an “establishment”.

PART II.—LICENSING OF PRIVATE HOSPITALS, NURSING HOMES AND CERTAIN RESIDENTIAL CENTRES FOR HANDICAPPED PERSONS.

Clause 5 enables different classes of private hospitals and of nursing homes to be prescribed by the regulations.

Clause 6 and Schedule 1 authorise standards to be prescribed by the regulations for or with respect to patient care, construction, staffing, management or any other matter in connection with the conduct of establishments.

Clause 7 makes provision for the making of an application for a licence for an establishment.

Clause 8 authorises the Secretary of the Department of Health ("the Secretary") to issue a temporary licence pending the determination of an application for a licence.

Clause 9 provides for the Secretary's approval to be obtained to the site of a proposed establishment and the plans and specifications of any building proposed to be erected, altered or extended.

Clause 10 provides for the determination of an application for a licence.

Clause 11 specifies the circumstances in which an application may be refused.

Clause 12 prescribes the form of a licence.

Clause 13 authorises the Secretary to impose conditions on licences.

Clause 14 provides that a licence (other than a temporary licence) remains in force until cancelled.

Clause 15 requires the licensee of an establishment to pay an annual licence fee.

Clause 16 empowers the Secretary to transfer a licence for an establishment to a person who intends to conduct the establishment.

Clause 17 prohibits alterations or extensions to licensed establishments except with the approval of the Secretary.

Clause 18 empowers the Secretary to amend a licence.

Clause 19 contains provisions relating to applications under the proposed Act.

Clause 20 provides for the issue of a duplicate licence.

Clause 21 specifies the circumstances in which the Secretary may cancel a licence.

Clause 22 provides for appeals in certain circumstances to the District Court against a decision to cancel a licence.

PART III.—CONDUCT OF ESTABLISHMENTS.

Clause 23 makes it an offence to conduct a private hospital or nursing home without a licence.

Clause 24 makes it an offence to conduct without a licence a residential centre for handicapped persons which is part of, or adjoins, a private hospital or nursing home.

Clause 25 makes transitional arrangements upon the death of a licensee who is a natural person.

Clause 26 prevents a private hospital or nursing home from being used for any other purpose except a purpose permitted by a condition to which its licence is subject or a purpose prescribed by the regulations.

Clause 27 limits the number of patients that may be accommodated in an establishment to the number specified in the licence for the establishment.

Clause 28 requires the appointment in a private hospital or nursing home of a chief nurse who is responsible for the care of patients.

Clause 29 limits the use of the title of "matron" and "director of nursing" in connection with an establishment.

Clause 30 requires a registered nurse to be on duty at all times in a private hospital or nursing home.

Clause 31 prevents a nursing home or residential centre for handicapped persons from using the title "hospital".

Clause 32 provides for a register of patients to be kept at a private hospital or nursing home.

Clause 33 requires a copy of the proposed Act and the regulations thereunder to be readily available for inspection by the chief nurse.

Clause 34 empowers the Secretary to require repairs, alterations, extensions or improvements to an establishment.

PART IV.—DISCLOSURE OF PECUNIARY INTERESTS BY MEDICAL PRACTITIONERS.

Clause 35. Interpretation.

Clause 36 authorises regulations to be made to define the circumstances in which a medical practitioner has a pecuniary interest in a private hospital or nursing home.

Clause 37 requires a medical practitioner to disclose to his patients that he has a pecuniary interest in a private hospital or nursing home if those patients are admitted to or treated at the private hospital or nursing home by him.

Clause 38 requires a medical practitioner who has a pecuniary interest in a private hospital or nursing home to notify the licensee of that fact.

Clause 39 requires the licensee of a private hospital or nursing home to keep a register of the medical practitioners who have a pecuniary interest in the private hospital or nursing home.

Clause 40 makes a register of pecuniary interests of medical practitioners available for public inspection.

PART V.—MISCELLANEOUS.

Clause 41 provides for exemptions to be given from the operation of the proposed Act.

Clause 42 confers a power of entry and inspection in relation to licensed establishments or premises proposed to be licensed.

Clause 43 confers a power of inspection of certain registers and records of an establishment.

Clause 44 makes it an offence to hinder, obstruct or delay persons in the exercise or performance of their duties under the proposed Act.

Clause 45 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 46 provides for the issue of certain evidentiary certificates.

Clause 47 prescribes the procedure for the giving or serving of notices or other documents by the Secretary.

Clause 48 provides for offences under the proposed Act or regulations to be dealt with summarily before the Supreme Court or a Court of Petty Sessions.

Clause 49 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 50 empowers the making of regulations.

Clause 51 and Schedule 2 repeal the Private Hospitals Act, 1908, and certain other enactments that have amended that Act.

Clause 52 and Schedule 3 make savings, transitional and other provisions consequent upon the enactment of the proposed Act.

PRIVATE HEALTH ESTABLISHMENTS BILL, 1982

No. , 1982.

A BILL FOR

An Act to provide for the licensing and control of private hospitals, nursing homes and certain residential centres for handicapped persons; and to repeal the Private Hospitals Act, 1908, and certain other enactments.

[MR BRERETON—10 November, 1982.]

See also Medical Practitioners (Private Health Establishments) Amendment Bill, 1982; Community Welfare (Private Health Establishments) Amendment Bill, 1982.

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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:—

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PART I.

PRELIMINARY.

Short title.

1. This Act may be cited as the "Private Health Establishments Act, 1982".

10 **Commencement.**

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

(2) Except as provided by 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.

15 **Arrangement.**

3. This Act is arranged as follows:—

PART I.—PRELIMINARY—*ss.* 1–4.

20 PART II.—LICENSING OF PRIVATE HOSPITALS, NURSING HOMES AND CERTAIN RESIDENTIAL CENTRES FOR HANDICAPPED PERSONS—*ss.* 5–22.

PART III.—CONDUCT OF ESTABLISHMENTS—*ss.* 23–34.

PART IV.—DISCLOSURE OF PECUNIARY INTERESTS BY MEDICAL PRACTITIONERS—*ss.* 35–40.

PART V.—MISCELLANEOUS—*ss.* 41–52.

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SCHEDULE 1.—MATTERS WITH RESPECT TO WHICH LICENSING STANDARDS MAY BE PRESCRIBED.

SCHEDULE 2.—REPEALS.

SCHEDULE 3.—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS.

5 Interpretation.

4. (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

- 10 “chief nurse”, in relation to a private hospital or nursing home, means the chief nurse of the private hospital or nursing home as referred to in section 28;
- “establishment” means a private hospital, nursing home or residential centre for handicapped persons;
- “licence” means a licence issued under section 10 and in force under this Act or a temporary licence;
- 15 “licensee” means the holder, or any 1 or more of the holders, for the time being of a licence;
- “licensing standards” means the standards prescribed pursuant to section 6;
- 20 “nursing home” means premises at which patients are provided with nursing care for fee, gain or reward, being patients—
- (a) who are recuperating from illness or childbirth and who require nursing care; or
 - (b) who require nursing care on account of age, infirmity, chronic ill-health or other condition,
- 25 but does not include—
- (c) an institution conducted by or on behalf of the State;
 - (d) an incorporated hospital or a separate institution within the meaning of, or a hospital specified in the Fifth Schedule to, the Public Hospitals Act, 1929; or
 - 30 (e) a private hospital;

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“patient”, in relation to an establishment, means a person lodged in the establishment;

“premises” includes any land, building and part of any building;

5 “private hospital” means premises at which patients are provided with medical, surgical or other treatment, and with ancillary nursing care, for fee, gain or reward, but does not include—

(a) an institution conducted by or on behalf of the State;

10 (b) an incorporated hospital or a separate institution within the meaning of, or a hospital specified in the Fifth Schedule to, the Public Hospitals Act, 1929; or

(c) a nursing home;

“register of patients”, in relation to a private hospital or nursing home, means the register that is required by section 32 (2) to be kept at the private hospital or nursing home;

15 “registered nurse” means a nurse registered under the Nurses Registration Act, 1953;

“regulation” means a regulation made under this Act;

“residential centre for handicapped persons” means premises which—

20 (a) are located in the same building as a private hospital or nursing home; or

(b) adjoin premises which are a private hospital or nursing home,

25 and which would, but for the foregoing, be a residential centre for handicapped persons within the meaning of Division 2 of Part XI of the Community Welfare Act, 1982;

“Secretary” means the Secretary of the Department of Health;

“temporary licence” means a licence issued under section 8 (1) and in force under this Act;

30 “ward”, in relation to an establishment, means any room in the establishment in which patients are lodged, but does not include any labour room or operating theatre.

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(2) A reference in this Act to the conduct of an establishment (however expressed) is a reference to the carrying on of the business of the establishment.

(3) A reference in this Act to a person who conducts an establishment (however expressed) is a reference—

(a) to a corporation which conducts the establishment, except where that corporation is acting only in its capacity as an agent; or

(b) to a natural person who conducts the establishment (whether jointly with other persons or alone), except where that person is acting only in his capacity as a servant or an agent.

(4) For the purposes of this Act, a corporation is not a fit and proper person to be a licensee unless each director and each person concerned in the management of the corporation is a fit and proper person to be a licensee.

PART II.

15 LICENSING OF PRIVATE HOSPITALS, NURSING HOMES AND CERTAIN
RESIDENTIAL CENTRES FOR HANDICAPPED PERSONS.

Classes of private hospitals and nursing homes.

5. For the purposes of this Act, there shall be such classes of private hospitals and of nursing homes as may be prescribed.

20 **Licensing standards.**

6. (1) For the purposes of this Act, standards may be prescribed by the regulations for or with respect to patient care, construction, staffing, management or any other matter in connection with the conduct of establishments.

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(2) Without affecting the generality of subsection (1), a standard for or with respect to the conduct of an establishment may relate to any matter referred to in Schedule 1.

5 (3) A regulation under subsection (1) with respect to residential centres for handicapped persons may adopt wholly or in part the provisions of any regulations made under the Community Welfare Act, 1982, with respect to residential centres for handicapped persons licensed under that Act.

Applications for licences.

10 7. (1) An application for a licence for an establishment may be made to the Secretary by the person who intends to conduct the establishment.

(2) An application under subsection (1) shall—

- (a) be in or to the effect of the prescribed form;
- 15 (b) in the case of a private hospital or nursing home—specify any 1 or more classes of private hospitals or nursing homes in respect of which the licence is sought;
- (c) be accompanied by such particulars as may be prescribed;
- (d) be accompanied by the prescribed application fee; and
- 20 (e) where the application relates to any building proposed to be erected, altered or extended—be accompanied by such plans and specifications relating to the building as may be prescribed.

Temporary licences.

8. (1) Where an application is made for a licence in respect of an existing building, the Secretary may, pending the determination of the 25 application, issue to the applicant a temporary licence.

(2) A temporary licence remains in force until—

- (a) the date of expiry of the temporary licence as referred to in subsection (3);

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- (b) the application made under section 7 is granted; or
 - (c) the temporary licence is cancelled,
- whichever first occurs.

- (3) The date of expiry of a temporary licence is—
- 5 (a) except as provided by paragraph (b)—such date (not exceeding 2 months after the date of issue of the temporary licence) as may be specified in the temporary licence; or
 - (b) such later date as the Secretary may, by notice in writing served on the applicant, direct.

10 Approval of erection of building, etc.

9. Where an application for a licence relates to any building proposed to be erected, altered or extended, the Secretary may, subject to such conditions as he may impose, approve of—

- (a) the site of the building; and
- 15 (b) the plans and specifications that accompanied the application.

Determination of application for licence.

10. Subject to this Part, the Secretary shall, after considering an application for a licence—

- (a) grant the application and issue to the applicant a licence; or
- 20 (b) refuse the application.

Refusal of application for licence.

