

FIRST PRINT

**DRUG AND ALCOHOL REHABILITATION  
ESTABLISHMENTS BILL 1987**

NEW SOUTH WALES



**EXPLANATORY NOTE**

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

This Bill is cognate with the Drug Offensive Bill 1987.

The objects of this Bill are—

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

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**PART 1—PRELIMINARY**

Clause 1 specifies the short title of the proposed Act.

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

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

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

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

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

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

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

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

#### PART 2—LICENSING OF RESIDENTIAL REHABILITATION ESTABLISHMENTS

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

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

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

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



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

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

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

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

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

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

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

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

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

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



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

### PART 3—CONDUCT OF RESIDENTIAL REHABILITATION ESTABLISHMENTS

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

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

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

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

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

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

### PART 4—REVIEW OF LICENSING DECISIONS

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

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



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

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

PART 5—MISCELLANEOUS

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

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

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

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

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

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

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

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

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

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

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

Clause 41 empowers the making of regulations.

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

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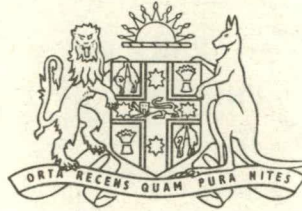
SCHEDULE 1—MATTERS WITH RESPECT TO WHICH LICENSING STANDARDS  
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**DRUG AND ALCOHOL REHABILITATION  
ESTABLISHMENTS BILL 1987**

NEW SOUTH WALES



No.           , 1987

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**A BILL FOR**

An Act to provide for the licensing and control of certain establishments providing treatment and rehabilitation for drug or alcohol related problems.

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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 1

## PRELIMINARY

**Short title**

1. This Act may be cited as the "Drug and Alcohol Rehabilitation Establishments Act 1987".

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 and notified by proclamation  
15 published in the Gazette.

**Interpretation**

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

"Director" means the Director of the Drug Offensive;

20 "licence" means a licence issued under section 8 and in force under this Act or a temporary licence;

"licensee" means the holder, or any one or more of the holders, for the time being of a licence;

25 "licensing standards" means the standards prescribed pursuant to section 5;

"manager", in relation to a residential rehabilitation establishment, means the manager of the establishment as referred to in section 24;

"premises" includes any land, building and part of any building;

30 "register of residents", in relation to a residential rehabilitation establishment, means the register that is required by section 25 to be kept at the establishment;

"regulation" means a regulation made under this Act;



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

5 “residential rehabilitation establishment” or “establishment” means premises at which residential accommodation for persons suffering from drug or alcohol related problems is provided in conjunction with the treatment or rehabilitation of such persons for those problems (whether the treatment or rehabilitation is provided there or elsewhere),  
10 but does not include—

(a) any such premises which are conducted by 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;

15 (c) a hospital or other health service under the control of an area health service constituted under the Area Health Services Act 1986;

(d) a nursing home or a private hospital, within the meaning of the Private Health Establishments Act 1982;

20 (e) a proclaimed place within the meaning of the Intoxicated Persons Act 1979; or

(f) any premises or class of premises declared by the regulations to be exempt from this Act;

25 “temporary licence” means a licence issued under section 7 (1) and in force under this Act;

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

(2) In this Act—

30 (a) a reference to a function includes a reference to a power, authority and duty; and

(b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

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



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(4) A reference in this Act to a person who conducts an establishment (however expressed) does not include a reference—

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

(5) 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  
10 the management of the corporation is a fit and proper person to be a licensee.

(6) Until the commencement of the Private Health Establishments Act 1982, the reference in subsection (1) to that Act shall be read as a reference to the Private Hospitals Act 1908.

**15 Drug or alcohol related problems**

4. A reference in this Act to a drug or alcohol related problem includes a reference to any personal, social, health or economic problem arising from or related to—

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

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PART 2

LICENSING OF RESIDENTIAL REHABILITATION  
ESTABLISHMENTS

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**Licensing standards**

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



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

#### **Applications for licences**

5 6. (1) An application for a licence for a residential rehabilitation establishment may be made to the Director by the person who intends to conduct the establishment.

(2) An application under this section shall—

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

#### **Temporary licences**

7. (1) If an application is made for a licence in respect of an existing residential rehabilitation establishment, the Director may, pending the  
15 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);
  - (b) the application made under section 6 is granted; or
  - 20 (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 6  
25 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 Director may, by notice in writing served on the applicant, direct.

#### **Determination of application for licence**

8. Subject to this Part, the Director shall, after considering an  
30 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**

9. The Director may refuse an application for a licence—

- 5 (a) if the applicant or any of the applicants is not a fit and proper person to be a licensee;
- (b) if any person who will be concerned in the management of the establishment at a senior level is not a fit and proper person to be involved in its management;
- 10 (c) if the applicant or any of the applicants or, where the applicant is a corporation, any director or other person concerned in the management of the corporation has been convicted of an offence under this Act or the regulations;
- (d) if—
- 15 (i) the applicant or any of the applicants;
- (ii) where the applicant is a corporation, any director or other person concerned in the management of the corporation; or
- (iii) any person who will be concerned in the management of the establishment at a senior level,
- 20 has been convicted in New South Wales of an offence punishable by penal servitude or imprisonment for a period of 12 months or more, or has been convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable;
- 25 (e) if the Director is satisfied that the establishment does not comply with, or is not capable of being conducted in accordance with, the licensing standards applicable to it; or
- (f) if the Director is satisfied that the conduct of the establishment—
- 30 (i) would result in more than adequate facilities or services of the kind provided by residential rehabilitation establishments becoming available to the population of the area in which the establishment is situated; or
- (ii) would be prejudicial to the efficient provision in New South Wales of facilities or services for the treatment or rehabilitation of persons suffering from drug or alcohol related problems.



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**Form of licences**

10. 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; and  
 (c) the maximum number of residents who may be accommodated at any one time at the establishment, as determined by the Director.

**Conditions of licences**

10 11. (1) The Director may issue a licence subject to such conditions as may be specified in it.

(2) Without affecting the generality of subsection (1), the Director may issue a licence for a residential rehabilitation establishment subject to conditions that—

- 15 (a) restrict the type of treatment or method of rehabilitation that may otherwise be provided to residents pursuant to this Act;  
 (b) limit the number of persons of any class who may reside at the establishment if they are not undergoing treatment or rehabilitation as referred to in this Act; or  
 20 (c) prohibit any such class of persons from residing at the establishment.

(3) Without affecting the generality of subsection (1), a licence is subject to such conditions as are prescribed by the regulations and applicable to it.

**Duration of licences**

12. A licence (other than a temporary licence) remains in force until  
 25 cancelled or suspended under this Act.

**Annual licence fees**

13. The licensee of a residential rehabilitation establishment shall, on or before 31 December in each year, pay to the Director such annual licence fee as may be prescribed.



**Transfer of licence to another licensee**

14. (1) The Director may, upon application being made in accordance with this section, transfer the licence for a residential rehabilitation establishment to the person who intends to conduct the establishment—

- 5 (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 this section shall—

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

(3) The Director may refuse an application under this section—

- (a) if the proposed licensee, or any of the proposed licensees, is not a fit and proper person to be a licensee; or  
 15 (b) on any other ground on which the application could have been refused under section 9 if it were an application for a licence.

