

# NURSING HOMES ACT 1988 No. 124

NEW SOUTH WALES



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**NURSING HOMES ACT 1988 No. 124**

NEW SOUTH WALES



**Act No. 124, 1988**

An Act to provide for the licensing and control of nursing homes; and for other purposes. [Assented to 30 December 1988]

**The Legislature of New South Wales enacts:****PART 1—PRELIMINARY****Short title**

1. This Act may be cited as the Nursing Homes Act 1988.

**Commencement**

2. This Act commences on a day or days to be appointed by proclamation.

**Definitions**

3. (1) In this Act—

“application” means—

- (a) an application for a licence under section 5; or
- (b) an application to transfer a licence under section 15; or
- (c) an application to alter or extend a nursing home under section 16; or
- (d) an application for amendment of a licence under section 18;

“chief nurse” means the chief nurse of a nursing home as referred to in section 37;

“licence” means a licence issued under section 8 and in force under this Act, and includes a temporary licence;

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

“licensing standards” means the standards prescribed under section 4;

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

- (a) who are recuperating from illness or childbirth and who require nursing care; or
- (b) who require nursing care on account of age, infirmity, chronic ill-health or other condition,

but does not include—

- (c) an institution conducted by or on behalf of the State; or
- (d) an incorporated hospital or a separate institution within the meaning of, or a hospital specified in the Fifth Schedule to, the Public Hospitals Act 1929; or
- (e) a hospital or other health service under the control of an area health service constituted under the Area Health Services Act 1986; or
- (f) a private hospital or a day procedure centre within the meaning of the Private Hospitals and Day Procedure Centres Act 1988; or

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- (g) a residential rehabilitation establishment licensed under the Drug and Alcohol Rehabilitation Establishments Act 1987;
- “premises” includes any land, building and part of any building;
- “register of residents” means the register that is required by section 41 to be kept at a nursing home;
- “registered nurse” means a nurse registered under the Nurses Registration Act 1953;
- “resident” means a person accommodated in a nursing home who receives nursing care;
- “Secretary” means the Secretary of the Department of Health;
- “temporary licence” means a licence issued under section 9 and in force under this Act;
- “ward” means any room in a nursing home in which residents are accommodated.
- (2) A reference in this Act to the conduct of a nursing home (however expressed) is a reference to the carrying on of the business of the nursing home.
- (3) A reference in this Act to a person who conducts a nursing home (however expressed) is a reference—
- (a) to a corporation which conducts the nursing home, except where that corporation is acting only in its capacity as an agent; or
  - (b) to a natural person who conducts the nursing home (whether jointly with other persons or alone), except where that person is acting only in the person’s capacity as an employee or an agent.
- (4) For the purposes of this Act, a corporation is not a fit and proper person to be a licensee unless each director and each person concerned in the management of the corporation is a fit and proper person to be a licensee.
- (5) 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.

**PART 2—LICENSING OF NURSING HOMES****Division 1—Licensing standards****Licensing standards**

4. The regulations may prescribe standards for or with respect to any matter relating to the safety, care or quality of life of residents at nursing homes, including the following matters:

- (a) design and construction of premises;

- (b) facilities and equipment;
- (c) staffing, including qualifications of staff members, number of staff and duties;
- (d) operational matters, including administration and support services;
- (e) clinical records, including access by residents to, and confidentiality of, those records.

### **Division 2—Applications for and issue of licences**

#### **Application for licence**

5. (1) An application for a licence for a nursing home may be made to the Secretary by the person who intends to conduct the nursing home.

(2) Any such application shall—

- (a) be in or to the effect of the form prescribed by the regulations; and
- (b) specify the class or classes of nursing homes in respect of which the licence is sought; and
- (c) be accompanied by such particulars or documents as may be required by the prescribed application form; and
- (d) be accompanied by such application fee as may be prescribed by the regulations.

#### **Approval in principle or refusal of application**

6. (1) The Secretary shall, after considering an application for a licence under section 5—

- (a) approve the application in principle; or
- (b) refuse the application.

(2) The Secretary may impose conditions on an approval of an application in principle, including—

- (a) conditions relating to the design and construction of any building to be constructed, altered or extended for the purposes of the proposed nursing home; and
- (b) the preparation and submission to the Secretary of a development timetable for any such building specifying the dates by which it is proposed that different stages in construction, alteration or extension will be completed.