11. The Secretary may refuse an application for a licence—

- (a) if—
 - (i) the applicant; or
 - 25 (ii) in the case of a joint application, any of the applicants, is not a fit and proper person to be a licensee;

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- (b) where the application relates to a building erected, altered or extended after the day appointed and notified under section 2 (2) for the purposes of conducting an establishment—
- 5 (i) if the approval of the Secretary was not obtained under section 9 to the site of the building before it was erected, altered or extended;
- (ii) if the building was not erected, altered or extended in accordance with plans and specifications approved by the Secretary under section 9 before the building was erected, altered or extended; or
- 10 (iii) if a condition to which any such approval was subject has not been complied with;
- (c) if the Secretary is satisfied that the establishment concerned is not capable of being conducted in accordance with the licensing standards applicable to it;
- 15 (d) where the application relates to a private hospital or nursing home—if the premises to which the application relates have not previously been licensed and are situated less than—
- (i) the prescribed distance from any licensed private hospital;
- 20 (ii) the prescribed distance from any licensed nursing home; or
- (iii) the prescribed distance from any incorporated hospital or separate institution within the meaning of, or any hospital specified in the Fifth Schedule to, the Public Hospitals Act, 1929; or
- 25 (e) where the application relates to a private hospital or nursing home—if the Secretary is satisfied that the conduct of a private hospital or nursing home of the class or classes specified in the application—
- 30 (i) will result in more than adequate facilities of that class or those classes becoming available to the population of the area in which the premises are situated; or
- (ii) will be prejudicial to the economic or efficient delivery of health services in New South Wales.

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Form of licence.

12. A licence shall be in or to the effect of the prescribed form and, without prejudice to the inclusion in the licence of any other particulars, shall specify—
- 5 (a) the person to whom it is issued;
 - (b) the address of the establishment for which it is issued;
 - (c) in the case of a private hospital or nursing home—the class or classes of private hospitals or nursing homes in respect of which it is issued; and
 - 10 (d) the maximum number of patients who may be lodged at any one time in each ward of the establishment, as determined by the Secretary.

Conditions of licence.

13. (1) The Secretary may issue a licence subject to such conditions as 15 may be specified therein.

(2) Without affecting the generality of subsection (1), the Secretary may issue a licence for a private hospital or nursing home subject to conditions that—

- 20 (a) restrict the type of medical, surgical and other treatment that may otherwise be provided to patients pursuant to this Act;
- (b) require the installation, or the use in relation to patients, of specified equipment or facilities not otherwise required by or under this Act; or
- 25 (c) prohibit the installation, or the use in relation to patients, of specified equipment or facilities otherwise permitted by or under this Act.

Duration of licences.

14. A licence (other than a temporary licence) remains in force until cancelled under this Act.

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Annual licence fees.

15. The licensee of an establishment shall, on or before 31st December in each year, pay to the Secretary such annual licence fee as may be prescribed in relation to the establishment.

5 Transfer of licence to another licensee.

16. (1) The Secretary may, upon application being made in accordance with subsection (2), transfer the licence for an establishment to the person who intends to conduct the establishment—

- (a) by an appropriate endorsement on the licence; or
- 10 (b) by cancelling the licence and issuing a substitute licence to that person.

(2) An application under subsection (1) shall—

- (a) be in or to the effect of the prescribed form;
- (b) be accompanied by such particulars as may be prescribed; and
- 15 (c) be accompanied by the prescribed application fee.

(3) The Secretary may refuse an application under subsection (1) if the proposed licensee, or any of the proposed licensees, is not a fit and proper person to be a licensee.

Alteration or extensions to licensed establishments.

20 17. (1) Except as provided by section 34, the licensee of an establishment shall not cause or permit the establishment to be altered or extended unless—

- (a) the approval of the Secretary is first obtained to the alteration or extension; and
- 25 (b) the establishment is altered or extended in accordance with plans and specifications approved by the Secretary.

Penalty: \$2,000.

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(2) An application for approval under subsection (1) shall—

- (a) be in or to the effect of the prescribed form;
- (b) be accompanied by such particulars as may be prescribed; and
- (c) be accompanied by such plans and specifications as may be prescribed.

5

(3) The Secretary may refuse an application under subsection (1) for any reason he might refuse an application for a licence for the establishment as altered or extended.

Amendment of licences.

10 **18. (1)** The Secretary may amend a licence in 1 or more of the following ways:—

- (a) in the case of a private hospital or nursing home—by specifying in the licence additional classes of private hospitals or nursing homes;
- 15 (b) in the case of a private hospital or nursing home—by omitting classes of private hospitals or nursing homes specified in the licence;
- (c) by increasing or decreasing the number specified in the licence as the number of patients who may be lodged in any ward of the
- 20 establishment;
- (d) by amending or revoking any condition to which the licence is subject or attaching further conditions to the licence.

(2) The Secretary may amend a licence under subsection (1) if—

- (a) the licensee applies in writing to the Secretary to make the
- 25 amendment; or
- (b) the Secretary considers that the licence requires amendment.

(3) A licence is amended under subsection (1)—

- (a) by an appropriate endorsement on the licence;

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- (b) by the cancellation of the licence and the issue of a substitute licence incorporating the amendment; or
- (c) by a notice in writing served on the licensee.

(4) A licensee shall forward his licence to the Secretary if the Secretary, by notice in writing, requires him to do so for the purposes of this section.

Penalty: \$500.

(5) Upon the service of a notice referred to in subsection (3) (c), the licence to which the notice relates shall be deemed to be amended according to the tenor of the notice.

Provisions relating to applications generally.

19. (1) In this section, "application" means—

- (a) an application for a licence under section 7;
- (b) an application to transfer a licence under section 16;
- 15 (c) an application to alter or extend an establishment under section 17; or
- (d) an application for amendment of a licence under section 18.

(2) The Secretary may, by notice in writing served on an applicant, direct the applicant to furnish him with such information as he may reasonably require for the purpose of determining the application.

(3) Without limiting the power of the Secretary to refuse an application upon any other ground, the Secretary may refuse an application upon the ground that the applicant has failed to comply with a direction under subsection (2).

25 (4) Where the Secretary refuses an application, he shall forthwith cause the applicant to be notified—

- (a) that he has refused the application;
- (b) of the grounds upon which he has refused the application; and

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- (c) where he refuses the application upon the ground that the applicant is not a fit and proper person to be a licensee—of the reasons why the applicant is not a fit and proper person to be a licensee.
- 5 (5) Before determining an application referred to in subsection (1) (a) or (b), and before giving any approval under section 9, in relation to a private hospital or nursing home, the Secretary shall —
- (a) cause the application to be publicly advertised in such manner as may be prescribed; and
- 10 (b) take into consideration any representations made in relation to the application within the time limited in the advertisement.
- (6) An applicant may, with the approval of the Secretary, amend his application.
- (7) Where the Secretary refuses an application, the applicant may, by writing under his hand, request the Minister to review the decision of the
15 Secretary.
- (8) Upon receipt of a request under subsection (7), the Minister may, after such investigation of the matter as he considers necessary, either—
- (a) confirm the decision of the Secretary; or
- (b) revoke that decision and direct the Secretary to grant the
20 application concerned.
- (9) The Secretary shall give effect to a direction of the Minister under subsection (8) (b).
- (10) Where an application is refused, the regulations may provide for the refund to the applicant of the whole or any part of any application
25 fee that accompanied the application.

Duplicate licence.

20. If the Secretary is satisfied that a licence has been lost, destroyed or damaged, he may, on payment of the prescribed fee, issue a duplicate licence to the licensee.

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Cancellation of licences.

21. (1) The Secretary may cancel the licence for an establishment without holding an inquiry or giving any notice to the licensee—

- 5 (a) if the annual licence fee payable under section 15 in respect of the establishment has not been paid by the due date;
- (b) if the licensee requests the Secretary in writing to cancel the licence;
- 10 (c) if the premises to which the licence relates have ceased to be an establishment of the kind in respect of which the licence was issued;
or
- (d) in the case of a temporary licence—if the Secretary considers that it is appropriate to do so.

(2) Subject to subsection (4), the Secretary may cancel the licence for an establishment—

- 15 (a) if the licensee is not a fit and proper person to be a licensee;
- (b) if the licensee or, where the licensee is a corporation, any director or other person concerned in the management of the corporation is convicted of an offence under this Act or the regulations;
- 20 (c) if the licensee or, where the licensee is a corporation, any director or other person concerned in the management of the corporation is convicted in New South Wales of an offence punishable by imprisonment for a period of 12 months or more, or if he is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable;
- 25 (d) if the licensee breaches any condition to which the licence is subject;
- 30 (e) if the licensee (being a natural person) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit;

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- (f) where the licensee is a corporation, if a receiver or manager has been appointed in respect of the property of the licensee or if the licensee is commenced to be wound up or is under official management;
- 5 (g) if the establishment has not been conducted in accordance with the licensing standards applicable to it; or
- (h) if the establishment is conducted in such a manner—
- (i) that reasonable standards of patient care have not been maintained; or
- 10 (ii) that the cancellation of the licence is otherwise in the public interest.

(3) The Secretary may, for the purpose of exercising his powers under subsection (2), cause an inquiry to be made by some person appointed by him for the purpose.

- 15 (4) The Secretary shall not cancel a licence under subsection (2) unless, before cancelling the licence—
- (a) he has given notice to the licensee that he intends to cancel the licence;
- 20 (b) he has specified in that notice the reasons for his intention to cancel the licence;
- (c) he has given the licensee a reasonable opportunity to make submissions to him in relation to the proposed cancellation, whether in the course of an inquiry under subsection (3) or otherwise; and
- 25 (d) he has taken into consideration any such submissions by the licensee.

(5) The cancellation of a licence under subsection (2) shall not take effect—

- (a) until the expiration of 14 days after notice of the Secretary's decision is given to the licensee; or
- 30 (b) where the licensee lodges an appeal under section 22 before the expiration of the period referred to in paragraph (a)—until the appeal is dealt with or withdrawn.

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Appeals.

22. (1) A person aggrieved by a decision of the Secretary to cancel the licence for an establishment (except under section 21 (1)) may appeal to the District Court in accordance with the rules of court.

5 (2) An appeal under subsection (1) in respect of a decision of the Secretary shall be dealt with by way of rehearing, but fresh evidence or evidence in addition to, or substitution for, the evidence given on the making of the decision shall not be given on the appeal unless the District Court considers that there was good cause for the evidence not having been given
10 on the making of the decision.

(3) The District Court may, pending the determination of an appeal under subsection (1), make such orders as it thinks fit in relation to the matter the subject of the appeal.

(4) The District Court may, in determining an appeal under sub-
15 section (1), uphold the appeal or confirm the decision of the Secretary.

(5) The determination of the District Court in respect of an appeal under subsection (1) shall be final and conclusive and shall be given effect to by the Secretary.

PART III.

20

CONDUCT OF ESTABLISHMENTS.**Unlicensed private hospitals or nursing homes.**

23. (1) A person shall not conduct a private hospital or nursing home unless—

- 25 (a) the private hospital or nursing home, as the case may be, is licensed; and
(b) he is the licensee.

Penalty: \$10,000.

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- (2) Evidence that, at any premises—
- (a) during any month—2 or more persons (not being members of the occupier's family); or
 - (b) during any year—6 or more persons (not being members of the occupier's family),
- 5 have been lodged in the premises shall be prima facie evidence that—
- (c) where the persons have been provided with medical, surgical or other treatment, and with ancillary nursing care—the premises are a private hospital; or
 - 10 (d) where the persons have been provided with nursing care only—the premises are a nursing home,
- whether or not there is any evidence that a charge was made for the treatment or nursing care.

Unlicensed residential centres for handicapped persons.

- 15 **24.** On and after the day appointed by the Governor for the purposes of this section by proclamation published in the Gazette, a person shall not conduct a residential centre for handicapped persons unless—
- (a) the residential centre is licensed; and
 - (b) he is the licensee.
- 20 Penalty: \$10,000.

Executor or administrator deemed licensee.

- 25.** Where the only licensee of an establishment is a natural person and he dies, the executor of the will or administrator of the estate of the licensee shall be deemed to be the licensee for a period not exceeding 2 months or
- 25 such longer period as the Secretary may, in any particular case, approve.

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Purposes for which private hospitals or nursing homes may be used.

26. (1) The licensee of a private hospital or nursing home shall not cause or permit the licensed premises to be used for any purpose other than the following purposes:—

- 5 (a) the conduct of a private hospital or nursing home, as the case may be, of the class or classes specified in the licence;
- (b) a purpose permitted by a condition to which the licence is subject;
- (c) a purpose which is prescribed for the purposes of this paragraph.