**Amendment of licences**

15. (1) The Director may amend a licence in either or both of the following ways:

- 20 (a) by increasing or decreasing the number specified in the licence as the maximum number of residents who may be accommodated at any one time at the establishment;  
 (b) by amending or revoking any condition (other than a condition under the regulations) to which the licence is subject or attaching  
 25 further conditions to the licence.

(2) The Director may amend a licence under this section if—

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

30 (3) A licence is amended under this section—

- (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) If the Director, by notice in writing served on a licensee, requires the licensee to forward the licensee's licence to the Director for the purpose of amending it under this section, the licensee shall, within 14 days after service of the notice, comply with the requirement.

Penalty: \$500.

(5) Upon the service of such a notice, the licence shall be deemed to be amended according to the tenor of the notice.

**General provisions regarding applications**

16. (1) The Director may in respect of an application under this Part, by notice in writing served on the applicant, direct the applicant to furnish the Director with such information as the Director may reasonably require for the purpose of determining the application.

(2) Without limiting the power of the Director to refuse the application on any other ground, the Director may refuse an application under this Part on the ground that the applicant has failed to comply with a direction under subsection (1).

(3) An application under this Part may, with the approval of the Director, be amended by the applicant.

(4) Before determining an application under section 6 or 14, the Director 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, and in the manner specified, in the advertisement.

(5) The regulations may provide for the refund to an applicant of the whole or any part of any application fee that accompanied an application under this Part which is refused.



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**Notice of refusal of application**

17. If the Director refuses an application under this Part, the Director shall forthwith cause the applicant to be notified—

- (a) that the Director has refused the application;
- 5 (b) of the grounds on which the Director has refused the application; and
- (c) if the Director refuses the application on the ground that a person is not a fit and proper person to be a licensee or to be involved in the management of a residential rehabilitation establishment—of the reasons why the Director is of the opinion that the person is not such a fit and proper person.

**Duplicate licences**

18. The Director may, if satisfied that a licence has been lost, destroyed or damaged, and on payment of the prescribed fee, issue a duplicate licence to the licensee.

**Cancellation or suspension of licences**

19. (1) The Director may cancel the licence for a residential rehabilitation establishment without holding an inquiry or giving any notice to the licensee—

- 20 (a) if the annual licence fee payable under section 13 in respect of the establishment has not been paid by the due date;
- (b) if the licensee requests the Director in writing to cancel the licence;
- (c) if the premises to which the licence relates have ceased to be a residential rehabilitation establishment; or
- 25 (d) in the case of a temporary licence—if the Director considers that it is appropriate to do so.

(2) Subject to subsection (4), the Director may cancel the licence for a residential rehabilitation establishment—

- (a) if the licensee is not a fit and proper person to be a licensee;
- 30 (b) if any person concerned in the management of the establishment at a senior level is not a fit and proper person to be concerned in its management;

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- (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 of an offence under this Act or the regulations;
- (d) if—
- 5       (i) the licensee;
- (ii) where the licensee is a corporation, any director or other person concerned in the management of the corporation; or
- (iii) any person concerned in the management of the establishment at a senior level,
- 10       is convicted in New South Wales of an offence punishable by penal servitude or imprisonment for a period of 12 months or more, or is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable;
- 15       (e) if the licensee breaches any condition to which the licence is subject;
- (f) 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 or her creditors or makes an assignment of his or her remuneration for their benefit;
- 20       (g) where the licensee is a corporation, if a receiver 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;
- (h) if the establishment has not been conducted in accordance with the licensing standards applicable to it; or
- 25       (i) if the establishment is conducted in such a manner—
- (i) that reasonable standards of resident care have not been maintained; or
- (ii) that the cancellation of the licence is otherwise in the public interest.
- 30       (3) The Director may, for the purpose of exercising powers under subsection (2), cause an inquiry to be held by some person appointed by the Director for the purpose.



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(4) The Director shall not cancel a licence under this section unless, before cancelling the licence, the Director—

- (a) has given notice to the licensee that the Director intends to cancel the licence;
- 5 (b) has specified in the notice the reasons for the Director's intention to cancel the licence;
- (c) has given the licensee a reasonable opportunity to make submissions to the Director in relation to the proposed cancellation, whether in the course of an inquiry under this section or otherwise; and
- 10 (d) has taken into consideration any such submissions by the licensee.

(5) The cancellation of a licence under this section shall not take effect—

- (a) until the expiration of 14 days after notice of the Director's decision is given to the licensee; or
- 15 (b) if the licensee lodges an appeal under Part 4 before the expiration of the period referred to in paragraph (a)—until the appeal is dealt with or withdrawn.

(6) The Minister may suspend a licence whose cancellation under this section has not yet taken effect, but may do so only if satisfied that—

- 20 (a) the interests of the residents concerned would be seriously prejudiced; or
- (b) it would be contrary to the public interest,

if the licence were to remain in force until the cancellation takes effect.

(7) The suspension of a licence under this section ceases to have effect if it is lifted by the Minister or if an appeal against the cancellation is upheld.

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## PART 3

CONDUCT OF RESIDENTIAL REHABILITATION  
ESTABLISHMENTS**Unlicensed residential rehabilitation establishments**

5    20. (1) On and after a day to be appointed by the Governor for the purposes of this section and notified by proclamation published in the Gazette, a person shall not conduct a residential rehabilitation establishment unless—

(a) the establishment is licensed; and

10   (b) the person is the licensee.

Penalty: \$5,000.

(2) Evidence that, at any premises—

(a) at all times during any month—2 or more persons (not being members of the occupier's family); or

15   (b) at any time—3 or more persons (not being members of the occupier's family),

20   have been accommodated at the premises and have been provided (whether there or elsewhere) with treatment or rehabilitation for drug or alcohol related problems is prima facie evidence that the premises are a residential rehabilitation establishment, whether or not there is any evidence that a charge was made for the treatment or rehabilitation.



*Drug and Alcohol Rehabilitation Establishments 1987***Executor or administrator deemed licensee**

21. If the only licensee of a residential rehabilitation establishment is a natural person and the person dies, the executor of the will or the administrator of the estate of the licensee shall be deemed to be the licensee  
5 for—

- (a) a period, commencing on the date of death of the licensee, not exceeding 2 months; or
- (b) such longer period as the Director may, in any particular case, approve.

**10 Purposes for which residential rehabilitation establishments may be used**

22. The licensee of a residential rehabilitation establishment shall not cause or permit the licensed premises to be used for any purpose other than the following purposes:

- (a) the conduct of a residential rehabilitation establishment;
- 15 (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: \$1,000.

**Overcrowding**

23. (1) The licensee of a residential rehabilitation establishment shall  
20 not cause or permit the number of residents accommodated at the establishment to exceed the number of residents specified in the licence in relation to the establishment.

Penalty: \$1,000.

25 (2) The licensee of a residential rehabilitation establishment is not guilty of an offence under this section in respect of anything done in the case of an emergency.

**Manager of establishment**

24. (1) The licensee of a residential rehabilitation establishment shall not conduct the establishment unless there is a person who—

- 30 (a) carries out the duties of manager of the establishment, being a person who is responsible for the care of the residents at the establishment; and



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(b) holds the appropriate qualifications (if any) that are specified or referred to in the licence.