(3) The Secretary may refuse, under this section, an application for a licence only if—

- (a) the applicant, or any of the applicants, is not a fit and proper person to be a licensee; or
- (b) the Secretary is satisfied that the proposed nursing home is not capable of being conducted in accordance with the licensing standards applicable to it.

(4) If the Secretary approves an application in principle, the Secretary shall give the applicant written notice of that approval and any conditions to which the approval is subject.

**Approval in principle to remain effective for 1 year**

7. (1) An approval of an application for a licence in principle is effective for a period of 1 year from the date on which the applicant is given notice of that approval under section 6 (4) and for any such further period or periods as the Secretary may, at the request of the applicant, allow.

(2) More than one request may be made by an applicant under subsection (1), but any such request must be made while the approval of the application in principle is effective.

(3) If the Secretary has, as a condition of an approval of an application in principle, required the applicant to provide a development timetable, the Secretary may grant an extension of the period for which that approval is effective only if the Secretary is satisfied that the applicant has made a reasonable attempt to comply with that timetable.

**Issue of licence approved in principle**

8. (1) If the Secretary has approved an application for a licence in principle and the construction, alteration or extension of any building to which the application relates has been completed, the Secretary shall either—

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

(2) In any such case, the Secretary may not refuse the application for a licence unless—

- (a) the approval of the application in principle expired before the completion of the construction, alteration or extension of any building to which the application relates; or
- (b) any such building was not constructed, altered or extended in accordance with the approval in principle; or
- (c) any other condition to which the approval in principle was subject has not been complied with.

**Temporary licences**

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

(2) A temporary licence remains in force until—

- (a) the date of expiry of the temporary licence; or
- (b) the application for the licence is granted; or

(c) the temporary licence is cancelled, whichever first occurs.

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

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

### **Division 3—Provisions relating to licences**

#### **Classes of nursing homes**

10. For the purposes of this Act, there shall be such classes of nursing homes as may be prescribed by the regulations.

#### **Form of licence**

11. Without limiting the particulars that may be included in a licence, a licence shall specify—

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

#### **Conditions of licence**

12. The Secretary may issue a licence subject to such conditions as may be specified in the licence.

#### **Duration of licence**

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

#### **Annual licence fees**

14. The licensee of a nursing home shall, on or before 31 December in each year, pay to the Secretary such annual licence fee as may be prescribed by the regulations in relation to the nursing home.

#### **Transfer of licence to another licensee**

15. (1) The Secretary may, if application is made in accordance with this section, transfer the licence for a nursing home to the person who intends to conduct the nursing home—

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



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- (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 form prescribed by the regulations; and
  - (b) be accompanied by such particulars or documents as may be required by the prescribed form; and
  - (c) be accompanied by such application fee as may be prescribed by the regulations.
- (3) The Secretary may refuse an application if the proposed licensee, or any of the proposed licensees, is not a fit and proper person to be a licensee.

**Alterations or extensions to licensed nursing homes**

16. (1) The licensee of a nursing home shall not cause or permit the nursing home to be altered or extended unless—
- (a) the approval of the Secretary to the alteration or extension is first obtained; and
  - (b) the nursing home is altered or extended in accordance with plans and specifications approved by the Secretary.

Maximum penalty: 20 penalty units.

- (2) An application for approval under this section shall—
- (a) be in or to the effect of the form prescribed by the regulations; and
  - (b) be accompanied by such particulars or documents as may be required by the prescribed form.
- (3) The Secretary may refuse an application under this section for any reason the Secretary might refuse under Division 2 an application for a licence for the nursing home as altered or extended.
- (4) The approval of the Secretary is not required under this section for any alteration or extension required to be carried out under section 17.

**Provision for repairs etc.**

17. (1) The Secretary may, by notice in writing, require the licensee of a nursing home to carry out such repairs, maintenance, alterations, extensions or improvements to the nursing home as may be specified in the notice.
- (2) A licensee shall comply with the requirements of any such notice within the time specified in the notice or within such further time as the Secretary may allow.

Maximum penalty: 20 penalty units.

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- (3) Any such notice shall not take effect—
- (a) until the expiration of 14 days after the notice has been given to the licensee; or
  - (b) if the licensee applies for a review of the Secretary's decision under section 25 before the expiration of the period referred to in paragraph (a)—until the application for review is dealt with or withdrawn.