Penalty: \$2,000.

- 10 **(2)** A reference in subsection (1) (a) to the conduct of a private hospital or nursing home does not include a reference to the conduct of a pharmacist's shop or dispensary in the private hospital or nursing home.

Overcrowding.

- 27. (1)** The licensee of an establishment shall not cause or permit the 15 number of patients in any ward in the establishment to exceed the number of patients specified in the licence in relation to that ward.

Penalty: \$2,000.

(2) The licensee of an establishment is not guilty of an offence under subsection (1) in respect of anything done in the case of an emergency.

20 Chief nurse of private hospital or nursing home.

28. (1) In this section, "establishment" does not include a residential centre for handicapped persons.

(2) The licensee of an establishment shall not conduct the establishment unless—

- 25 (a) there is a person who carries out the duties of chief nurse of the establishment and who is responsible for the care of the patients in the establishment; and

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(b) that person is a registered nurse and holds the prescribed qualifications that are applicable to a chief nurse of the establishment.

Penalty: \$2,000.

(3) Notwithstanding subsection (2), the licensee of an establishment is not guilty of an offence under that subsection by reason only that, from time to time (not exceeding at any one time the number of days prescribed for the purposes of this subsection), there is no person who is a registered nurse and who holds the prescribed qualifications that are applicable to the chief nurse of the establishment and who carries out the duties of chief nurse of the establishment.

(4) Except as may be provided by the regulations, the licensee of an establishment shall notify the Secretary in writing in accordance with subsection (5) of the full name and the qualifications of the person who carries out the duties of chief nurse of the establishment.

Penalty: \$500.

(5) A notification under subsection (4)—

(a) shall be given before the person to whom it relates commences to carry out the duties of chief nurse or, if that is not practicable, forthwith thereafter;

(b) shall be accompanied by such particulars as may be prescribed; and

(c) shall be accompanied by the prescribed notification fee.

(6) Nothing in this Act prevents the licensee of an establishment (being a natural person) from carrying out the duties of chief nurse of the establishment if he could carry out those duties had he not been the licensee.

(7) It shall be a defence to a prosecution for an offence arising under this section if the person charged proves that he took all such steps as are reasonable in the circumstances to avoid being guilty of the offence.

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Title of "matron" and "director of nursing".

29. (1) The licensee of an establishment or a person employed at the establishment shall not use the title "matron" or "director of nursing" unless—

- (a) the establishment is a private hospital or nursing home; and
- 5 (b) the licensee or person is the chief nurse of the establishment.

(2) The licensee of an establishment shall not permit a person employed at the establishment to contravene subsection (1).

Penalty: \$2,000.

Registered nurse to be on duty.

10 30. (1) In this section, "establishment" does not include a residential centre for handicapped persons.

(2) The licensee of an establishment shall, at all times while the establishment is being conducted, cause a registered nurse to be on duty in the establishment.

15 Penalty: \$2,000.

Title of "hospital" not to be used by nursing home, etc.

31. The person who conducts a nursing home or residential centre for handicapped persons shall not permit it to be held out to be a hospital by the use of the title "hospital", whether as part of its name or otherwise.

20 Penalty: \$2,000.

Register of patients.

32. (1) In this section, "establishment" does not include a residential centre for handicapped persons.

(2) The licensee of an establishment shall cause a register of patients
25 to be kept, in or to the effect of the prescribed form, at the establishment.

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(3) The following particulars shall be entered in the register of patients:—

- (a) the name, age and residential address of each patient at the establishment;
- 5 (b) the date when the patient was received at the establishment;
- (c) the date when the patient left the establishment or, in the event of his death, the date of his death;
- (d) the name of the medical practitioner attending the patient;
- (e) such other particulars as may be prescribed.

10 (4) The particulars referred to in subsection (3) shall be entered in the register of patients by the persons, at the time, and in the manner, prescribed for the purposes of this subsection.

(5) A person shall not—

- 15 (a) enter in the register of patients any particulars that he knows or has reason to believe to be false or misleading in a material particular; or
- (b) wilfully fail to enter in the register of patients any particulars which he is required by subsection (4) to enter.

Penalty: \$2,000.

20 Copy of Act and regulations to be available.

33. The licensee of an establishment (being a private hospital or nursing home) shall, at all times while the establishment is being conducted, cause a copy of this Act and the regulations to be readily available at the establishment for inspection by the chief nurse.

25 Penalty: \$500.

Private Health Establishments.

Provision for repairs, etc.

34. (1) The Secretary may, by notice in writing, require the licensee of an establishment to effect such repairs, alterations, extensions or improvements to the establishment or to the accommodation provided for the nursing and other staff of the establishment (whether that accommodation is provided at the establishment or elsewhere) as may be specified in the notice.

(2) A licensee shall not neglect or fail to comply with the requirements of any such notice within the time specified in the notice or within such further time as the Secretary may allow.

Penalty: \$2,000.

PART IV.**DISCLOSURE OF PECUNIARY INTERESTS BY MEDICAL PRACTITIONERS.****Interpretation: Pt. IV.**

15 35. In this Part—

“establishment” does not include a residential centre for handicapped persons;

“register of pecuniary interests”, in relation to an establishment, means the register that is required by section 39 (1) to be kept at the establishment.

Pecuniary interests.

36. (1) For the purposes of this Part, a medical practitioner has a pecuniary interest in an establishment if he has an interest in relation to the establishment which is prescribed as a pecuniary interest in the establishment.

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(2) The regulations may prescribe, pursuant to subsection (1), an interest of a relative or associate of a medical practitioner as a pecuniary interest of the medical practitioner.

Disclosure of pecuniary interests to patients.

5 **37. (1)** Where a medical practitioner has a pecuniary interest in an establishment, he shall not—

- (a) advise a person to be admitted to the establishment;
- (b) arrange the admission of a person to the establishment; or
- 10 (c) provide medical, surgical or other treatment to, or arrange the provision of any such treatment to, any patient in the establishment, unless, before so doing, he has notified the person or patient, in the prescribed manner, that he has a pecuniary interest in the establishment.

Penalty: \$2,000.

(2) Without affecting the generality of section 50 (2), the regula-
15 tions may prescribe, for the purposes of subsection (1), that the manner of notification shall be any 1 or more of the following:—

- (a) a statement made by the medical practitioner;
- 20 (b) a written notification given by the medical practitioner and, if required by the regulations, signed by the person to whom it is given;
- (c) a notice displayed in any surgery or other premises of the medical practitioner.

(3) A person is not guilty of an offence under subsection (1) if he proves that—

- 25 (a) he contravened that subsection in the course of his providing emergency medical, surgical or other treatment to a person; or
- (b) he was not, at the time the contravention occurred, aware that he had a pecuniary interest in the establishment concerned.

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Notification of pecuniary interests by medical practitioners.

38. (1) A medical practitioner who has a pecuniary interest in any licensed establishment shall, in accordance with subsection (2), give notice of that fact to the licensee of the establishment.

5 Penalty: \$2,000.

(2) A notice referred to in subsection (1) shall—

- (a) be in writing;
- (b) specify the name and residential address of the medical practitioner giving the notice; and
- 10 (c) contain such other particulars in relation to the pecuniary interest as may be prescribed.

Register of pecuniary interests.

39. (1) During any period that a medical practitioner has a pecuniary interest in a licensed establishment, the licensee shall cause a register of
15 pecuniary interests to be kept, in or to the effect of the prescribed form, at the establishment.

(2) The following particulars shall be entered by the licensee of an establishment in the register of pecuniary interests kept at the establishment—

- 20 (a) the name and residential address of each medical practitioner who has, to the knowledge of the licensee, a pecuniary interest in the establishment;
- (b) such other particulars as may be prescribed.

(3) The licensee of an establishment shall not—

- 25 (a) enter in the register of pecuniary interests any particulars that he knows or has reason to believe to be false or misleading in a material particular;
- (b) wilfully fail to enter in that register any particulars which he is required by subsection (2) to enter; or

Private Health Establishments.

(c) delete from that register any particulars relating to a medical practitioner unless the medical practitioner has ceased to have any pecuniary interest in the establishment.

- 5 (4) The licensee of an establishment shall, on or before 31st December in each year and at such other times as the Secretary may direct, forward to the Secretary a copy of the register of pecuniary interests kept at the establishment.

Penalty: \$2,000.

Inspection of register of pecuniary interests.

- 10 **40. (1)** The licensee of an establishment shall, at all times while the establishment is being conducted—
- (a) cause the register of pecuniary interests to be available for public inspection;
 - 15 (b) if required by the regulations, cause to be displayed at the establishment a notice which contains a statement to the effect that a register of pecuniary interests is kept at the establishment and is available for public inspection by any person; and
 - 20 (c) if required by the regulations, cause to be displayed at the establishment a notice which lists the names of the medical practitioners who have a pecuniary interest in the establishment.

Penalty: \$2,000.

(2) A notice referred to in subsection (1) (b) shall—

- (a) be in or to the effect of the prescribed form; and
 - (b) be displayed in the prescribed manner.
-

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PART V.

MISCELLANEOUS.

Exemption from operation of Act.

5 **41. (1)** The Minister may, by order published in the Gazette, direct that the whole or any specified provision of this Act—

- (a) shall not apply to or in respect of —
 (i) any person or class of persons; or
 (ii) any establishment or class of establishment,
 specified in the order; or

10 (b) shall not so apply in such circumstances as may be so specified.

(2) An order published under subsection (1)—

- (a) has effect according to its tenor; and
(b) takes effect on and from the date of publication or, where a later date is specified in the order, the later date so specified.

15 **(3)** Nothing in this section affects the operation of section 31.

Power to enter and inspect establishments.

42. (1) A person authorised by the Secretary to do so may, at any time, enter and inspect—

- (a) any licensed establishment; or
20 (b) any premises which are the subject of an application for a licence.

(2) Every person authorised under subsection (1) shall be provided by the Secretary with a certificate of his authority, and on applying for admission to any premises which he is empowered by this section to enter shall, if requested to do so, produce the certificate to the person apparently in charge
25 of the premises.

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Power to inspect, etc., registers and records.

43. (1) In this section, "prescribed records", in relation to any establishment, means the register of patients or any other records required by or under this Act to be kept at the establishment.

- 5 **(2)** A person authorised by the Secretary under section 42—
- (a) may inspect and take copies of, or extracts from, any prescribed records of an establishment; or
 - (b) may take and retain possession of any prescribed records of an establishment for such period as is necessary to enable those records to be inspected and copies of, or extracts from, those records to be taken.
- 10

(3) Where a person retains possession of any prescribed records of an establishment pursuant to subsection (2) (b), he shall, during the period that he retains possession of them—

- 15 (a) permit a person who is entitled to inspect any 1 or more of those records to inspect at all reasonable times such of the records as that person is so entitled to inspect; and
- (b) permit a person who is required by or under this Act to make an entry in those records to make the entry at any reasonable time.

20 **(4)** Subsection (2) (b) does not authorise a person who takes possession of any prescribed records of an establishment to remove those records from the establishment if those records—

- (a) relate to a person who is then a patient of the establishment; and
 - (b) may be required to be referred to for the purposes of providing the patient with nursing care or medical, surgical or other treatment.
- 25

(5) Subject to subsections (6) and (7), in any legal proceedings (whether proceedings under this Act or otherwise) a copy of or extract from a prescribed record is admissible in evidence as if it were the original record or the relevant part of the original record.

30

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(6) A copy of or extract from a prescribed record is not admissible in evidence under subsection (5) unless it is proved that the copy or extract is a true copy of the record or of the relevant part of the record.

5 (7) For the purposes of subsection (6), evidence that a copy of or extract from a prescribed record is a true copy of the record or of a part of the record may be given by a person who has compared the copy or extract with the record or the relevant part of the record and may be given either orally or by an affidavit sworn, or by a declaration made, before a person authorised to take affidavits or statutory declarations.

10 Obstruction, etc., of officers.

44. A person shall not wilfully hinder, obstruct or delay any person in the exercise or performance of any power, authority, duty or function under this Act.

Penalty: \$2,000.