Penalty: \$1,000.

5 (2) The licensee of a residential rehabilitation establishment is not guilty of an offence under this section merely because, 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 carries out the duties of manager of the establishment and who holds the appropriate qualifications.

10 (3) Except as may be provided by the regulations, the licensee of a residential rehabilitation establishment shall notify the Director in writing in accordance with subsection (4) of the full name and the qualifications of the person who carries out the duties of manager of the establishment.

Penalty: \$500.

(4) A notification under subsection (3)—

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

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

20 (5) Nothing in this Act prevents a natural person who is the licensee of a residential rehabilitation establishment from carrying out the duties of manager of the establishment if the person could carry out those duties were the person not the licensee.

25 (6) It is a defence to a prosecution for an offence arising under this section if the person charged proves that the person took all such steps as were reasonable in the circumstances to avoid being guilty of the offence.

### **Register of residents**

25. (1) The licensee of a residential rehabilitation establishment shall cause a register of residents to be kept, in the prescribed manner and in or to the effect of the prescribed form, at the establishment.

30 (2) The following particulars shall be entered in the register of residents:

(a) the name, age and residential address of each resident at the establishment;

(b) the date when the resident was received at the establishment;

35 (c) the date when the resident left the establishment or, in the event of the resident's death, the date of death;



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(d) such other particulars as may be prescribed.

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

5 (4) A person shall not—

(a) enter in the register of residents any particulars that the person knows or has reason to believe to be false or misleading in a material particular; or

10 (b) wilfully fail to enter in the register of residents any particular which the person is required by this section to enter.

Penalty: \$2,000.

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PART 4

REVIEW OF LICENSING DECISIONS

**Refusal of application**

15 26. (1) If the Director refuses an application under Part 2, the applicant may request the Minister in writing to review the decision of the Director.

(2) On receipt of the request, the Minister may, after such investigation of the matter as the Minister considers necessary, either—

(a) confirm the decision of the Director; or

20 (b) revoke the decision and direct the Director to grant the application concerned.

(3) The Director shall give effect to the Minister's direction.

25 (4) A direction of the Minister under this section does not affect the power of the Director under section 11 to issue a licence subject to conditions.

**Issue of licence conditionally**

27. (1) If a licence is issued subject to conditions under section 11, the licensee may request the Minister in writing to review the decision of the Director to issue the licence subject to conditions.



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(2) On receipt of the request, the Minister may, after such investigation of the matter as the Minister considers necessary, either—

- (a) confirm the decision of the Director; or
  - 5 (b) revoke the decision and direct the Director to cancel the licence and issue a substitute licence either free of conditions or subject to such conditions as the Minister directs.
- (3) The Director shall give effect to the Minister's direction.

**Amendment of licence**

10 28. (1) If a licence is amended under section 15 (otherwise than on the application of the licensee), the licensee may request the Minister in writing to review the decision of the Director to amend the licence.

(2) On receipt of the request, the Minister may, after such investigation of the matter as the Minister considers necessary—

- (a) confirm the decision of the Director;
- 15 (b) revoke the decision and direct the Director to amend the licence so as to cause the licence to be subject to the same conditions to which it was subject immediately before the amendment to which the decision relates took effect; or
- 20 (c) revoke the decision of the Director as to certain matters, confirm it as to the remainder, and direct the Director to amend the licence so as to cause the licence to be subject to such of those same conditions as the Minister specifies.

(3) The Director shall give effect to the Minister's direction.

**Cancellation of licence**

25 29. (1) A person aggrieved by a decision of the Director to cancel the licence for a residential rehabilitation establishment (except under section 19 (1)) may appeal to the District Court in accordance with rules of court.

30 (2) The appeal shall be dealt with by way of rehearing, and fresh evidence in addition to, or in 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.



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

(4) The District Court may, in determining the appeal, uphold the appeal or confirm the decision of the Director.

(5) The determination of the District Court on the appeal is final and conclusive and shall be given effect to by the Director.

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PART 5  
MISCELLANEOUS

10 Exemptions

30. (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

15 (ii) any establishment or class of establishments,  
specified in the order; or

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

(2) An order published under this section—

20 (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.

**Power to enter and inspect establishments**

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

(a) any licensed residential rehabilitation establishment; or

(b) any premises which are the subject of an application for a licence,



*Drug and Alcohol Rehabilitation Establishments 1987*

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and may observe and converse with any person apparently residing at the establishment or premises.

(2) Every person authorised under this section shall be provided by the Director with a certificate of the person's authority.

5 (3) On applying for admission to any establishment or premises which an authorised person is empowered by this section to enter, the authorised person shall, if requested to do so, produce the certificate to the person apparently in charge of the establishment or premises.

**Power to require information, inspect records etc.**

10 32. (1) In this section, "records", in relation to a residential rehabilitation establishment, includes—

- (a) the register of residents and any other records required by or under this Act to be kept at the establishment; and
- 15 (b) any other records, books or other documents relating to the conduct of the establishment.

(2) A person authorised by the Director under section 31 may do any or all of the following:

- 20 (a) require a licensee or the manager of, or a member of the staff of, or any other person concerned in the conduct of, a residential rehabilitation establishment to furnish to the authorised person information relating to the conduct of the establishment;
- (b) require a licensee or the manager of, or any other person concerned in the conduct of, a residential rehabilitation establishment, to produce, at such time and place as the authorised person may specify, any records of the establishment;
- 25 (c) inspect and take copies of, or extracts from, any records of a residential rehabilitation establishment;
- (d) take and retain possession of any records of a residential rehabilitation 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.
- 30



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(3) If a person retains possession of any records of a residential rehabilitation establishment under subsection (2) (d), the person shall, during the period that the person retains possession of them—

5 (a) permit a person who is entitled to inspect any one 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.

10 (4) Subsection (2) (d) does not authorise a person who takes possession of any records of a residential rehabilitation establishment to remove those records from the establishment if those records—

(a) relate to a person who is then a resident at the establishment; and

15 (b) may be required to be referred to for the purposes of providing the resident with treatment or rehabilitation in connection with a drug or alcohol related problem.

**Evidence of records**

33. (1) In this section, “records” has the same meaning as in section 32.

20 (2) In any legal proceedings (whether proceedings under this Act or otherwise), a copy of or extract from a record is admissible in evidence as if it were the original record or the relevant part of the original record.

(3) A copy of or extract from a record is not admissible in evidence under this section unless it is proved that the copy or extract is a true copy of the record or of the relevant part of the record.

25 (4) For the purposes of subsection (3), evidence that a copy of or extract from a record is a true copy of the record or of a part of the record—

(a) may be given by a person who has compared the copy or extract with the record or the relevant part of the record; and

30 (b) may be so given either orally or by an affidavit sworn, or by a declaration made, before a person authorised to take affidavits or statutory declarations.

**Obstruction of officers etc.**

34. (1) A person shall not wilfully hinder, obstruct or delay any person in the exercise of any function under this Act.



*Drug and Alcohol Rehabilitation Establishments 1987*

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(2) A person shall not, without reasonable excuse, fail to comply with a requirement made under section 32 (2) (a) or (b).