#### **Amendment of licences**

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

- (a) by specifying in the licence additional classes of nursing homes;
- (b) by omitting any class of nursing homes specified in the licence;
- (c) by increasing or decreasing the number of residents specified in the licence as the number of residents who may be accommodated overnight at any one time in any ward of the nursing home;
- (d) by amending or revoking any condition to which the licence is subject or attaching further conditions to the licence.

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

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

(3) A licence is amended under this section—

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

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

Maximum penalty: 5 penalty units.

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

#### **Division 4—General provisions relating to applications for licences etc.**

##### **Additional information**

**19. (1)** The Secretary may, by notice in writing served on an applicant, direct the applicant to provide such information to the Secretary as the Secretary may reasonably require for the purpose of determining the application.

(2) The Secretary may refuse an application on the ground that the applicant has failed to comply with any such direction.

#### **Notice of reasons for refusal of application**

20. If the Secretary refuses an application, the Secretary shall immediately cause the applicant to be notified in writing—

- (a) that the Secretary has refused the application; and
- (b) of the grounds on which the Secretary has refused the application; and
- (c) if the Secretary refuses the application on the ground that the applicant is not a fit and proper person to be a licensee—of the reasons why the applicant is not a fit and proper person to be a licensee.

#### **Advertising of applications**

21. Before—

- (a) approving an application for a licence in principle, or refusing any such application, under section 6; or
- (b) determining an application to transfer a licence,

the Secretary shall cause the application to be publicly advertised in such manner as the Secretary thinks fit and shall take into consideration any representations made in relation to the application within the time specified in the advertisement.

#### **Amendment of applications**

22. An applicant may, with the approval of the Secretary, amend an application.

### **Division 5—Review of decisions of Secretary**

#### **Definition**

23. In this Division, “decision of the Secretary” means—

- (a) a decision of the Secretary to refuse an application; or
- (b) a determination by the Secretary, when issuing a licence, of the class or classes of nursing homes for which the licence is issued; or
- (c) a determination by the Secretary, when issuing a licence for a nursing home, of the maximum number of residents who may be accommodated overnight at any one time in any ward of the nursing home; or
- (d) a determination by the Secretary of the conditions subject to which a licence is issued; or
- (e) a decision of the Secretary to require the licensee of a nursing home to carry out repairs, maintenance, alterations, extensions or improvements to the nursing home; or

- (f) a decision of the Secretary to amend a licence (otherwise than on the application of the licensee).

#### **Chairperson of Committees of Review**

24. (1) The Minister may appoint a person to be Chairperson of Committees of Review.

(2) Schedule 1 has effect with respect to the Chairperson of Committees of Review.

#### **Application for review of Secretary's decision**

25. (1) A person aggrieved by a decision of the Secretary may apply, in or to the effect of the form prescribed by the regulations, to the Minister to review the decision of the Secretary.

(2) On receipt of an application for review, the Minister shall forward the application to the Chairperson of Committees of Review, who shall establish a Committee of Review to advise the Minister on the application.

#### **Constitution of Committee of Review**

26. (1) A Committee of Review established under this Division shall comprise the Chairperson of Committees of Review and 3 other persons appointed by the Chairperson to represent, respectively, the interests of the nursing home industry, the health care professions and consumers.

(2) The Chairperson may not appoint any such person if the Chairperson knows, or has reason to believe, that the person has a pecuniary interest in the subject-matter of the application for review.

(3) Schedule 2 has effect with respect to Committees of Review.

#### **Committee of Review to make recommendation to Minister**

27. (1) After such investigation as it considers necessary in relation to an application for review, a Committee of Review may, in a written report to the Minister—

- (a) recommend that the decision of the Secretary be confirmed, or that the decision be revoked and—
- (i) in the case of a decision to refuse an application, the application concerned be granted; or
  - (ii) in any other case, the Secretary be directed to take such other action under this Act as the Committee considers appropriate; and
- (b) give the reasons for its recommendation.

(2) If the members of a Committee of Review are unable to agree on the recommendation that the Committee should make to the Minister, the Committee's report shall include the recommendation, and the reasons for the recommendation, of each member.

**Determination of application for review by Minister**

28. (1) The Minister may, after such investigation as the Minister considers necessary in relation to an application for review, and after having regard to the report of the Committee of Review to which the application has been referred, either—

- (a) confirm the decision of the Secretary; or
- (b) revoke that decision and—
  - (i) in the case of a decision to refuse an application, direct the Secretary to grant the application concerned; or
  - (ii) in any other case, direct the Secretary to take such other action under this Act as the Minister considers appropriate.