15 False or misleading statements, etc.

45. A person shall not, in any application under this Act, or in support of any such application, or for the purposes of any inquiry under this Act—

- (a) make a statement; or
- (b) furnish any information,

20 which he knows or has reason to believe to be false or misleading in a material particular.

Penalty: \$2,000.

Evidentiary certificates.

25 46. A certificate which purports to be under the hand of the Secretary or a prescribed officer and which states that, on a date specified in the certificate—

- (a) a person so specified was or was not the licensee of an establishment so specified;

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- (b) any premises so specified were or were not licensed;
- (c) the licence for an establishment so specified was cancelled;
- (d) any particulars so specified were the particulars specified in the licence for an establishment so specified; or
- 5 (e) the licence for an establishment so specified was subject to any condition so specified,

is, without proof of signature, admissible in evidence in any legal proceedings (whether proceedings under this Act or otherwise) and is prima facie evidence of the matters stated therein.

10 Service of notices, etc., by Secretary.

47. (1) Where, by or under this Act, a notice or other document is required to be or may be given or served by the Secretary, that notice may be given to or served on—

- (a) a natural person—
 - 15 (i) by delivering it to him personally;
 - (ii) by leaving it at his place of residence last known to the Secretary with a person who apparently resides there or, if he is a licensee, by leaving it at the establishment to which the licence relates with a person apparently employed at the establishment, being in either case a person who has
20 apparently attained the age of 16 years; or
 - (iii) by sending it by post addressed to him at that place of residence or that establishment; or
- (b) a corporation—
 - 25 (i) by delivering it to a person who is apparently engaged in the control or management of the corporation;
 - (ii) by leaving it at the registered office of the corporation with a person who is apparently employed at that office or, if the corporation is a licensee, by leaving it at the establish-
30 ment to which the licence relates with a person who is

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apparently employed at the establishment, being in either case a person who has apparently attained the age of 16 years; or

5 (iii) by sending it by post addressed to the corporation at that registered office or that establishment.

(2) A notice or other document that is sent by post in accordance with subsection (1) shall, in the absence of evidence to the contrary, be deemed to have been given or served when it would have been delivered in the ordinary course of post.

10 Proceedings for offences.

48. (1) Proceedings for offences against this Act or the regulations may be taken before a court of petty sessions constituted by a stipendiary magistrate sitting alone or before the Supreme Court in its summary jurisdiction.

15 (2) If proceedings in respect of an offence against this Act or the regulations are brought in a court of petty sessions held before a stipendiary magistrate, the maximum penalty that the court may impose in respect of the offence is, notwithstanding any other provision of this Act, \$4,000 or the maximum penalty provided by this Act or the regulations in respect of the offence, whichever is the lesser.

20 (3) If proceedings in respect of an offence against this Act or the regulations are brought before the Supreme Court in its summary jurisdiction, that Court may impose a penalty not exceeding the maximum penalty provided by this Act or the regulations in respect of the offence.

25 (4) Proceedings in the Supreme Court in its summary jurisdiction in respect of an offence against this Act or the regulations may be commenced only within 6 months after the offence was alleged to be committed.

Offences by corporations.

49. (1) Where a corporation contravenes, whether by act or omission, any provision of this Act or the regulations, each director of the corporation, 30 and each person concerned in the management of the corporation, shall be deemed to have contravened the same provision unless he satisfies the court that—

(a) the corporation contravened the provision without his knowledge;

Private Health Establishments.

- (b) he was not in a position to influence the conduct of the corporation in relation to its contravention of the provision; or
- (c) he, being in such a position, used all due diligence to prevent the contravention by the corporation.

5 (2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or been convicted under that provision.

 (3) Nothing in subsection (1) prejudices or affects any liability imposed by a provision of this Act or the regulations on any corporation by
10 which an offence against the provision is actually committed.

Regulations.

50. (1) The Governor may make regulations, not 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
15 carrying out or giving effect to this Act.

(2) A provision of a regulation may—

- (a) apply generally or be limited in its application by reference to specified exceptions or factors;
- (b) apply differently according to different factors of a specified kind;
20 or
- (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,

or may do any combination of those things.

(3) A regulation (including a regulation prescribing a licensing
25 standard) may impose a penalty not exceeding \$500 for an offence against the regulation.

Repeals.

51. Each Act specified in Column 1 of Schedule 2 is, to the extent specified opposite that Act in Column 2 of that Schedule, repealed.

Private Health Establishments.

Savings, transitional and other provisions.

52. Schedule 3 has effect.

SCHEDULE 1.**(Sec. 6 (2).)****5****MATTERS WITH RESPECT TO WHICH LICENSING STANDARDS
MAY BE PRESCRIBED.****10**

1. The design and construction of establishments generally.
2. The provision of lighting, heating and ventilation facilities.
3. The design and construction of establishments to provide safety from fire and the provision of facilities to prevent, detect and extinguish fire.
4. The provision of sufficient means of escape from establishments in the case of fire.
5. The provision of water, sewerage and drainage services.
6. The provision of accommodation for patients and for nursing and other staff.
7. The provision of laundry, washing and toilet facilities.
8. The provision of cooking facilities.
9. The provision of operating theatres, labour rooms, nurseries or other specified types of room.
10. The provision of refuse disposal facilities.
11. The situation of establishments.
12. The duties of licensees and chief nurses of establishments.
13. The provision of nursing and other staff at establishments.
14. The duties of nursing and other staff at establishments.

20

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SCHEDULE 1—*continued.*MATTERS WITH RESPECT TO WHICH LICENSING STANDARDS
MAY BE PRESCRIBED—*continued.*

- 5 15. The regulation or prohibition of admission to establishments of persons suffering from diseases or in other conditions.
16. The removal from, or the isolation within, establishments of patients suffering from diseases or in other conditions.
17. The keeping of dead bodies at establishments.
18. The giving of notice to the Secretary or other persons of—
- 10 (a) births and deaths occurring at establishments;
- (b) the outbreak of diseases at establishments;
- (c) the outbreak of fire; and
- (d) any other occurrence.
19. The keeping of records at establishments.
- 15 20. The disposal of a part of a register or record required to be kept by or under this Act which relates to previous patients of an establishment.
21. The furnishing of information to the Secretary in relation to the conduct of establishments.
- 20 22. The furnishing of information to a patient and the inspection of records by a patient in connection with the treatment of the patient at an establishment.
23. The displaying of licences at establishments.
24. The compounding, storing, dispensing and administering of medicines and drugs at establishments.
- 25 25. The regulation or prohibition of types of medical, surgical and other treatment at establishments.
26. The regulation or prohibition of the installation in establishments, or the use in relation to patients of establishments, of types of facilities and equipment.
27. The regulation of visiting hours at establishments.

*Private Health Establishments.*SCHEDULE 1—*continued.*MATTERS WITH RESPECT TO WHICH LICENSING STANDARDS
MAY BE PRESCRIBED—*continued.*

- 5 28. The provision and maintenance of furniture, equipment, furnishings, linen and utensils at establishments.
29. Hygiene at establishments.
30. The prevention and destruction of vermin at establishments.
31. The storage, preparation and serving of food at establishments.

SCHEDULE 2.

(Sec. 51.)

10

REPEALS.

Column 1.		Column 2.
Year and number of Act.	Short title of Act.	Extent of repeal.
15	1908, No. 14 .. 1924, No. 37 .. 1937, No. 35 ..	Private Hospitals Act, 1908 Nurses' Registration Act, 1924 Statute Law Revision Act, 1937
20	1953, No. 10 .. 1954, No. 22 .. 1964, No. 45 .. 1970, No. 52 ..	Private Hospitals Act, 1908 Nurses' Registration Act, 1924 Statute Law Revision Act, 1937 Nurses Registration Act, 1953 Private Hospitals (Amendment) Act, 1954 .. Private Hospitals (Amendment) Act, 1964 .. Supreme Court Act, 1970
25	1971, No. 10 .. 1972, No. 41 ..	Private Hospitals (Amendment) Act, 1971 .. Supreme Court (Amendment) Act, 1972 ..

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SCHEDULE 3.

(Sec. 52.)

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS.

Interpretation.

5 1. In this Schedule—

“appointed day” means the day appointed and notified under section 2 (2);

“former Act” means the Private Hospitals Act, 1908.

Existing licences.

- 10 2. A licence (other than an interim licence) which was in force under the former Act immediately before the appointed day shall be deemed to have been issued, on that day, under this Act.

Pending applications.

- 15 3. (1) An application for a licence made under the former Act which has not been determined immediately before the appointed day shall be deemed to have been made under this Act and shall be dealt with in accordance with the provisions of this Act.

- 20 (2) For the purposes of subclause (1), an approval granted under the former Act or the regulations thereunder in respect of the site, or plans and specifications, of a proposed private hospital or nursing home shall be deemed to have been granted by the Secretary under section 9.

Regulations under former Act.

4. A regulation in force under the former Act immediately before the appointed day shall, to the extent that it could have been made under this Act on or after that day, be deemed to have been made under this Act.

25 **Notice to effect repairs.**

5. A notice given under section 14A of the former Act and in force immediately before the appointed day shall be deemed to have been given, on that day, under section 34 and shall have effect according to its tenor.

Private Health Establishments.

SCHEDULE 3—*continued.*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued.***Residential centres for handicapped persons.**

- 5 6. If the day appointed under section 24 is a day that is earlier than the day appointed and notified under section 2 (2) of the Community Welfare Act, 1982, a residential centre for handicapped persons within the meaning of the Youth and Community Services Act, 1973, shall be deemed, for the purposes of that lastmentioned Act, not to include a residential centre for handicapped persons licensed under this Act.

10 Register of patients.

7. The register of patients kept at a private hospital or nursing home pursuant to section 13 of the former Act immediately before the appointed day shall be deemed, on that day, to be kept pursuant to section 32.

Inquiry.

- 15 8. Where, immediately before the appointed day, an inquiry is being made under section 16 (1) of the former Act, the inquiry may continue as if it were being made under section 21 (3).

Revocation.

- 20 9. A revocation of a licence pursuant to section 16 or 16A of the former Act, which has not taken effect before the appointed day, shall have effect, on that day, as a cancellation of the licence under section 21 (2) and any notification of the revocation given under section 16B of the former Act shall be deemed, on that day, to be a notice given under section 21 (5).

Appeal.

- 25 10. Any appeal pending under section 16C of the former Act immediately before the appointed day shall be deemed, on that day, to be pending under section 22, and may be heard and determined accordingly.

References to former Act.

- 30 11. On and from the appointed day, a reference in any Act, other than this Act, to the Private Hospitals Act, 1908, shall be construed as a reference to the Private Health Establishments Act, 1982.

Private Health Establishments.

SCHEDULE 3—*continued.*

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued.*

Regulations.

5 12. (1) The Governor may make regulations containing other provisions of a savings or transitional nature consequent on the enactment of this Act.

(2) A provision made under subclause (1) may take effect as from the appointed day or a later day.

10 (3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—

(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication therein; or

15 (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication therein.

(4) A provision made under subclause (1) shall, if the regulations under this clause so provide, have effect notwithstanding the foregoing clauses of this Schedule.