Penalty: \$2,000.

**False or misleading statements etc.**

5    **35.** 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, or pursuant to a requirement under section 32 (2) (a)—

(a) make a statement; or

(b) furnish any information,

10 which the person knows or has reason to believe to be false or misleading in a material particular.

Penalty: \$2,000.

**Evidentiary certificates**

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

(a) a specified person was or was not a licensee of a specified establishment;

(b) any specified premises were or were not licensed;

20 (c) the licence for a specified establishment was cancelled or suspended;

(d) any specified particulars were the particulars specified in the licence for a specified establishment; or

(e) the licence for a specified establishment was subject to any specified condition,

25 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 in it.



*Drug and Alcohol Rehabilitation Establishments 1987***Service of notices etc. by Director**

37. (1) If, by or under this Act, a notice or other document is required to be or may be given or served by the Director, the notice or document may be given to or served on—

5 (a) a natural person—

(i) by delivering it to the person personally;

(ii) by leaving it at the person's place of residence last known to the Director with a person who apparently resides there and who has apparently reached the age of 16 years;

10 (iii) if the person is a licensee—by leaving it at the establishment to which the licence relates with a person who is apparently employed at the establishment and who has apparently reached the age of 16 years; or

15 (iv) by sending it by post addressed to the person 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;

20 (ii) by leaving it at the registered office of the corporation with a person who is apparently employed at that office and who has apparently reached the age of 16 years;

25 (iii) if the corporation is a licensee—by leaving it at the establishment to which the licence relates with a person who is apparently employed at the establishment and who has apparently reached the age of 16 years; or

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

30 (2) A notice or other document that is sent by post in accordance with this section 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.

**Delegation by Director**

38. (1) The Director may delegate to—

(a) a public servant;



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- (b) a member of the staff of 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;
- 5 (c) a member of the staff of a hospital or other health service under the control of an area health service constituted under the Area Health Services Act 1986; or
- (d) a person of a prescribed class or description,
- the exercise of any of the Director's functions, other than this power of delegation.
- 10 (2) A delegation—
- (a) shall be in writing;
- (b) may be general or limited; and
- (c) may be revoked, wholly or partly, by the Director.
- (3) A delegate is, in the exercise of a delegated function, subject to such  
15 conditions as are specified in the instrument of delegation.
- (4) A delegated function, when exercised by the delegate, shall be deemed to have been exercised by the Director.
- (5) A delegation does not prevent the exercise of a function by the Director.
- 20 (6) A function purporting to have been exercised by a delegate shall, until the contrary is proved, be deemed to have been duly exercised by a delegate under this section.

**Proceedings for offences**

- 25 39. Proceedings for offences against this Act or the regulations shall be disposed of in a summary manner before a Local Court constituted by a Magistrate sitting alone.

**Offences by corporations**

- 30 40. (1) If a corporation contravenes, whether by act or omission, any provision of this Act or a regulation, each person who is a director of the corporation or who is concerned in the management of the corporation shall be deemed to have contravened the same provision if the person knowingly authorised or permitted the contravention.



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(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 the provision.

(3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against this Act or the regulations.

**Regulations**

41. (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 regulation (including a regulation prescribing a licensing standard) may create an offence punishable by a penalty not exceeding \$500.

(3) 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.

(4) Without affecting the generality of subsection (3), different fees may be prescribed for different classes of residential rehabilitation establishments.

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**SCHEDULE 1**

(Sec. 5 (2))

**25 MATTERS WITH RESPECT TO WHICH LICENSING STANDARDS  
MAY BE PRESCRIBED**

1. The regulation or prohibition of types of treatment and methods of rehabilitation at establishments.

2. The provision of accommodation for residents at establishments.



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SCHEDULE 1—*continued*

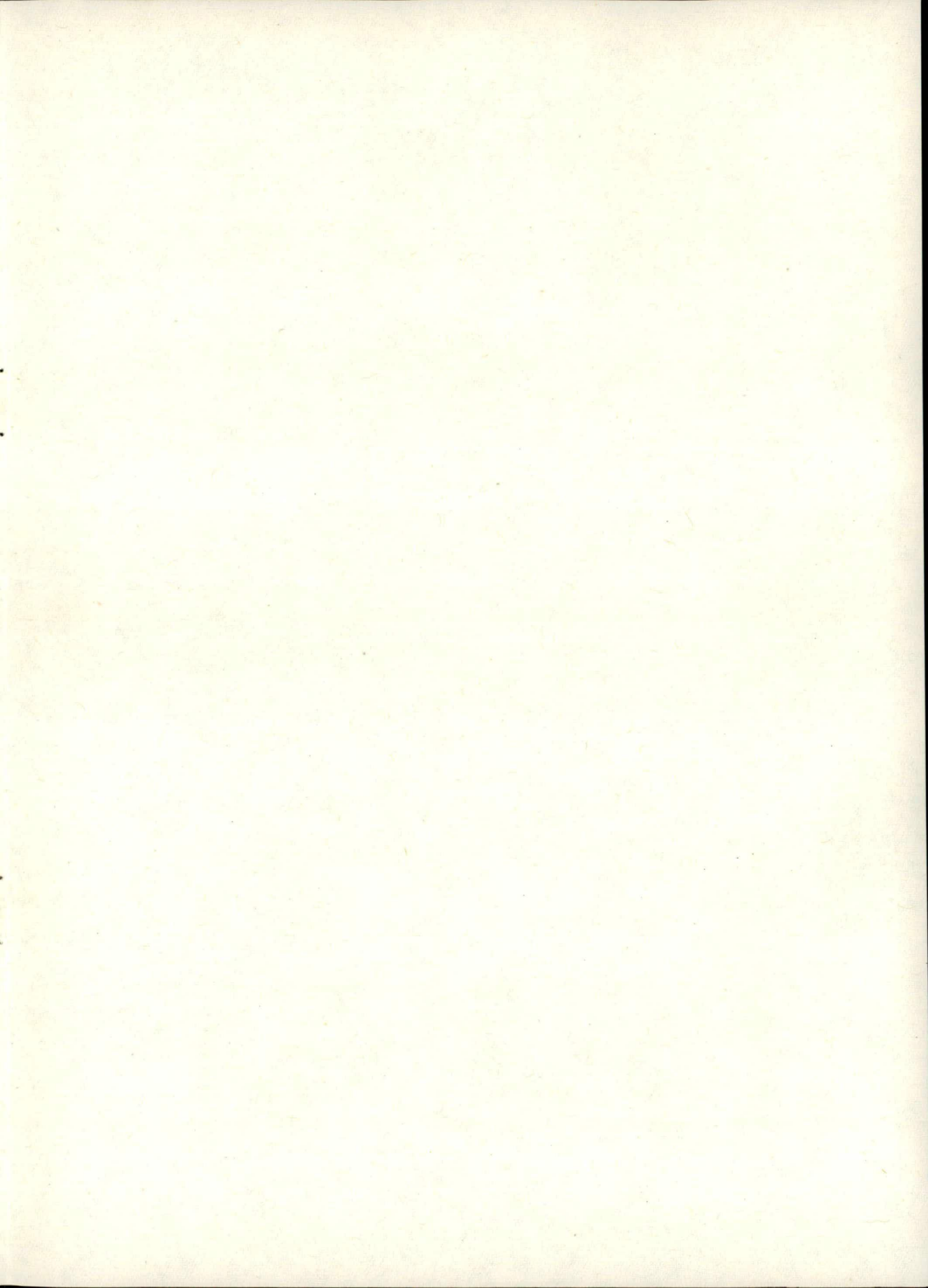
MATTERS WITH RESPECT TO WHICH LICENSING STANDARDS  
MAY BE PRESCRIBED—*continued*