(2) The Secretary shall give effect to any such direction of the Minister.

(3) The Minister is not required, before determining an application for review under this section, to have regard to a report of the Committee of Review to which the application has been referred if that Committee has failed to submit a report to the Minister within such time as the Minister may have communicated to the Chairperson of Committees of Review.

**Applicant to provide information etc.**

29. The Minister or a Committee of Review to which an application for review is referred may (as a condition of dealing with the application) require the applicant—

- (a) to provide the Minister or the Committee (as the case may require) with such additional information as the Minister or the Committee may reasonably require to determine the application; and
- (b) to allow the Minister or members of the Committee (or a person nominated by the Minister or the Committee) to enter and inspect any premises to which the application for review relates.

**Division 6—Cancellation of licences****Cancellation of licence without notice**

30. The Secretary may cancel the licence for a nursing home without holding an inquiry or giving any notice to the licensee—

- (a) if the licensee requests the Secretary in writing to cancel the licence; or
- (b) if the premises to which the licence relates have ceased to be a nursing home of a class in respect of which the licence was issued; or
- (c) in the case of a temporary licence—if the Secretary considers that it is appropriate to do so.

**Cancellation of licence with notice**

**31. (1)** The Secretary may cancel the licence for a nursing home—

- (a) if the annual licence fee payable under section 14 in respect of the nursing home has not been paid by the due date; or
- (b) if the licensee is no longer a fit and proper person to be a licensee; or
- (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; or
- (d) if the licensee (or, where the licensee is a corporation, any director or other person concerned in the management of the corporation) is convicted in New South Wales of an offence punishable by 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; or
- (e) if the licensee breaches any condition to which the licence is subject; or
- (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; or
- (g) where the licensee is a corporation, if a receiver or manager has been appointed in respect of the property of the licensee or if the licensee is commenced to be wound up or is under official management; or
- (h) if the nursing home has not been conducted in accordance with the licensing standards applicable to it; or
- (i) if the nursing home 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.

**(2)** The Secretary may, for the purpose of exercising any of the Secretary's powers under subsection (1), cause an inquiry to be made by some person appointed by the Secretary for the purpose.

**(3)** The Secretary shall not cancel a licence under this section unless, before cancelling the licence, the Secretary—

- (a) has given notice to the licensee that the Secretary intends to cancel the licence; and
- (b) has specified in that notice the reasons for the Secretary's intention to cancel the licence; and

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- (c) has given the licensee (whether in the course of an inquiry under subsection (2) or otherwise) a reasonable opportunity to make submissions to the Secretary in relation to the proposed cancellation; and
- (d) has taken into consideration any such submissions by the licensee.
- (4) The cancellation of a licence under this section shall not take effect—
  - (a) until the expiration of 14 days after notice of the Secretary's decision is given to the licensee; and
  - (b) where the licensee lodges an appeal under section 32 before the expiration of the period referred to in paragraph (a)—until the appeal is dealt with or withdrawn.

**Right to appeal to District Court**

32. (1) The licensee of a nursing home may appeal to the District Court, in accordance with the rules of court, against a decision of the Secretary to cancel the licence for the nursing home (except under section 30).

(2) An appeal under this section in respect of a decision of the Secretary shall be dealt with by way of a new hearing, but new evidence shall not be given on the appeal unless the District Court considers that there was good cause for the evidence not having been given on the making of the decision.

(3) The District Court may, pending the determination of an appeal under this section, make such orders as it thinks fit in relation to the matter the subject of the appeal, including an order prohibiting the licensee from conducting a nursing home.

- (4) The District Court may, in determining such an appeal—
  - (a) confirm the decision of the Secretary; or
  - (b) revoke that decision and make such order as the District Court considers appropriate.

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

**PART 3—CONDUCT OF NURSING HOMES****Unlicensed nursing homes**

33. (1) A person shall not conduct a nursing home unless—
- (a) the nursing home is licensed; and
  - (b) the person is the licensee.

Maximum penalty: 100 penalty units.

- (2) Evidence that, at any premises—
  - (a) during any month—2 or more persons (not being members of the occupier's family); or

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

have been accommodated in the premises shall, if the persons have been provided at the premises with nursing care only, be evidence that the premises are a nursing home (whether or not there is any evidence that a charge was made for the nursing care).