20 (5) A reference in any provision of this Act (this clause excepted) to regulations does not include a reference to regulations made under this clause.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1982

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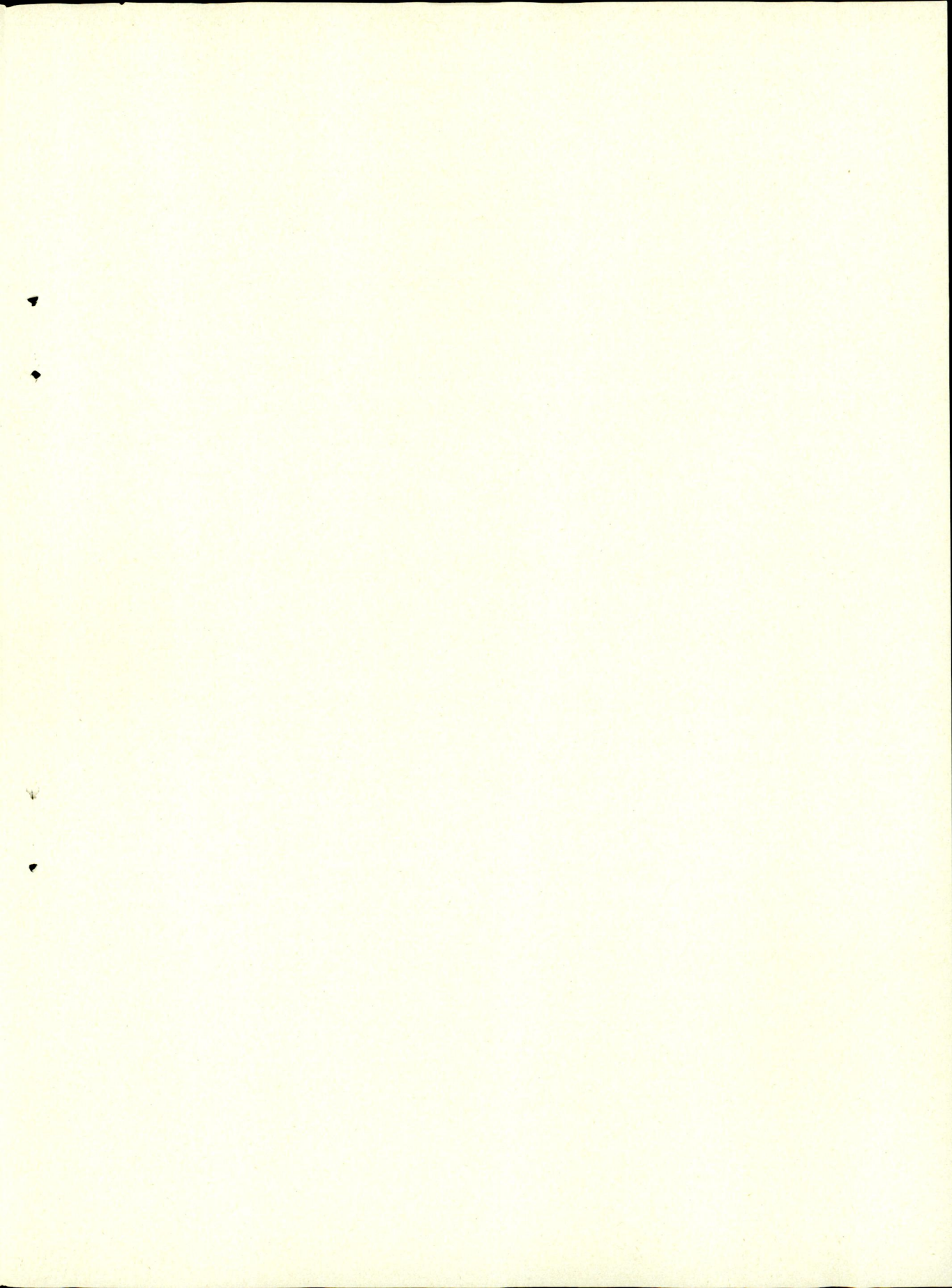
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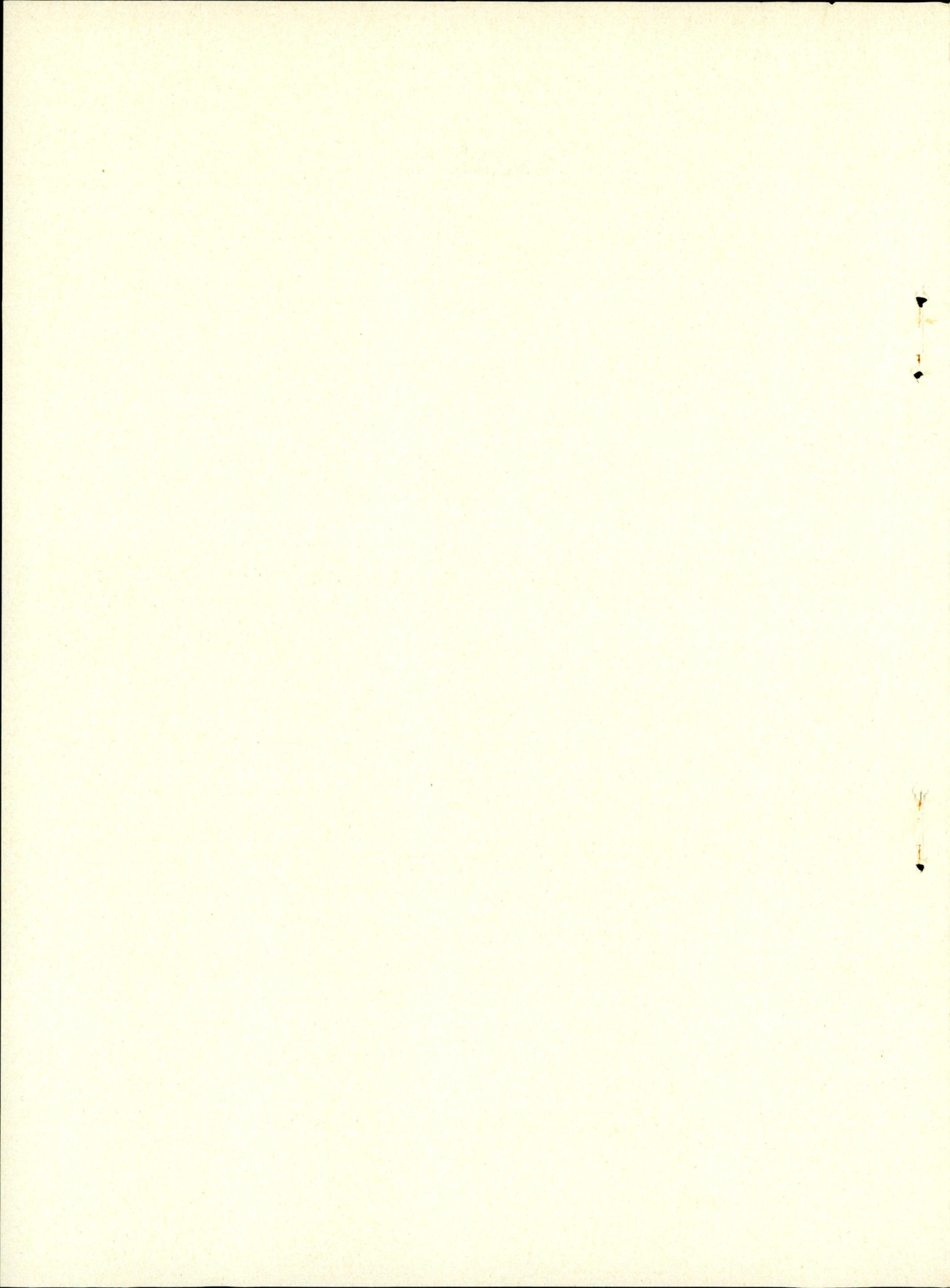
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PRIVATE HEALTH ESTABLISHMENTS ACT, 1982, No. 130

New South Wales



ANNO TRICESIMO PRIMO

ELIZABETHÆ II REGINÆ

Act No. 130, 1982.

An Act to provide for the licensing and control of private hospitals, nursing homes and certain residential centres for handicapped persons; and to repeal the Private Hospitals Act, 1908, and certain other enactments. [Assented to, 15th December, 1982.]

See also Medical Practitioners (Private Health Establishments) Amendment Act, 1982; Community Welfare (Private Health Establishments) Amendment Act, 1982.

Private Health Establishments.

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:—

PART I.**PRELIMINARY.****Short title.**

1. This Act may be cited as the "Private Health Establishments Act, 1982".

Commencement.

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

(2) Except as provided by 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.

Arrangement.

3. This Act is arranged as follows:—

PART I.—PRELIMINARY—*ss.* 1–4.

PART II.—LICENSING OF PRIVATE HOSPITALS, NURSING HOMES AND CERTAIN RESIDENTIAL CENTRES FOR HANDICAPPED PERSONS—*ss.* 5–22.

PART III.—CONDUCT OF ESTABLISHMENTS—*ss.* 23–34.

PART IV.—DISCLOSURE OF PECUNIARY INTERESTS BY MEDICAL PRACTITIONERS—*ss.* 35–40.

PART V.—MISCELLANEOUS—*ss.* 41–52.

Private Health Establishments.

SCHEDULE 1.—MATTERS WITH RESPECT TO WHICH LICENSING STANDARDS MAY BE PRESCRIBED.

SCHEDULE 2.—REPEALS.

SCHEDULE 3.—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS.

Interpretation.

4. (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

“chief nurse”, in relation to a private hospital or nursing home, means the chief nurse of the private hospital or nursing home as referred to in section 28;

“establishment” means a private hospital, nursing home or residential centre for handicapped persons;

“licence” means a licence issued under section 10 and in force under this Act or a temporary licence;

“licensee” means the holder, or any 1 or more of the holders, for the time being of a licence;

“licensing standards” means the standards prescribed pursuant to section 6;

“nursing home” means premises at which patients are provided with nursing care for fee, gain or reward, being patients—

(a) who are recuperating from illness or childbirth and who require nursing care; or

(b) who require nursing care on account of age, infirmity, chronic ill-health or other condition,

but does not include—

(c) an institution conducted by or on behalf of the State;

(d) an incorporated hospital or a separate institution within the meaning of, or a hospital specified in the Fifth Schedule to, the Public Hospitals Act, 1929; or

(e) a private hospital;

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“patient”, in relation to an establishment, means a person lodged in the establishment;

“premises” includes any land, building and part of any building;

“private hospital” means premises at which patients are provided with medical, surgical or other treatment, and with ancillary nursing care, for fee, gain or reward, but does not include—

- (a) an institution conducted by or on behalf of the State;
- (b) an incorporated hospital or a separate institution within the meaning of, or a hospital specified in the Fifth Schedule to, the Public Hospitals Act, 1929; or
- (c) a nursing home;

“register of patients”, in relation to a private hospital or nursing home, means the register that is required by section 32 (2) to be kept at the private hospital or nursing home;

“registered nurse” means a nurse registered under the Nurses Registration Act, 1953;

“regulation” means a regulation made under this Act;

“residential centre for handicapped persons” means premises which—

- (a) are located in the same building as a private hospital or nursing home; or
- (b) adjoin premises which are a private hospital or nursing home,

and which would, but for the foregoing, be a residential centre for handicapped persons within the meaning of Division 2 of Part XI of the Community Welfare Act, 1982;

“Secretary” means the Secretary of the Department of Health;

“temporary licence” means a licence issued under section 8 (1) and in force under this Act;

“ward”, in relation to an establishment, means any room in the establishment in which patients are lodged, but does not include any labour room or operating theatre.

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(2) A reference in this Act to the conduct of an establishment (however expressed) is a reference to the carrying on of the business of the establishment.

(3) A reference in this Act to a person who conducts an establishment (however expressed) is a reference—

- (a) to a corporation which conducts the establishment, except where that corporation is acting only in its capacity as an agent; or
- (b) to a natural person who conducts the establishment (whether jointly with other persons or alone), except where that person is acting only in his capacity as a servant or an agent.

(4) For the purposes of this Act, a corporation is not a fit and proper person to be a licensee unless each director and each person concerned in the management of the corporation is a fit and proper person to be a licensee.

PART II.

LICENSING OF PRIVATE HOSPITALS, NURSING HOMES AND CERTAIN
RESIDENTIAL CENTRES FOR HANDICAPPED PERSONS.

Classes of private hospitals and nursing homes.

5. For the purposes of this Act, there shall be such classes of private hospitals and of nursing homes as may be prescribed.

Licensing standards.

6. (1) For the purposes of this Act, standards may be prescribed by the regulations for or with respect to patient care, construction, staffing, management or any other matter in connection with the conduct of establishments.

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(2) Without affecting the generality of subsection (1), a standard for or with respect to the conduct of an establishment may relate to any matter referred to in Schedule 1.

(3) A regulation under subsection (1) with respect to residential centres for handicapped persons may adopt wholly or in part the provisions of any regulations made under the Community Welfare Act, 1982, with respect to residential centres for handicapped persons licensed under that Act.

Applications for licences.

7. (1) An application for a licence for an establishment may be made to the Secretary by the person who intends to conduct the establishment.