3. The regulation of visits and access to, and communication with or by, residents at establishments.
4. The regulation of the relationship between a resident and an establishment in connection with the resident's property, income and other  
5 interests.
5. The provision of staff at establishments.
6. The duties of staff at establishments.
7. The regulation or prohibition of admission to or accommodation at establishments of persons suffering from diseases or in other conditions.
- 10 8. The keeping of records at establishments.
9. The disposal of a part of a register or record required to be kept by or under this Act which relates to previous residents at an establishment.
10. The furnishing of information to the Director in relation to the conduct of establishments.
- 15 11. The furnishing of information to the Director in relation to the staff at establishments and other persons concerned in the management of establishments.
12. The furnishing of information to a resident and the inspection of records by a resident in connection with the treatment or rehabilitation of  
20 the resident at an establishment.
13. The displaying of licences and notices at establishments.
14. The location of establishments.
15. The design and construction of establishments generally.

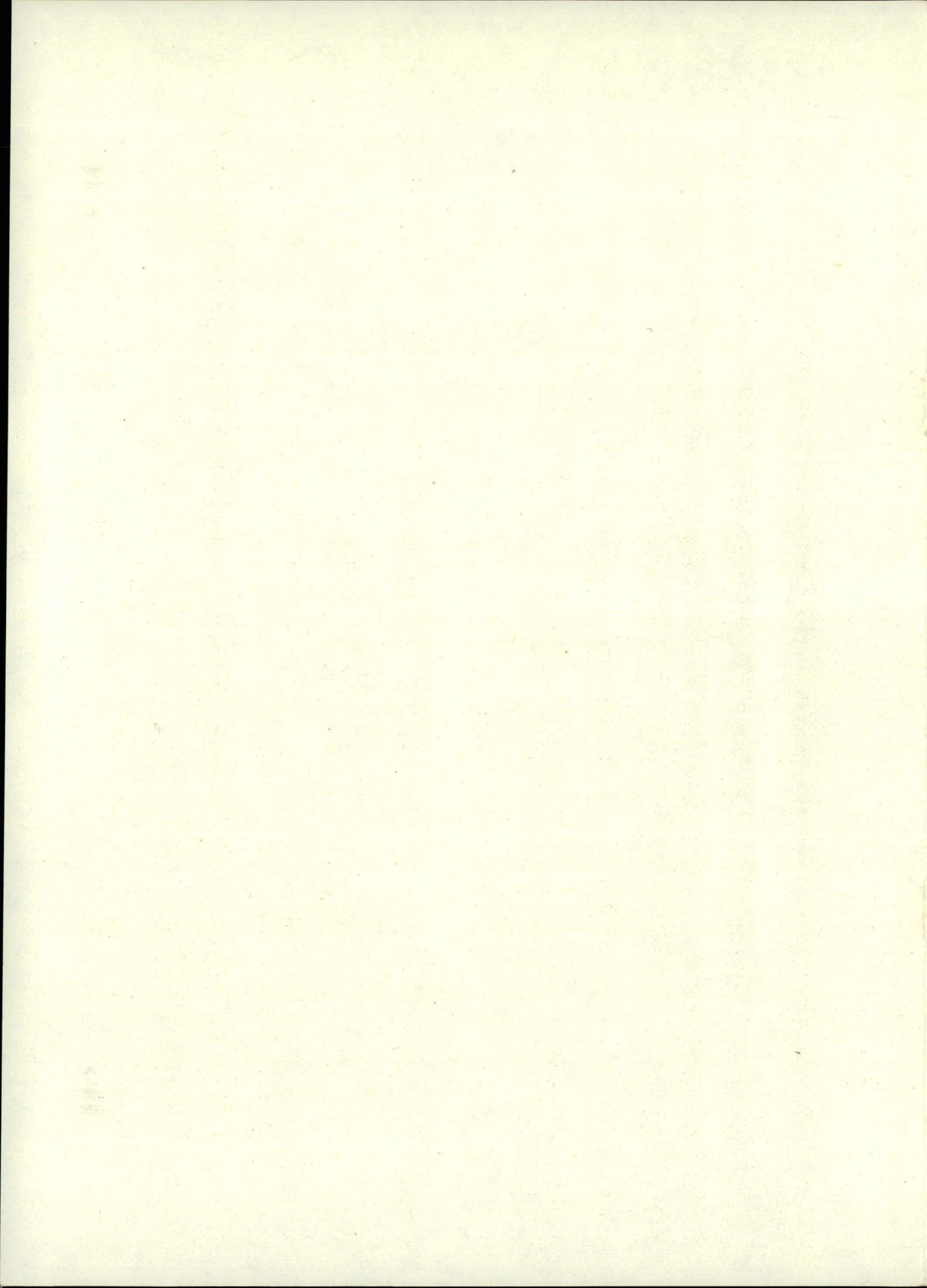














# DRUG AND ALCOHOL REHABILITATION ESTABLISHMENTS ACT 1987 No. 120

NEW SOUTH WALES



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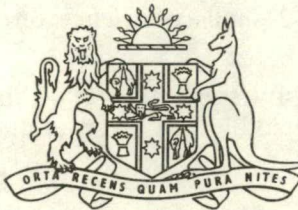
SCHEDULE 1—MATTERS WITH RESPECT TO WHICH LICENSING STANDARDS  
MAY BE PRESCRIBED

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**DRUG AND ALCOHOL REHABILITATION ESTABLISHMENTS  
ACT 1987 No. 120**

NEW SOUTH WALES



**Act No. 120, 1987**

An Act to provide for the licensing and control of certain establishments providing treatment and rehabilitation for drug or alcohol related problems.  
[Assented to 16 June 1987]



*Drug and Alcohol Rehabilitation Establishments 1987*

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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:

PART 1  
PRELIMINARY

**Short title**

1. This Act may be cited as the "Drug and Alcohol Rehabilitation Establishments Act 1987".

**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 and notified by proclamation published in the Gazette.

**Interpretation**

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

"Director" means the Director of the Drug Offensive;

"licence" means a licence issued under section 8 and in force under this Act or a temporary licence;

"licensee" means the holder, or any one or more of the holders, for the time being of a licence;

"licensing standards" means the standards prescribed pursuant to section 5;

"manager", in relation to a residential rehabilitation establishment, means the manager of the establishment as referred to in section 24;

"premises" includes any land, building and part of any building;

"register of residents", in relation to a residential rehabilitation establishment, means the register that is required by section 25 to be kept at the establishment;

"regulation" means a regulation made under this Act;



*Drug and Alcohol Rehabilitation Establishments 1987*

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

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

- (a) any such premises which are conducted by 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;
- (c) a hospital or other health service under the control of an area health service constituted under the Area Health Services Act 1986;
- (d) a nursing home or a private hospital, within the meaning of the Private Health Establishments Act 1982;
- (e) a proclaimed place within the meaning of the Intoxicated Persons Act 1979; or
- (f) any premises or class of premises declared by the regulations to be exempt from this Act;

“temporary licence” means a licence issued under section 7 (1) and in force under this Act;

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

(2) In this Act—

- (a) a reference to a function includes a reference to a power, authority and duty; and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

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



*Drug and Alcohol Rehabilitation Establishments 1987*

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(4) A reference in this Act to a person who conducts an establishment (however expressed) does not include a reference—

- (a) to a corporation which conducts the establishment 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) where that person is acting only in the person's capacity as an employee or agent.