#### **Executor or administrator regarded as licensee**

34. If a licensee of a nursing home dies and he or she was the only licensee of the nursing home, the executor of the will or administrator of the estate of the licensee shall be taken to be the licensee for a period not exceeding 2 months or such longer period as the Secretary may, in any particular case, approve.

#### **Purposes for which nursing homes may be used**

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

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

Maximum penalty: 20 penalty units.

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

#### **Overcrowding**

36. (1) The licensee of a nursing home shall not cause or permit the number of residents accommodated overnight at any one time in any ward of the nursing home to exceed the number of residents specified in the licence in relation to that ward.

Maximum penalty: 20 penalty units.

(2) The licensee of a nursing home is not guilty of an offence under this section in respect of anything done in an emergency.

#### **Chief nurse of nursing home**

37. (1) The licensee of a nursing home shall not conduct the nursing home unless—

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



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

Maximum penalty: 20 penalty units.

(2) The licensee of a nursing home is not guilty of an offence under subsection (1) 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 is a registered nurse, who holds the prescribed qualifications that are applicable to the chief nurse of the nursing home and who carries out the duties of chief nurse of the nursing home.

(3) Except as may be provided by the regulations, the licensee of a nursing home shall notify the Secretary in writing of the full name and the qualifications of the person who carries out the duties of chief nurse of the nursing home.

Maximum penalty: 5 penalty units.

(4) A notification under subsection (3)—

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

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

(5) Nothing in this Act prevents the licensee of a nursing home (being a natural person) from carrying out the duties of chief nurse of the nursing home if the licensee is qualified to carry out those duties.

(6) It shall be 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 are reasonable in the circumstances to avoid being guilty of the offence.

**Title of “matron” and “director of nursing”**

38. (1) The licensee of a nursing home or a person employed at the nursing home shall not use the title “matron” or “director of nursing” unless the licensee or person is the chief nurse of the nursing home.

(2) The licensee of a nursing home shall not permit a person employed at the nursing home to contravene this section.

Maximum penalty: 20 penalty units.

**Registered nurse to be on duty**

39. The licensee of a nursing home shall, at all times while the nursing home is being conducted, cause a registered nurse to be on duty in the nursing home.

Maximum penalty: 20 penalty units.

**Title of "hospital" not to be used by nursing home**

40. The licensee of a nursing home shall not permit it to be held out to be a hospital by the use of the title "hospital", whether as part of its name or otherwise.

Maximum penalty: 20 penalty units.

**Register of residents**

41. (1) The licensee of a nursing home shall cause a register of residents to be kept, in or to the effect of the prescribed form, at the nursing home.

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

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

(3) The particulars referred to in subsection (2) 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 particular 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 subsection (2) to enter.

Maximum penalty: 20 penalty units.

**Copy of Act and regulations to be available**

42. The licensee of a nursing home shall, at all times while the nursing home is being conducted, cause a copy of this Act and the regulations to be readily available at the nursing home for inspection by the chief nurse.

Maximum penalty: 5 penalty units.

**PART 4—MISCELLANEOUS****Disclosure of pecuniary interests to residents**

43. (1) In this section, "practitioner" means a medical practitioner.

(2) If a practitioner has a pecuniary interest in a nursing home, the practitioner shall not—

- (a) advise a person to be admitted to the nursing home; or

- (b) arrange the admission of a person to the nursing home; or
- (c) provide medical or other treatment to, or arrange the provision of any such treatment to, any resident in the nursing home,

unless, before so doing, the practitioner has notified the person or resident, in the prescribed manner, that the practitioner has a pecuniary interest in the nursing home.

Maximum penalty: 20 penalty units.

(3) The regulations may prescribe, for the purposes of subsection (2), that the manner of notification shall be any 1 or more of the following:

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

(4) A person is not guilty of an offence under subsection (2) if the person proves that he or she—

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

(5) For the purposes of this section, a practitioner has a pecuniary interest in a nursing home only if the practitioner has an interest in the nursing home which is prescribed by the regulations as a pecuniary interest in the nursing home.

(6) The regulations may prescribe an interest of a relative or associate of a practitioner as a pecuniary interest of the practitioner.

#### **Power to enter and inspect nursing homes**

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

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

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

#### **Power to inspect registers and records**

45. (1) In this section, "prescribed records", in relation to a nursing home, means the register of residents or any other records required by or under this Act to be kept at the nursing home.

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(2) A person authorised by the Secretary under section 44—

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

(3) Where a person retains possession of any prescribed records of a nursing home pursuant to subsection (2) (b), the person shall, during the period for which 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 entitled to inspect; and
- (b) permit a person who is required by or under this Act to make an entry in those records to make the entry at any reasonable time.