(2) An application under subsection (1) shall—

- (a) be in or to the effect of the prescribed form;
- (b) in the case of a private hospital or nursing home—specify any 1 or more classes of private hospitals or nursing homes in respect of which the licence is sought;
- (c) be accompanied by such particulars as may be prescribed;
- (d) be accompanied by the prescribed application fee; and
- (e) where the application relates to any building proposed to be erected, altered or extended—be accompanied by such plans and specifications relating to the building as may be prescribed.

Temporary licences.

8. (1) Where an application is made for a licence in respect of an existing building, the Secretary may, pending the determination of the application, issue to the applicant a temporary licence.

(2) A temporary licence remains in force until—

- (a) the date of expiry of the temporary licence as referred to in subsection (3);

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- (b) the application made under section 7 is granted; or
 - (c) the temporary licence is cancelled,
- whichever first occurs.

(3) The date of expiry of a temporary licence is—

- (a) except as provided by paragraph (b)—such date (not exceeding 2 months after the date of issue of the temporary licence) as may be specified in the temporary licence; or
- (b) such later date as the Secretary may, by notice in writing served on the applicant, direct.

Approval of erection of building, etc.

9. Where an application for a licence relates to any building proposed to be erected, altered or extended, the Secretary may, subject to such conditions as he may impose, approve of—

- (a) the site of the building; and
- (b) the plans and specifications that accompanied the application.

Determination of application for licence.

10. Subject to this Part, the Secretary shall, after considering an application for a licence—

- (a) grant the application and issue to the applicant a licence; or
- (b) refuse the application.

Refusal of application for licence.

11. The Secretary may refuse an application for a licence—

- (a) if—
 - (i) the applicant; or
 - (ii) in the case of a joint application, any of the applicants, is not a fit and proper person to be a licensee;

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- (b) where the application relates to a building erected, altered or extended after the day appointed and notified under section 2 (2) for the purposes of conducting an establishment—
- (i) if the approval of the Secretary was not obtained under section 9 to the site of the building before it was erected, altered or extended;
 - (ii) if the building was not erected, altered or extended in accordance with plans and specifications approved by the Secretary under section 9 before the building was erected, altered or extended; or
 - (iii) if a condition to which any such approval was subject has not been complied with;
- (c) if the Secretary is satisfied that the establishment concerned is not capable of being conducted in accordance with the licensing standards applicable to it;
- (d) where the application relates to a private hospital or nursing home—if the premises to which the application relates have not previously been licensed and are situated less than—
- (i) the prescribed distance from any licensed private hospital;
 - (ii) the prescribed distance from any licensed nursing home;
or
 - (iii) the prescribed distance from any incorporated hospital or separate institution within the meaning of, or any hospital specified in the Fifth Schedule to, the Public Hospitals Act, 1929; or
- (e) where the application relates to a private hospital or nursing home—if the Secretary is satisfied that the conduct of a private hospital or nursing home of the class or classes specified in the application—
- (i) will result in more than adequate facilities of that class or those classes becoming available to the population of the area in which the premises are situated; or
 - (ii) will be prejudicial to the economic or efficient delivery of health services in New South Wales.

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Form of licence.

12. A licence shall be in or to the effect of the prescribed form and, without prejudice to the inclusion in the licence of any other particulars, shall specify—

- (a) the person to whom it is issued;
- (b) the address of the establishment for which it is issued;
- (c) in the case of a private hospital or nursing home—the class or classes of private hospitals or nursing homes in respect of which it is issued; and
- (d) the maximum number of patients who may be lodged at any one time in each ward of the establishment, as determined by the Secretary.

Conditions of licence.

13. (1) The Secretary may issue a licence subject to such conditions as may be specified therein.

(2) Without affecting the generality of subsection (1), the Secretary may issue a licence for a private hospital or nursing home subject to conditions that—

- (a) restrict the type of medical, surgical and other treatment that may otherwise be provided to patients pursuant to this Act;
- (b) require the installation, or the use in relation to patients, of specified equipment or facilities not otherwise required by or under this Act; or
- (c) prohibit the installation, or the use in relation to patients, of specified equipment or facilities otherwise permitted by or under this Act.

Duration of licences.

14. A licence (other than a temporary licence) remains in force until cancelled under this Act.

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Annual licence fees.

15. The licensee of an establishment shall, on or before 31st December in each year, pay to the Secretary such annual licence fee as may be prescribed in relation to the establishment.

Transfer of licence to another licensee.

16. (1) The Secretary may, upon application being made in accordance with subsection (2), transfer the licence for an establishment to the person who intends to conduct the establishment—

- (a) by an appropriate endorsement on the licence; or
- (b) by cancelling the licence and issuing a substitute licence to that person.

(2) An application under subsection (1) shall—

- (a) be in or to the effect of the prescribed form;
- (b) be accompanied by such particulars as may be prescribed; and
- (c) be accompanied by the prescribed application fee.

(3) The Secretary may refuse an application under subsection (1) if the proposed licensee, or any of the proposed licensees, is not a fit and proper person to be a licensee.

Alteration or extensions to licensed establishments.

17. (1) Except as provided by section 34, the licensee of an establishment shall not cause or permit the establishment to be altered or extended unless—

- (a) the approval of the Secretary is first obtained to the alteration or extension; and
- (b) the establishment is altered or extended in accordance with plans and specifications approved by the Secretary.

Penalty: \$2,000.

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(2) An application for approval under subsection (1) shall—

- (a) be in or to the effect of the prescribed form;
- (b) be accompanied by such particulars as may be prescribed; and
- (c) be accompanied by such plans and specifications as may be prescribed.

(3) The Secretary may refuse an application under subsection (1) for any reason he might refuse an application for a licence for the establishment as altered or extended.

Amendment of licences.

18. (1) The Secretary may amend a licence in 1 or more of the following ways:—

- (a) in the case of a private hospital or nursing home—by specifying in the licence additional classes of private hospitals or nursing homes;
- (b) in the case of a private hospital or nursing home—by omitting classes of private hospitals or nursing homes specified in the licence;
- (c) by increasing or decreasing the number specified in the licence as the number of patients who may be lodged in any ward of the establishment;
- (d) by amending or revoking any condition to which the licence is subject or attaching further conditions to the licence.

(2) The Secretary may amend a licence under subsection (1) if—

- (a) the licensee applies in writing to the Secretary to make the amendment; or
- (b) the Secretary considers that the licence requires amendment.

(3) A licence is amended under subsection (1)—

- (a) by an appropriate endorsement on the licence;

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- (b) by the cancellation of the licence and the issue of a substitute licence incorporating the amendment; or
- (c) by a notice in writing served on the licensee.

(4) A licensee shall forward his licence to the Secretary if the Secretary, by notice in writing, requires him to do so for the purposes of this section.

Penalty: \$500.

(5) Upon the service of a notice referred to in subsection (3) (c), the licence to which the notice relates shall be deemed to be amended according to the tenor of the notice.

Provisions relating to applications generally.

19. (1) In this section, "application" means—

- (a) an application for a licence under section 7;
- (b) an application to transfer a licence under section 16;
- (c) an application to alter or extend an establishment under section 17; or
- (d) an application for amendment of a licence under section 18.

(2) The Secretary may, by notice in writing served on an applicant, direct the applicant to furnish him with such information as he may reasonably require for the purpose of determining the application.

(3) Without limiting the power of the Secretary to refuse an application upon any other ground, the Secretary may refuse an application upon the ground that the applicant has failed to comply with a direction under subsection (2).

(4) Where the Secretary refuses an application, he shall forthwith cause the applicant to be notified—

- (a) that he has refused the application;
- (a) of the grounds upon which he has refused the application; and

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- (c) where he refuses the application upon the ground that the applicant is not a fit and proper person to be a licensee—of the reasons why the applicant is not a fit and proper person to be a licensee.
- (5) Before determining an application referred to in subsection (1) (a) or (b), and before giving any approval under section 9, in relation to a private hospital or nursing home, the Secretary shall—
- (a) cause the application to be publicly advertised in such manner as may be prescribed; and
- (b) take into consideration any representations made in relation to the application within the time limited in the advertisement.
- (6) An applicant may, with the approval of the Secretary, amend his application.
- (7) Where the Secretary refuses an application, the applicant may, by writing under his hand, request the Minister to review the decision of the Secretary.
- (8) Upon receipt of a request under subsection (7), the Minister may, after such investigation of the matter as he considers necessary, either—
- (a) confirm the decision of the Secretary; or
- (b) revoke that decision and direct the Secretary to grant the application concerned.
- (9) The Secretary shall give effect to a direction of the Minister under subsection (8) (b).
- (10) Where an application is refused, the regulations may provide for the refund to the applicant of the whole or any part of any application fee that accompanied the application.

Duplicate licence.

20. If the Secretary is satisfied that a licence has been lost, destroyed or damaged, he may, on payment of the prescribed fee, issue a duplicate licence to the licensee.

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Cancellation of licences.

21. (1) The Secretary may cancel the licence for an establishment without holding an inquiry or giving any notice to the licensee—

- (a) if the annual licence fee payable under section 15 in respect of the establishment has not been paid by the due date;
- (b) if the licensee requests the Secretary in writing to cancel the licence;
- (c) if the premises to which the licence relates have ceased to be an establishment of the kind in respect of which the licence was issued;
or
- (d) in the case of a temporary licence—if the Secretary considers that it is appropriate to do so.

(2) Subject to subsection (4), the Secretary may cancel the licence for an establishment—

- (a) if the licensee is not a fit and proper person to be a licensee;
- (b) if the licensee or, where the licensee is a corporation, any director or other person concerned in the management of the corporation is convicted of an offence under this Act or the regulations;
- (c) if the licensee or, where the licensee is a corporation, any director or other person concerned in the management of the corporation is convicted in New South Wales of an offence punishable by imprisonment for a period of 12 months or more, or if he is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable;
- (d) if the licensee breaches any condition to which the licence is subject;
- (e) if the licensee (being a natural person) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit;

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- (f) where the licensee is a corporation, if a receiver or manager has been appointed in respect of the property of the licensee or if the licensee is commenced to be wound up or is under official management;
- (g) if the establishment has not been conducted in accordance with the licensing standards applicable to it; or
- (h) if the establishment is conducted in such a manner—
 - (i) that reasonable standards of patient care have not been maintained; or
 - (ii) that the cancellation of the licence is otherwise in the public interest.

(3) The Secretary may, for the purpose of exercising his powers under subsection (2), cause an inquiry to be made by some person appointed by him for the purpose.

(4) The Secretary shall not cancel a licence under subsection (2) unless, before cancelling the licence—

- (a) he has given notice to the licensee that he intends to cancel the licence;
- (b) he has specified in that notice the reasons for his intention to cancel the licence;
- (c) he has given the licensee a reasonable opportunity to make submissions to him in relation to the proposed cancellation, whether in the course of an inquiry under subsection (3) or otherwise; and
- (d) he has taken into consideration any such submissions by the licensee.

(5) The cancellation of a licence under subsection (2) shall not take effect—

- (a) until the expiration of 14 days after notice of the Secretary's decision is given to the licensee; or
- (b) where the licensee lodges an appeal under section 22 before the expiration of the period referred to in paragraph (a)—until the appeal is dealt with or withdrawn.

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Appeals.

22. (1) A person aggrieved by a decision of the Secretary to cancel the licence for an establishment (except under section 21 (1)) may appeal to the District Court in accordance with the rules of court.

(2) An appeal under subsection (1) in respect of a decision of the Secretary shall be dealt with by way of rehearing, but fresh evidence or evidence in addition to, or substitution for, the evidence given on the making of the decision shall not be given on the appeal unless the District Court considers that there was good cause for the evidence not having been given on the making of the decision.

(3) The District Court may, pending the determination of an appeal under subsection (1), make such orders as it thinks fit in relation to the matter the subject of the appeal.

(4) The District Court may, in determining an appeal under subsection (1), uphold the appeal or confirm the decision of the Secretary.

(5) The determination of the District Court in respect of an appeal under subsection (1) shall be final and conclusive and shall be given effect to by the Secretary.

PART III.**CONDUCT OF ESTABLISHMENTS.****Unlicensed private hospitals or nursing homes.**

23. (1) A person shall not conduct a private hospital or nursing home unless—

- (a) the private hospital or nursing home, as the case may be, is licensed; and
- (b) he is the licensee.