(5) 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.

(6) Until the commencement of the Private Health Establishments Act 1982, the reference in subsection (1) to that Act shall be read as a reference to the Private Hospitals Act 1908.

**Drug or alcohol related problems**

4. A reference in this Act to a drug or alcohol related problem includes a reference to any personal, social, health or economic problem arising from or related to—

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

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PART 2

LICENSING OF RESIDENTIAL REHABILITATION  
ESTABLISHMENTS

**Licensing standards**

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



*Drug and Alcohol Rehabilitation Establishments 1987*

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

**Applications for licences**

6. (1) An application for a licence for a residential rehabilitation establishment may be made to the Director by the person who intends to conduct the establishment.

(2) An application under this section 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.

**Temporary licences**

7. (1) If an application is made for a licence in respect of an existing residential rehabilitation establishment, the Director 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);
- (b) the application made under section 6 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 6 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 Director may, by notice in writing served on the applicant, direct.

**Determination of application for licence**

8. Subject to this Part, the Director 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**

9. The Director may refuse an application for a licence—

- (a) if the applicant or any of the applicants is not a fit and proper person to be a licensee;
- (b) if any person who will be concerned in the management of the establishment at a senior level is not a fit and proper person to be involved in its management;
- (c) if the applicant or any of the applicants or, where the applicant is a corporation, any director or other person concerned in the management of the corporation has been convicted of an offence under this Act or the regulations;
- (d) if—
  - (i) the applicant or any of the applicants;
  - (ii) where the applicant is a corporation, any director or other person concerned in the management of the corporation; or
  - (iii) any person who will be concerned in the management of the establishment at a senior level,

has been convicted in New South Wales of an offence punishable by penal servitude or imprisonment for a period of 12 months or more, or has been convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable;

- (e) if the Director is satisfied that the establishment does not comply with, or is not capable of being conducted in accordance with, the licensing standards applicable to it; or
- (f) if the Director is satisfied that the conduct of the establishment—
  - (i) would result in more than adequate facilities or services of the kind provided by residential rehabilitation establishments becoming available to the population of the area in which the establishment is situated; or
  - (ii) would be prejudicial to the efficient provision in New South Wales of facilities or services for the treatment or rehabilitation of persons suffering from drug or alcohol related problems.



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**Form of licences**

10. 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; and
- (c) the maximum number of residents who may be accommodated at any one time at the establishment, as determined by the Director.

**Conditions of licences**

11. (1) The Director may issue a licence subject to such conditions as may be specified in it.

(2) Without affecting the generality of subsection (1), the Director may issue a licence for a residential rehabilitation establishment subject to conditions that—

- (a) restrict the type of treatment or method of rehabilitation that may otherwise be provided to residents pursuant to this Act;
- (b) limit the number of persons of any class who may reside at the establishment if they are not undergoing treatment or rehabilitation as referred to in this Act; or
- (c) prohibit any such class of persons from residing at the establishment.

(3) Without affecting the generality of subsection (1), a licence is subject to such conditions as are prescribed by the regulations and applicable to it.

**Duration of licences**

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

**Annual licence fees**

13. The licensee of a residential rehabilitation establishment shall, on or before 31 December in each year, pay to the Director such annual licence fee as may be prescribed.



**Transfer of licence to another licensee**

14. (1) The Director may, upon application being made in accordance with this section, transfer the licence for a residential rehabilitation 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 this section 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 Director may refuse an application under this section—

- (a) if the proposed licensee, or any of the proposed licensees, is not a fit and proper person to be a licensee; or
- (b) on any other ground on which the application could have been refused under section 9 if it were an application for a licence.

**Amendment of licences**

15. (1) The Director may amend a licence in either or both of the following ways:

- (a) by increasing or decreasing the number specified in the licence as the maximum number of residents who may be accommodated at any one time at the establishment;
- (b) by amending or revoking any condition (other than a condition under the regulations) to which the licence is subject or attaching further conditions to the licence.

(2) The Director may amend a licence under this section if—

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

(3) A licence is amended under this section—

- (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) If the Director, by notice in writing served on a licensee, requires the licensee to forward the licensee's licence to the Director for the purpose of amending it under this section, the licensee shall, within 14 days after service of the notice, comply with the requirement.

Penalty: \$500.

(5) Upon the service of such a notice, the licence shall be deemed to be amended according to the tenor of the notice.

**General provisions regarding applications**

16. (1) The Director may in respect of an application under this Part, by notice in writing served on the applicant, direct the applicant to furnish the Director with such information as the Director may reasonably require for the purpose of determining the application.

(2) Without limiting the power of the Director to refuse the application on any other ground, the Director may refuse an application under this Part on the ground that the applicant has failed to comply with a direction under subsection (1).

(3) An application under this Part may, with the approval of the Director, be amended by the applicant.

(4) Before determining an application under section 6 or 14, the Director 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, and in the manner specified, in the advertisement.

(5) The regulations may provide for the refund to an applicant of the whole or any part of any application fee that accompanied an application under this Part which is refused.



**Notice of refusal of application**

17. If the Director refuses an application under this Part, the Director shall forthwith cause the applicant to be notified—

- (a) that the Director has refused the application;
- (b) of the grounds on which the Director has refused the application; and
- (c) if the Director refuses the application on the ground that a person is not a fit and proper person to be a licensee or to be involved in the management of a residential rehabilitation establishment—of the reasons why the Director is of the opinion that the person is not such a fit and proper person.

**Duplicate licences**

18. The Director may, if satisfied that a licence has been lost, destroyed or damaged, and on payment of the prescribed fee, issue a duplicate licence to the licensee.

**Cancellation or suspension of licences**

19. (1) The Director may cancel the licence for a residential rehabilitation establishment without holding an inquiry or giving any notice to the licensee—

- (a) if the annual licence fee payable under section 13 in respect of the establishment has not been paid by the due date;
- (b) if the licensee requests the Director in writing to cancel the licence;
- (c) if the premises to which the licence relates have ceased to be a residential rehabilitation establishment; or
- (d) in the case of a temporary licence—if the Director considers that it is appropriate to do so.