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

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

(5) Subject to subsections (6) and (7), in any legal proceedings (whether or not proceedings under this Act) a copy of or extract from a prescribed record is admissible in evidence as if it were the original record or the relevant part of the original record.

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

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

### **Obstruction of officers**

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

Maximum penalty: 20 penalty units.

**False or misleading statements etc.**

47. A person shall not, in any application under this Act (including an application for review under section 25), or in support of any such application, or for the purposes of any inquiry under this Act—

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

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

Maximum penalty: 20 penalty units.

**Evidentiary certificates**

48. A certificate which purports to be signed by the Secretary or a prescribed officer and which states that, on a date specified in the certificate—

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

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

**Service of notices by Secretary**

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

- (a) a natural person—
  - (i) by delivering it to the person personally; or
  - (ii) by leaving it at his or her place of residence last known to the Secretary with a person who apparently resides there or, if the person is a licensee, by leaving it at the nursing home to which the licence relates with a person apparently employed at the nursing home (being in either case a person who is apparently 16 years of age or more); or
  - (iii) 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; or
- (ii) by leaving it at the registered office of the corporation with a person who is apparently employed at that office or, if the corporation is a licensee, by leaving it at the nursing home to which the licence relates with a person who is apparently employed at the nursing home (being in either case a person who is apparently 16 years of age or more); or
- (iii) by sending it by post addressed to the corporation at that registered office or that nursing home.

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

### **Offences by corporations**

50. (1) If a corporation contravenes any provision of this Act or the regulations, each person who is a director of the corporation or who is concerned in the management of the corporation shall be taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.

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

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

### **Proceedings for offences**

51. Proceedings for offences against this Act or the regulations shall be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

### **Regulations**

52. (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) In particular, the regulations may make provision for or with respect to the following:

- (a) the display of licences at nursing homes;

- (b) the supply by the licensee of a nursing home to the Secretary of information relating to—
- (i) any particulars that are required to be provided when an application for a licence is made; and
  - (ii) the number of residents, and the length of stay of residents, at the nursing home and the provision of health services to those residents; and
  - (iii) staffing at the nursing home;
- (c) the supply by the licensee of a nursing home to the Secretary of a copy of the register of residents for the nursing home or a copy of a part of the register.
- (3) A regulation (including a regulation prescribing a licensing standard) may create an offence punishable by a penalty not exceeding 5 penalty units.

### **Savings and transitional provisions**

53. Schedule 3 has effect.

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## **SCHEDULE 1—PROVISIONS RELATING TO CHAIRPERSON OF COMMITTEES OF REVIEW**

(Sec. 24 (2))

### **Deputy for Chairperson**

1. (1) The Minister may, from time to time, appoint a person to be the deputy of the Chairperson.
- (2) The deputy of the Chairperson may act in the office of the Chairperson during the illness or absence of the Chairperson and, while so acting, has all the functions of the Chairperson.
- (3) The Minister may remove a person from the office of deputy of the Chairperson at any time.
- (4) The deputy while so acting in the office of Chairperson is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the deputy.
- (5) For the purposes of this clause, a vacancy in the office of Chairperson shall be taken to be an absence of the Chairperson.

### **Term of office**

2. A person shall, subject to this Schedule, hold office as Chairperson for such term, not exceeding 3 years, as is specified in the person's instrument of appointment, but is eligible for re-appointment.

### **Remuneration**

3. The Chairperson is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the Chairperson.

*Nursing Homes 1988***SCHEDULE 1—PROVISIONS RELATING TO CHAIRPERSON OF COMMITTEES OF REVIEW—*continued*****Vacation of office**

4. (1) A person shall be taken to have vacated office as Chairperson if the person—
- (a) dies; or
  - (b) 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; or
  - (c) becomes a temporary resident or a continued treatment resident within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983; or
  - (d) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 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; or
  - (e) resigns the office by instrument in writing addressed to the Minister; or
  - (f) is removed from office by the Minister under subclause (2).
- (2) The Minister may remove a person from the office of Chairperson at any time.

**Filling of vacancy in office of member**

5. If the office of Chairperson becomes vacant, a person shall, subject to this Act, be appointed to fill the vacancy.

**Effect of certain other Acts**

6. (1) The Public Sector Management Act 1988 does not apply to or in respect of the appointment of a person to the office of Chairperson and a person is not, as Chairperson, subject to that Act (except Part 8).