Penalty: \$10,000.

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(2) Evidence that, at any premises—

- (a) during any month—2 or more persons (not being members of the occupier's family); or
- (b) during any year—6 or more persons (not being members of the occupier's family),

have been lodged in the premises shall be prima facie evidence that—

- (c) where the persons have been provided with medical, surgical or other treatment, and with ancillary nursing care—the premises are a private hospital; or
- (d) where the persons have been provided with nursing care only—the premises are a nursing home,

whether or not there is any evidence that a charge was made for the treatment or nursing care.

Unlicensed residential centres for handicapped persons.

24. On and after the day appointed by the Governor for the purposes of this section by proclamation published in the Gazette, a person shall not conduct a residential centre for handicapped persons unless—

- (a) the residential centre is licensed; and
- (b) he is the licensee.

Penalty: \$10,000.

Executor or administrator deemed licensee.

25. Where the only licensee of an establishment is a natural person and he dies, the executor of the will or administrator of the estate of the licensee shall be deemed to be the licensee for a period not exceeding 2 months or such longer period as the Secretary may, in any particular case, approve.

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Purposes for which private hospitals or nursing homes may be used.

26. (1) The licensee of a private hospital or nursing home shall not cause or permit the licensed premises to be used for any purpose other than the following purposes:—

- (a) the conduct of a private hospital or nursing home, as the case may be, of the class or classes specified in the licence;
- (b) a purpose permitted by a condition to which the licence is subject;
- (c) a purpose which is prescribed for the purposes of this paragraph.

Penalty: \$2,000.

(2) A reference in subsection (1) (a) to the conduct of a private hospital or nursing home does not include a reference to the conduct of a pharmacist's shop or dispensary in the private hospital or nursing home.

Overcrowding.

27. (1) The licensee of an establishment shall not cause or permit the number of patients in any ward in the establishment to exceed the number of patients specified in the licence in relation to that ward.

Penalty: \$2,000.

(2) The licensee of an establishment is not guilty of an offence under subsection (1) in respect of anything done in the case of an emergency.

Chief nurse of private hospital or nursing home.

28. (1) In this section, "establishment" does not include a residential centre for handicapped persons.

(2) The licensee of an establishment shall not conduct the establishment unless—

- (a) there is a person who carries out the duties of chief nurse of the establishment and who is responsible for the care of the patients in the establishment; and

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- (b) that person is a registered nurse and holds the prescribed qualifications that are applicable to a chief nurse of the establishment.

Penalty: \$2,000.

(3) Notwithstanding subsection (2), the licensee of an establishment is not guilty of an offence under that subsection by reason only that, from time to time (not exceeding at any one time the number of days prescribed for the purposes of this subsection), there is no person who is a registered nurse and who holds the prescribed qualifications that are applicable to the chief nurse of the establishment and who carries out the duties of chief nurse of the establishment.

(4) Except as may be provided by the regulations, the licensee of an establishment shall notify the Secretary in writing in accordance with subsection (5) of the full name and the qualifications of the person who carries out the duties of chief nurse of the establishment.

Penalty: \$500.

(5) A notification under subsection (4)—

- (a) shall be given before the person to whom it relates commences to carry out the duties of chief nurse or, if that is not practicable, forthwith thereafter;
- (b) shall be accompanied by such particulars as may be prescribed; and
- (c) shall be accompanied by the prescribed notification fee.

(6) Nothing in this Act prevents the licensee of an establishment (being a natural person) from carrying out the duties of chief nurse of the establishment if he could carry out those duties had he not been the licensee.

(7) It shall be a defence to a prosecution for an offence arising under this section if the person charged proves that he took all such steps as are reasonable in the circumstances to avoid being guilty of the offence.

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Title of "matron" and "director of nursing".

29. (1) The licensee of an establishment or a person employed at the establishment shall not use the title "matron" or "director of nursing" unless—

- (a) the establishment is a private hospital or nursing home; and
- (b) the licensee or person is the chief nurse of the establishment.

(2) The licensee of an establishment shall not permit a person employed at the establishment to contravene subsection (1).

Penalty: \$2,000.

Registered nurse to be on duty.

30. (1) In this section, "establishment" does not include a residential centre for handicapped persons.

(2) The licensee of an establishment shall, at all times while the establishment is being conducted, cause a registered nurse to be on duty in the establishment.

Penalty: \$2,000.

Title of "hospital" not to be used by nursing home, etc.

31. The person who conducts a nursing home or residential centre for handicapped persons shall not permit it to be held out to be a hospital by the use of the title "hospital", whether as part of its name or otherwise.

Penalty: \$2,000.

Register of patients.

32. (1) In this section, "establishment" does not include a residential centre for handicapped persons.

(2) The licensee of an establishment shall cause a register of patients to be kept, in or to the effect of the prescribed form, at the establishment.

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(3) The following particulars shall be entered in the register of patients:—

- (a) the name, age and residential address of each patient at the establishment;
- (b) the date when the patient was received at the establishment;
- (c) the date when the patient left the establishment or, in the event of his death, the date of his death;
- (d) the name of the medical practitioner attending the patient;
- (e) such other particulars as may be prescribed.

(4) The particulars referred to in subsection (3) shall be entered in the register of patients by the persons, at the time, and in the manner, prescribed for the purposes of this subsection.

(5) A person shall not—

- (a) enter in the register of patients any particulars that he knows or has reason to believe to be false or misleading in a material particular; or
- (b) wilfully fail to enter in the register of patients any particular which he is required by subsection (4) to enter.

Penalty: \$2,000.

Copy of Act and regulations to be available.

33. The licensee of an establishment (being a private hospital or nursing home) shall, at all times while the establishment is being conducted, cause a copy of this Act and the regulations to be readily available at the establishment for inspection by the chief nurse.

Penalty: \$500.

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Provision for repairs, etc.

34. (1) The Secretary may, by notice in writing, require the licensee of an establishment to effect such repairs, alterations, extensions or improvements to the establishment or to the accommodation provided for the nursing and other staff of the establishment (whether that accommodation is provided at the establishment or elsewhere) as may be specified in the notice.

(2) A licensee shall not neglect or fail to comply with the requirements of any such notice within the time specified in the notice or within such further time as the Secretary may allow.

Penalty: \$2,000.

PART IV.**DISCLOSURE OF PECUNIARY INTERESTS BY MEDICAL PRACTITIONERS.****Interpretation: Pt. IV.**

35. In this Part—

“establishment” does not include a residential centre for handicapped persons;

“register of pecuniary interests”, in relation to an establishment, means the register that is required by section 39 (1) to be kept at the establishment.

Pecuniary interests.

36. (1) For the purposes of this Part, a medical practitioner has a pecuniary interest in an establishment if he has an interest in relation to the establishment which is prescribed as a pecuniary interest in the establishment.

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(2) The regulations may prescribe, pursuant to subsection (1), an interest of a relative or associate of a medical practitioner as a pecuniary interest of the medical practitioner.

Disclosure of pecuniary interests to patients.

37. (1) Where a medical practitioner has a pecuniary interest in an establishment, he shall not—

- (a) advise a person to be admitted to the establishment;
- (b) arrange the admission of a person to the establishment; or
- (c) provide medical, surgical or other treatment to, or arrange the provision of any such treatment to, any patient in the establishment,

unless, before so doing, he has notified the person or patient, in the prescribed manner, that he has a pecuniary interest in the establishment.

Penalty: \$2,000.

(2) Without affecting the generality of section 50 (2), the regulations may prescribe, for the purposes of subsection (1), that the manner of notification shall be any 1 or more of the following:—

- (a) a statement made by the medical practitioner;
- (b) a written notification given by the medical practitioner and, if required by the regulations, signed by the person to whom it is given;
- (c) a notice displayed in any surgery or other premises of the medical practitioner.

(3) A person is not guilty of an offence under subsection (1) if he proves that—

- (a) he contravened that subsection in the course of his providing emergency medical, surgical or other treatment to a person; or
- (b) he was not, at the time the contravention occurred, aware that he had a pecuniary interest in the establishment concerned.

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Notification of pecuniary interests by medical practitioners.

38. (1) A medical practitioner who has a pecuniary interest in any licensed establishment shall, in accordance with subsection (2), give notice of that fact to the licensee of the establishment.

Penalty: \$2,000.

(2) A notice referred to in subsection (1) shall—

- (a) be in writing;
- (b) specify the name and residential address of the medical practitioner giving the notice; and
- (c) contain such other particulars in relation to the pecuniary interest as may be prescribed.

Register of pecuniary interests.

39. (1) During any period that a medical practitioner has a pecuniary interest in a licensed establishment, the licensee shall cause a register of pecuniary interests to be kept, in or to the effect of the prescribed form, at the establishment.

(2) The following particulars shall be entered by the licensee of an establishment in the register of pecuniary interests kept at the establishment—

- (a) the name and residential address of each medical practitioner who has, to the knowledge of the licensee, a pecuniary interest in the establishment;
- (b) such other particulars as may be prescribed.

(3) The licensee of an establishment shall not—

- (a) enter in the register of pecuniary interests any particulars that he knows or has reason to believe to be false or misleading in a material particular;
- (b) wilfully fail to enter in that register any particulars which he is required by subsection (2) to enter; or

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- (c) delete from that register any particulars relating to a medical practitioner unless the medical practitioner has ceased to have any pecuniary interest in the establishment.

(4) The licensee of an establishment shall, on or before 31st December in each year and at such other times as the Secretary may direct, forward to the Secretary a copy of the register of pecuniary interests kept at the establishment.

Penalty: \$2,000.

Inspection of register of pecuniary interests.

40. (1) The licensee of an establishment shall, at all times while the establishment is being conducted—

- (a) cause the register of pecuniary interests to be available for public inspection;
- (b) if required by the regulations, cause to be displayed at the establishment a notice which contains a statement to the effect that a register of pecuniary interests is kept at the establishment and is available for public inspection by any person; and
- (c) if required by the regulations, cause to be displayed at the establishment a notice which lists the names of the medical practitioners who have a pecuniary interest in the establishment.

Penalty: \$2,000.

(2) A notice referred to in subsection (1) (b) shall—

- (a) be in or to the effect of the prescribed form; and
 - (b) be displayed in the prescribed manner.
-

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PART V.**MISCELLANEOUS.****Exemption from operation of Act.**

41. (1) The Minister may, by order published in the Gazette, direct that the whole or any specified provision of this Act—

- (a) shall not apply to or in respect of —
 - (i) any person or class of persons; or
 - (ii) any establishment or class of establishment, specified in the order; or
- (b) shall not so apply in such circumstances as may be so specified.

(2) An order published under subsection (1)—

- (a) has effect according to its tenor; and
- (b) takes effect on and from the date of publication or, where a later date is specified in the order, the later date so specified.

(3) Nothing in this section affects the operation of section 31.

Power to enter and inspect establishments.

42. (1) A person authorised by the Secretary to do so may, at any time, enter and inspect—

- (a) any licensed establishment; or
- (b) any premises which are the subject of an application for a licence.

(2) Every person authorised under subsection (1) shall be provided by the Secretary with a certificate of his authority, and on applying for admission to any premises which he is empowered by this section to enter shall, if requested to do so, produce the certificate to the person apparently in charge of the premises.

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Power to inspect, etc., registers and records.

43. (1) In this section, "prescribed records", in relation to any establishment, means the register of patients or any other records required by or under this Act to be kept at the establishment.

(2) A person authorised by the Secretary under section 42—

- (a) may inspect and take copies of, or extracts from, any prescribed records of an establishment; or
- (b) may take and retain possession of any prescribed records of an establishment for such period as is necessary to enable those records to be inspected and copies of, or extracts from, those records to be taken.

(3) Where a person retains possession of any prescribed records of an establishment pursuant to subsection (2) (b), he shall, during the period that he retains possession of them—

- (a) permit a person who is entitled to inspect any 1 or more of those records to inspect at all reasonable times such of the records as that person is so entitled to inspect; and
- (b) permit a person who is required by or under this Act to make an entry in those records to make the entry at any reasonable time.