(2) Subject to subsection (4), the Director may cancel the licence for a residential rehabilitation establishment—

- (a) if the licensee is not a fit and proper person to be a licensee;
- (b) if any person concerned in the management of the establishment at a senior level is not a fit and proper person to be concerned in its management;



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- (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 of an offence under this Act or the regulations;
- (d) if—
  - (i) the licensee;
  - (ii) where the licensee is a corporation, any director or other person concerned in the management of the corporation; or
  - (iii) any person concerned in the management of the establishment at a senior level,

is convicted in New South Wales of an offence punishable by penal servitude or imprisonment for a period of 12 months or more, or is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable;

- (e) if the licensee breaches any condition to which the licence is subject;
  - (f) 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 or her creditors or makes an assignment of his or her remuneration for their benefit;
  - (g) where the licensee is a corporation, if a receiver 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;
  - (h) if the establishment has not been conducted in accordance with the licensing standards applicable to it; or
  - (i) if the establishment is conducted in such a manner—
    - (i) that reasonable standards of resident care have not been maintained; or
    - (ii) that the cancellation of the licence is otherwise in the public interest.
- (3) The Director may, for the purpose of exercising powers under subsection (2), cause an inquiry to be held by some person appointed by the Director for the purpose.



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(4) The Director shall not cancel a licence under this section unless, before cancelling the licence, the Director—

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

(5) The cancellation of a licence under this section shall not take effect—

- (a) until the expiration of 14 days after notice of the Director's decision is given to the licensee; or
- (b) if the licensee lodges an appeal under Part 4 before the expiration of the period referred to in paragraph (a)—until the appeal is dealt with or withdrawn.

(6) The Minister may suspend a licence whose cancellation under this section has not yet taken effect, but may do so only if satisfied that—

- (a) the interests of the residents concerned would be seriously prejudiced; or
- (b) it would be contrary to the public interest,

if the licence were to remain in force until the cancellation takes effect.

(7) The suspension of a licence under this section ceases to have effect if it is lifted by the Minister or if an appeal against the cancellation is upheld.

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## PART 3

CONDUCT OF RESIDENTIAL REHABILITATION  
ESTABLISHMENTS**Unlicensed residential rehabilitation establishments**

20. (1) On and after a day to be appointed by the Governor for the purposes of this section and notified by proclamation published in the Gazette, a person shall not conduct a residential rehabilitation establishment unless—

- (a) the establishment is licensed; and
- (b) the person is the licensee.

Penalty: \$5,000.

(2) Evidence that, at any premises—

- (a) at all times during any month—2 or more persons (not being members of the occupier's family); or
- (b) at any time—3 or more persons (not being members of the occupier's family),

have been accommodated at the premises and have been provided (whether there or elsewhere) with treatment or rehabilitation for drug or alcohol related problems is prima facie evidence that the premises are a residential rehabilitation establishment, whether or not there is any evidence that a charge was made for the treatment or rehabilitation.



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**Executor or administrator deemed licensee**

21. If the only licensee of a residential rehabilitation establishment is a natural person and the person dies, the executor of the will or the administrator of the estate of the licensee shall be deemed to be the licensee for—

- (a) a period, commencing on the date of death of the licensee, not exceeding 2 months; or
- (b) such longer period as the Director may, in any particular case, approve.

**Purposes for which residential rehabilitation establishments may be used**

22. The licensee of a residential rehabilitation establishment shall not cause or permit the licensed premises to be used for any purpose other than the following purposes:

- (a) the conduct of a residential rehabilitation establishment;
- (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: \$1,000.

**Overcrowding**

23. (1) The licensee of a residential rehabilitation establishment shall not cause or permit the number of residents accommodated at the establishment to exceed the number of residents specified in the licence in relation to the establishment.

Penalty: \$1,000.

(2) The licensee of a residential rehabilitation establishment is not guilty of an offence under this section in respect of anything done in the case of an emergency.

**Manager of establishment**

24. (1) The licensee of a residential rehabilitation establishment shall not conduct the establishment unless there is a person who—

- (a) carries out the duties of manager of the establishment, being a person who is responsible for the care of the residents at the establishment; and



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- (b) holds the appropriate qualifications (if any) that are specified or referred to in the licence.

Penalty: \$1,000.

(2) The licensee of a residential rehabilitation establishment is not guilty of an offence under this section merely because, 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 carries out the duties of manager of the establishment and who holds the appropriate qualifications.

(3) Except as may be provided by the regulations, the licensee of a residential rehabilitation establishment shall notify the Director in writing in accordance with subsection (4) of the full name and the qualifications of the person who carries out the duties of manager of the establishment.

Penalty: \$500.

(4) A notification under subsection (3)—

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

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

(5) Nothing in this Act prevents a natural person who is the licensee of a residential rehabilitation establishment from carrying out the duties of manager of the establishment if the person could carry out those duties were the person not the licensee.

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

### **Register of residents**

25. (1) The licensee of a residential rehabilitation establishment shall cause a register of residents to be kept, in the prescribed manner and in or to the effect of the prescribed form, at the establishment.

(2) The following particulars shall be entered in the register of residents:

- (a) the name, age and residential address of each resident at the establishment;
- (b) the date when the resident was received at the establishment;
- (c) the date when the resident left the establishment or, in the event of the resident's death, the date of death;



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(d) such other particulars as may be prescribed.

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

(4) A person shall not—

(a) enter in the register of residents any particulars that the person 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 residents any particular which the person is required by this section to enter.

Penalty: \$2,000.

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PART 4

REVIEW OF LICENSING DECISIONS

**Refusal of application**

26. (1) If the Director refuses an application under Part 2, the applicant may request the Minister in writing to review the decision of the Director.

(2) On receipt of the request, the Minister may, after such investigation of the matter as the Minister considers necessary, either—

(a) confirm the decision of the Director; or

(b) revoke the decision and direct the Director to grant the application concerned.

(3) The Director shall give effect to the Minister's direction.

(4) A direction of the Minister under this section does not affect the power of the Director under section 11 to issue a licence subject to conditions.

**Issue of licence conditionally**

27. (1) If a licence is issued subject to conditions under section 11, the licensee may request the Minister in writing to review the decision of the Director to issue the licence subject to conditions.



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(2) On receipt of the request, the Minister may, after such investigation of the matter as the Minister considers necessary, either—

- (a) confirm the decision of the Director; or
- (b) revoke the decision and direct the Director to cancel the licence and issue a substitute licence either free of conditions or subject to such conditions as the Minister directs.

(3) The Director shall give effect to the Minister's direction.

**Amendment of licence**

28. (1) If a licence is amended under section 15 (otherwise than on the application of the licensee), the licensee may request the Minister in writing to review the decision of the Director to amend the licence.

(2) On receipt of the request, the Minister may, after such investigation of the matter as the Minister considers necessary—

- (a) confirm the decision of the Director;
- (b) revoke the decision and direct the Director to amend the licence so as to cause the licence to be subject to the same conditions to which it was subject immediately before the amendment to which the decision relates took effect; or
- (c) revoke the decision of the Director as to certain matters, confirm it as to the remainder, and direct the Director to amend the licence so as to cause the licence to be subject to such of those same conditions as the Minister specifies.

(3) The Director shall give effect to the Minister's direction.

**Cancellation of licence**

29. (1) A person aggrieved by a decision of the Director to cancel the licence for a residential rehabilitation establishment (except under section 19 (1)) may appeal to the District Court in accordance with rules of court.

(2) The appeal shall be dealt with by way of rehearing, and fresh evidence in addition to, or in 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.



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

(4) The District Court may, in determining the appeal, uphold the appeal or confirm the decision of the Director.