- (2) If by or under any other Act provision is made—
- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or
  - (b) prohibiting the person from engaging in employment outside the duties of that office,

that provision does not operate to disqualify the person from holding that office and also the office of Chairperson or from accepting and retaining any remuneration payable to the person under this Act as Chairperson.

**SCHEDULE 2—PROVISIONS RELATING TO COMMITTEES OF REVIEW**

(Sec. 26 (3))

**Disclosure of pecuniary interests**

1. (1) If the Chairperson or any other member of a Committee of Review has a direct or indirect pecuniary interest in the subject-matter of an application for review, the Chairperson or other member shall, as soon as possible after the relevant facts have come to his or her knowledge, disclose the nature of the interest to the Minister.



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**SCHEDULE 2—PROVISIONS RELATING TO COMMITTEES OF REVIEW—**  
*continued*

- (2) After the Chairperson has disclosed the nature of an interest in the subject-matter of an application for review—
- (a) the Chairperson shall not, unless the Minister otherwise determines, act as Chairperson of the Committee of Review to which that application is referred; and
  - (b) the deputy of the Chairperson shall act as Chairperson of that Committee.
- (3) The deputy of the Chairperson, while acting as Chairperson under subclause (2), has all the functions of the Chairperson and shall be taken to be the Chairperson.
- (4) After a member of a Committee of Review (other than the Chairperson) has disclosed the nature of an interest in the subject-matter of an application for review—
- (a) the member shall not, unless the Minister otherwise determines, act as a member of the Committee of Review; and
  - (b) the Chairperson shall appoint another person to be a member of that Committee.
- (5) Notwithstanding that the Chairperson or other member of a Committee of Review contravenes the provisions of this clause, that contravention does not invalidate any recommendation of the Committee of Review or any recommendation of the Chairperson or the member (as the case may require).

**Liability of members etc.**

2. No matter or thing done by a Committee of Review, the Chairperson or any member, or any person acting under the direction, of a Committee of Review shall, if the matter or thing was done in good faith for the purpose of executing this or any other Act, subject the Chairperson, the member or the person so acting personally to any action, liability, claim or demand.

**General procedure**

3. The procedure for the calling of meetings of a Committee of Review and for the conduct of business at those meetings shall, subject to this Act, be as determined by the Chairperson of the Committee.

**Presiding member**

4. The Chairperson shall preside at a meeting of the Committee.

**SCHEDULE 3—SAVINGS AND TRANSITIONAL PROVISIONS**

(Sec. 53)

**PART 1—GENERAL****Definition**

1. In this Schedule, "former Act" means the Private Health Establishments Act 1982.

**Regulations**

2. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

this Act;

*Nursing Homes 1988*SCHEDULE 3—SAVINGS AND TRANSITIONAL PROVISIONS—*continued*

Miscellaneous Acts (Private Health Establishments) Amendment Act 1988.

(2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later day.

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

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

(4) If this Act (or any of the provisions of this Act) commences before the repeal of the Private Health Establishments Act 1982, the regulations may provide that the Private Health Establishments Act 1982 (or any specified provision of that Act) is not to apply to nursing homes within the meaning of that Act.

**PART 2—PROVISIONS CONSEQUENT ON ENACTMENT OF THIS ACT****Existing licences**

3. (1) A licence for a nursing home that was in force under the former Act immediately before the commencement of section 8 shall be taken to have been issued under that section.

(2) A temporary licence for a nursing home that was in force under the former Act immediately before the commencement of section 9 shall be taken to have been issued under that section.

(3) Such a licence or temporary licence shall be taken to be subject to the conditions specified in the licence immediately before the commencement of section 8 or section 9 (as the case may require).

(4) Nothing in subclause (3) affects the operation of section 18 (amendment of licences).

**Pending applications for licences**

4. (1) An application for a licence for a nursing home made under the former Act that has not been determined before the repeal of section 10 of the former Act shall be taken to be an application for a licence under section 5.

(2) If the Secretary has, under section 9 of the former Act, approved (whether or not subject to conditions) the plans and specifications relating to any building to be constructed, altered or extended that accompany an application for a licence for a nursing home, the Secretary—

- (a) may not, under section 6, impose a condition relating to the design or construction of the building on an approval of the application in principle; and
- (b) may, without limiting the operation of Division 2 of Part 2, refuse an application if the building is not constructed, altered or extended in accordance with those plans and specifications or if a condition to which the approval of the plans and specifications was subject has not been complied with.