(4) Subsection (2) (b) does not authorise a person who takes possession of any prescribed records of an establishment to remove those records from the establishment if those records—

- (a) relate to a person who is then a patient of the establishment; and
- (b) may be required to be referred to for the purposes of providing the patient with nursing care or medical, surgical or other treatment.

(5) Subject to subsections (6) and (7), in any legal proceedings (whether proceedings under this Act or otherwise) a copy of or extract from a prescribed record is admissible in evidence as if it were the original record or the relevant part of the original record.

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(6) A copy of or extract from a prescribed record is not admissible in evidence under subsection (5) unless it is proved that the copy or extract is a true copy of the record or of the relevant part of the record.

(7) For the purposes of subsection (6), evidence that a copy of or extract from a prescribed record is a true copy of the record or of a part of the record may be given by a person who has compared the copy or extract with the record or the relevant part of the record and may be given either orally or by an affidavit sworn, or by a declaration made, before a person authorised to take affidavits or statutory declarations.

Obstruction, etc., of officers.

44. A person shall not wilfully hinder, obstruct or delay any person in the exercise or performance of any power, authority, duty or function under this Act.

Penalty: \$2,000.

False or misleading statements, etc.

45. A person shall not, in any application under this Act, or in support of any such application, or for the purposes of any inquiry under this Act—

- (a) make a statement; or
- (b) furnish any information,

which he knows or has reason to believe to be false or misleading in a material particular.

Penalty: \$2,000.

Evidentiary certificates.

46. A certificate which purports to be under the hand of the Secretary or a prescribed officer and which states that, on a date specified in the certificate—

- (a) a person so specified was or was not the licensee of an establishment so specified;

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- (b) any premises so specified were or were not licensed;
- (c) the licence for an establishment so specified was cancelled;
- (d) any particulars so specified were the particulars specified in the licence for an establishment so specified; or
- (e) the licence for an establishment so specified was subject to any condition so specified,

is, without proof of signature, admissible in evidence in any legal proceedings (whether proceedings under this Act or otherwise) and is prima facie evidence of the matters stated therein.

Service of notices, etc., by Secretary.

47. (1) Where, by or under this Act, a notice or other document is required to be or may be given or served by the Secretary, that notice may be given to or served on—

- (a) a natural person—
 - (i) by delivering it to him personally;
 - (ii) by leaving it at his place of residence last known to the Secretary with a person who apparently resides there or, if he is a licensee, by leaving it at the establishment to which the licence relates with a person apparently employed at the establishment, being in either case a person who has apparently attained the age of 16 years; or
 - (iii) by sending it by post addressed to him at that place of residence or that establishment; or
- (b) a corporation—
 - (i) by delivering it to a person who is apparently engaged in the control or management of the corporation;
 - (ii) by leaving it at the registered office of the corporation with a person who is apparently employed at that office or, if the corporation is a licensee, by leaving it at the establishment to which the licence relates with a person who is

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apparently employed at the establishment, being in either case a person who has apparently attained the age of 16 years; or

- (iii) by sending it by post addressed to the corporation at that registered office or that establishment.

(2) A notice or other document that is sent by post in accordance with subsection (1) shall, in the absence of evidence to the contrary, be deemed to have been given or served when it would have been delivered in the ordinary course of post.

Proceedings for offences.

48. (1) Proceedings for offences against this Act or the regulations may be taken before a court of petty sessions constituted by a stipendiary magistrate sitting alone or before the Supreme Court in its summary jurisdiction.

(2) If proceedings in respect of an offence against this Act or the regulations are brought in a court of petty sessions held before a stipendiary magistrate, the maximum penalty that the court may impose in respect of the offence is, notwithstanding any other provision of this Act, \$4,000 or the maximum penalty provided by this Act or the regulations in respect of the offence, whichever is the lesser.

(3) If proceedings in respect of an offence against this Act or the regulations are brought before the Supreme Court in its summary jurisdiction, that Court may impose a penalty not exceeding the maximum penalty provided by this Act or the regulations in respect of the offence.

(4) Proceedings in the Supreme Court in its summary jurisdiction in respect of an offence against this Act or the regulations may be commenced only within 6 months after the offence was alleged to be committed.

Offences by corporations.

49. (1) Where a corporation contravenes, whether by act or omission, any provision of this Act or the regulations, each director of the corporation, and each person concerned in the management of the corporation, shall be deemed to have contravened the same provision unless he satisfies the court that—

- (a) the corporation contravened the provision without his knowledge;

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- (b) he was not in a position to influence the conduct of the corporation in relation to its contravention of the provision; or
- (c) he, being in such a position, used all due diligence to prevent the contravention by the corporation.

(2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or been convicted under that provision.

(3) Nothing in subsection (1) prejudices or affects any liability imposed by a provision of this Act or the regulations on any corporation by which an offence against the provision is actually committed.

Regulations.

50. (1) The Governor may make regulations, not 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.

- (2) A provision of a regulation may—
- (a) apply generally or be limited in its application by reference to specified exceptions or factors;
 - (b) apply differently according to different factors of a specified kind;
 - or
 - (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,

or may do any combination of those things.

(3) A regulation (including a regulation prescribing a licensing standard) may impose a penalty not exceeding \$500 for an offence against the regulation.

Repeals.

51. Each Act specified in Column 1 of Schedule 2 is, to the extent specified opposite that Act in Column 2 of that Schedule, repealed.

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Savings, transitional and other provisions.

52. Schedule 3 has effect.

SCHEDULE 1.**(Sec. 6 (2).)****MATTERS WITH RESPECT TO WHICH LICENSING STANDARDS
MAY BE PRESCRIBED.**

1. The design and construction of establishments generally.
2. The provision of lighting, heating and ventilation facilities.
3. The design and construction of establishments to provide safety from fire and the provision of facilities to prevent, detect and extinguish fire.
4. The provision of sufficient means of escape from establishments in the case of fire.
5. The provision of water, sewerage and drainage services.
6. The provision of accommodation for patients and for nursing and other staff.
7. The provision of laundry, washing and toilet facilities.
8. The provision of cooking facilities.
9. The provision of operating theatres, labour rooms, nurseries or other specified types of room.
10. The provision of refuse disposal facilities.
11. The situation of establishments.
12. The duties of licensees and chief nurses of establishments.
13. The provision of nursing and other staff at establishments.
14. The duties of nursing and other staff at establishments.

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SCHEDULE 1—*continued.*MATTERS WITH RESPECT TO WHICH LICENSING STANDARDS
MAY BE PRESCRIBED—*continued.*

15. The regulation or prohibition of admission to establishments of persons suffering from diseases or in other conditions.
16. The removal from, or the isolation within, establishments of patients suffering from diseases or in other conditions.
17. The keeping of dead bodies at establishments.
18. The giving of notice to the Secretary or other persons of—
 - (a) births and deaths occurring at establishments;
 - (b) the outbreak of diseases at establishments;
 - (c) the outbreak of fire; and
 - (d) any other occurrence.
19. The keeping of records at establishments.
20. The disposal of a part of a register or record required to be kept by or under this Act which relates to previous patients of an establishment.
21. The furnishing of information to the Secretary in relation to the conduct of establishments.
22. The furnishing of information to a patient and the inspection of records by a patient in connection with the treatment of the patient at an establishment.
23. The displaying of licences at establishments.
24. The compounding, storing, dispensing and administering of medicines and drugs at establishments.
25. The regulation or prohibition of types of medical, surgical and other treatment at establishments.
26. The regulation or prohibition of the installation in establishments, or the use in relation to patients of establishments, of types of facilities and equipment.
27. The regulation of visiting hours at establishments.

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SCHEDULE 1—*continued.*

MATTERS WITH RESPECT TO WHICH LICENSING STANDARDS
MAY BE PRESCRIBED—*continued.*

28. The provision and maintenance of furniture, equipment, furnishings, linen and utensils at establishments.
29. Hygiene at establishments.
30. The prevention and destruction of vermin at establishments.
31. The storage, preparation and serving of food at establishments.
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SCHEDULE 2.

(Sec. 51.)

REPEALS.

Column 1.		Column 2.
Year and number of Act.	Short title of Act.	Extent of repeal.
1908, No. 14 ..	Private Hospitals Act, 1908	The whole Act.
1924, No. 37 ..	Nurses' Registration Act, 1924	The unrepealed portion.
1937, No. 35 ..	Statute Law Revision Act, 1937	So much of the Second Schedule as amended Act No. 14, 1908.
1953, No. 10 ..	Nurses Registration Act, 1953	Section 2 (1) (d).
1954, No. 22 ..	Private Hospitals (Amendment) Act, 1954 ..	The whole Act.
1964, No. 45 ..	Private Hospitals (Amendment) Act, 1964 ..	The whole Act.
1970, No. 52 ..	Supreme Court Act, 1970	So much of the Second Schedule as amended Act No. 14, 1908.
1971, No. 10 ..	Private Hospitals (Amendment) Act, 1971 ..	Sections 1 (3), 2 and 4.
1972, No. 41 ..	Supreme Court (Amendment) Act, 1972 ..	Paragraph (p) of the Second Schedule.

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SCHEDULE 3.

(Sec. 52.)

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS.

Interpretation.

1. In this Schedule—

“appointed day” means the day appointed and notified under section 2 (2);

“former Act” means the Private Hospitals Act, 1908.

Existing licences.

2. A licence (other than an interim licence) which was in force under the former Act immediately before the appointed day shall be deemed to have been issued, on that day, under this Act.

Pending applications.

3. (1) An application for a licence made under the former Act which has not been determined immediately before the appointed day shall be deemed to have been made under this Act and shall be dealt with in accordance with the provisions of this Act.

(2) For the purposes of subclause (1), an approval granted under the former Act or the regulations thereunder in respect of the site, or plans and specifications, of a proposed private hospital or nursing home shall be deemed to have been granted by the Secretary under section 9.

Regulations under former Act.

4. A regulation in force under the former Act immediately before the appointed day shall, to the extent that it could have been made under this Act on or after that day, be deemed to have been made under this Act.

Notice to effect repairs.

5. A notice given under section 14A of the former Act and in force immediately before the appointed day shall be deemed to have been given, on that day, under section 34 and shall have effect according to its tenor.

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SCHEDULE 3—*continued.*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued.***Residential centres for handicapped persons.**

6. If the day appointed under section 24 is a day that is earlier than the day appointed and notified under section 2 (2) of the Community Welfare Act, 1982, a residential centre for handicapped persons within the meaning of the Youth and Community Services Act, 1973, shall be deemed, for the purposes of that lastmentioned Act, not to include a residential centre for handicapped persons licensed under this Act.

Register of patients.

7. The register of patients kept at a private hospital or nursing home pursuant to section 13 of the former Act immediately before the appointed day shall be deemed, on that day, to be kept pursuant to section 32.

Inquiry.

8. Where, immediately before the appointed day, an inquiry is being made under section 16 (1) of the former Act, the inquiry may continue as if it were being made under section 21 (3).

Revocation.

9. A revocation of a licence pursuant to section 16 or 16A of the former Act, which has not taken effect before the appointed day, shall have effect, on that day, as a cancellation of the licence under section 21 (2) and any notification of the revocation given under section 16B of the former Act shall be deemed, on that day, to be a notice given under section 21 (5).

Appeal.

10. Any appeal pending under section 16c of the former Act immediately before the appointed day shall be deemed, on that day, to be pending under section 22, and may be heard and determined accordingly.

References to former Act.

11. On and from the appointed day, a reference in any Act, other than this Act, to the Private Hospitals Act, 1908, shall be construed as a reference to the Private Health Establishments Act, 1982.

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SCHEDULE 3—*continued.*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued.***Regulations.**

12. (1) The Governor may make regulations containing other provisions of a savings or transitional nature consequent on the enactment of this Act.

(2) A provision made under subclause (1) may take effect as from the appointed day or a later day.

(3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—

(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication therein; or

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication therein.

(4) A provision made under subclause (1) shall, if the regulations under this clause so provide, have effect notwithstanding the foregoing clauses of this Schedule.

(5) A reference in any provision of this Act (this clause excepted) to regulations does not include a reference to regulations made under this clause.

In the name and on behalf of Her Majesty I assent to this Act.

J. A. ROWLAND,
Governor.

*Government House,
Sydney, 15th December, 1982.*



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