(5) The determination of the District Court on the appeal is final and conclusive and shall be given effect to by the Director.

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PART 5  
MISCELLANEOUS

**Exemptions**

30. (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 establishments,

specified in the order; or

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

(2) An order published under this section—

(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.

**Power to enter and inspect establishments**

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

(a) any licensed residential rehabilitation establishment; or

(b) any premises which are the subject of an application for a licence,



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and may observe and converse with any person apparently residing at the establishment or premises.

(2) Every person authorised under this section shall be provided by the Director with a certificate of the person's authority.

(3) On applying for admission to any establishment or premises which an authorised person is empowered by this section to enter, the authorised person shall, if requested to do so, produce the certificate to the person apparently in charge of the establishment or premises.

**Power to require information, inspect records etc.**

32. (1) In this section, "records", in relation to a residential rehabilitation establishment, includes—

- (a) the register of residents and any other records required by or under this Act to be kept at the establishment; and
- (b) any other records, books or other documents relating to the conduct of the establishment.

(2) A person authorised by the Director under section 31 may do any or all of the following:

- (a) require a licensee or the manager of, or a member of the staff of, or any other person concerned in the conduct of, a residential rehabilitation establishment to furnish to the authorised person information relating to the conduct of the establishment;
- (b) require a licensee or the manager of, or any other person concerned in the conduct of, a residential rehabilitation establishment, to produce, at such time and place as the authorised person may specify, any records of the establishment;
- (c) inspect and take copies of, or extracts from, any records of a residential rehabilitation establishment;
- (d) take and retain possession of any records of a residential rehabilitation 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.



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(3) If a person retains possession of any records of a residential rehabilitation establishment under subsection (2) (d), the person shall, during the period that the person retains possession of them—

- (a) permit a person who is entitled to inspect any one 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) (d) does not authorise a person who takes possession of any records of a residential rehabilitation establishment to remove those records from the establishment if those records—

- (a) relate to a person who is then a resident at the establishment; and
- (b) may be required to be referred to for the purposes of providing the resident with treatment or rehabilitation in connection with a drug or alcohol related problem.

**Evidence of records**

33. (1) In this section, “records” has the same meaning as in section 32.

(2) In any legal proceedings (whether proceedings under this Act or otherwise), a copy of or extract from a record is admissible in evidence as if it were the original record or the relevant part of the original record.

(3) A copy of or extract from a record is not admissible in evidence under this section unless it is proved that the copy or extract is a true copy of the record or of the relevant part of the record.

(4) For the purposes of subsection (3), evidence that a copy of or extract from a record is a true copy of the record or of a part of the record—

- (a) may be given by a person who has compared the copy or extract with the record or the relevant part of the record; and
- (b) may be so given either orally or by an affidavit sworn, or by a declaration made, before a person authorised to take affidavits or statutory declarations.

**Obstruction of officers etc.**

34. (1) A person shall not wilfully hinder, obstruct or delay any person in the exercise of any function under this Act.



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(2) A person shall not, without reasonable excuse, fail to comply with a requirement made under section 32 (2) (a) or (b).

Penalty: \$2,000.

**False or misleading statements etc.**

35. 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, or pursuant to a requirement under section 32 (2) (a)—

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

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

Penalty: \$2,000.

**Evidentiary certificates**

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

- (a) a specified person was or was not a licensee of a specified establishment;
- (b) any specified premises were or were not licensed;
- (c) the licence for a specified establishment was cancelled or suspended;
- (d) any specified particulars were the particulars specified in the licence for a specified establishment; or
- (e) the licence for a specified establishment was subject to any specified condition,

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 in it.



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**Service of notices etc. by Director**

37. (1) If, by or under this Act, a notice or other document is required to be or may be given or served by the Director, the notice or document may be given to or served on—

- (a) a natural person—
  - (i) by delivering it to the person personally;
  - (ii) by leaving it at the person's place of residence last known to the Director with a person who apparently resides there and who has apparently reached the age of 16 years;
  - (iii) if the person is a licensee—by leaving it at the establishment to which the licence relates with a person who is apparently employed at the establishment and who has apparently reached the age of 16 years; or
  - (iv) by sending it by post addressed to the person 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 and who has apparently reached the age of 16 years;
  - (iii) if the corporation is a licensee—by leaving it at the establishment to which the licence relates with a person who is apparently employed at the establishment and who has apparently reached the age of 16 years; or
  - (iv) 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 this section 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.

**Delegation by Director**

38. (1) The Director may delegate to—

- (a) a public servant;



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- (b) a member of the staff of 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;
- (c) a member of the staff of a hospital or other health service under the control of an area health service constituted under the Area Health Services Act 1986; or
- (d) a person of a prescribed class or description,

the exercise of any of the Director's functions, other than this power of delegation.

(2) A delegation—

- (a) shall be in writing;
- (b) may be general or limited; and
- (c) may be revoked, wholly or partly, by the Director.

(3) A delegate is, in the exercise of a delegated function, subject to such conditions as are specified in the instrument of delegation.

(4) A delegated function, when exercised by the delegate, shall be deemed to have been exercised by the Director.

(5) A delegation does not prevent the exercise of a function by the Director.

(6) A function purporting to have been exercised by a delegate shall, until the contrary is proved, be deemed to have been duly exercised by a delegate under this section.

**Proceedings for offences**

39. Proceedings for offences against this Act or the regulations shall be disposed of in a summary manner before a Local Court constituted by a Magistrate sitting alone.

**Offences by corporations**

40. (1) If a corporation contravenes, whether by act or omission, any provision of this Act or a regulation, each person who is a director of the corporation or who is concerned in the management of the corporation shall be deemed to have contravened the same provision if the person knowingly authorised or permitted the contravention.



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(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 the provision.

(3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against this Act or the regulations.

### **Regulations**

41. (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 regulation (including a regulation prescribing a licensing standard) may create an offence punishable by a penalty not exceeding \$500.

(3) 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.

(4) Without affecting the generality of subsection (3), different fees may be prescribed for different classes of residential rehabilitation establishments.

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### **SCHEDULE 1**

(Sec. 5 (2))

#### **MATTERS WITH RESPECT TO WHICH LICENSING STANDARDS MAY BE PRESCRIBED**

1. The regulation or prohibition of types of treatment and methods of rehabilitation at establishments.
2. The provision of accommodation for residents at establishments.



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

3. The regulation of visits and access to, and communication with or by, residents at establishments.
4. The regulation of the relationship between a resident and an establishment in connection with the resident's property, income and other interests.
5. The provision of staff at establishments.
6. The duties of staff at establishments.
7. The regulation or prohibition of admission to or accommodation at establishments of persons suffering from diseases or in other conditions.
8. The keeping of records at establishments.
9. The disposal of a part of a register or record required to be kept by or under this Act which relates to previous residents at an establishment.
10. The furnishing of information to the Director in relation to the conduct of establishments.
11. The furnishing of information to the Director in relation to the staff at establishments and other persons concerned in the management of establishments.
12. The furnishing of information to a resident and the inspection of records by a resident in connection with the treatment or rehabilitation of the resident at an establishment.
13. The displaying of licences and notices at establishments.
14. The location of establishments.
15. The design and construction of establishments generally.