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**SCHEDULE 3—SAVINGS AND TRANSITIONAL PROVISIONS—continued****Pending applications to transfer licences**

5. An application to transfer a licence for a nursing home made under section 16 of the former Act that has not been determined before the repeal of that section shall be taken to have been made under this Act and shall be dealt with in accordance with the provisions of this Act.

**Pending applications to alter nursing homes**

6. An application to alter or extend a nursing home under section 17 of the former Act that has not been determined before the repeal of that section shall be taken to have been made under this Act and shall be dealt with in accordance with the provisions of this Act.

**Notice to effect repairs**

7. (1) A notice given to a licensee of a nursing home under section 34 of the former Act and in force immediately before the repeal of that section shall be taken to have been given under section 17 and shall have effect according to its tenor.

(2) If notice was given to a licensee of a nursing home under section 34 of the former Act less than 14 days before the repeal of that section—

- (a) the licensee has a right to apply to the Minister for a review of the decision of the Secretary to issue the notice; and
- (b) the notice shall not take effect—
  - (i) until the expiration of 14 days after notice has been given to the licensee; or
  - (ii) if the licensee applies for a review of the Secretary's decision under section 25 before the expiration of the period referred to in subparagraph (i)—until the application for review is dealt with or withdrawn.

**Pending applications to amend licences**

8. An application for amendment of a licence for a nursing home under section 18 of the former Act that has not been determined before the repeal of that section shall be taken to have been made under this Act and shall be dealt with in accordance with the provisions of this Act.

**Requests for review**

9. A request for review of a decision of the Secretary relating to a nursing home that was made under section 19 of the former Act and that has not been determined by the Minister immediately before the repeal of that section shall be taken to be an application for review made under this Act and shall be dealt with in accordance with the provisions of this Act.

**Inquiry**

10. Where, immediately before the repeal of section 21 (3) of the former Act, an inquiry relating to the cancellation of a licence for a nursing home is being made (or continued by the former Act) under that subsection, the inquiry may continue as if it were being made under section 31.

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**SCHEDULE 3—SAVINGS AND TRANSITIONAL PROVISIONS—*continued*****Cancellation**

11. A cancellation of a licence for a nursing home under section 21 (2) of the former Act that has not taken effect immediately before the repeal of that subsection shall be taken to be a cancellation of a licence under section 31 (1) and any notice of the cancellation given under section 21 (4) of the former Act shall be taken to be a notice given under section 31 (3).

**Appeal**

12. Any appeal against a decision of the Secretary to cancel the licence for a nursing home pending under section 22 of the former Act immediately before the repeal of that section shall be taken to be pending under section 32, and may be heard and determined accordingly.

**Register of residents**

13. A register of patients kept at a nursing home pursuant to section 32 of the former Act immediately before the repeal of that section shall be taken to be a register of residents kept pursuant to section 41.

**Authority to enter and inspect premises**

14. (1) Any person who, immediately before the repeal of section 42 of the former Act, is authorised under that section to exercise the functions specified in that section (in relation to any licensed nursing home or any premises of a proposed nursing home) shall be taken to be a person authorised under section 44.

(2) A certificate of authority provided by the Secretary under section 42 of the former Act to such a person and in force immediately before the repeal of that section shall be taken to be a certificate of authority provided under section 44.

**References to former Act**

15. A reference in any other Act, in any instrument made under any Act or in any other instrument of any kind to, or required (immediately before the repeal of clause 11 of Schedule 3 to the former Act) to be construed as a reference to, the Private Health Establishments Act 1982 shall, in so far as the reference relates to nursing homes, be read as a reference to this Act.

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*[Minister's second reading speech made in—  
Legislative Assembly on 29 November 1988  
Legislative Council on 13 December 1988]*

## NURSING HOMES BILL 1988

NEW SOUTH WALES



### EXPLANATORY NOTE

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

This Bill is cognate with the Private Hospitals and Day Procedure Centres Bill 1988.

The object of this Bill is to provide for the licensing and control of nursing homes which is presently dealt with in the Private Health Establishments Act 1982. That Act is to be repealed by the proposed Private Hospitals and Day Procedure Centres Act 1988.

Significant features of the Bill include—

- (a) provision for the Secretary of the Department of Health to approve in principle proposals for new nursing homes;
- (b) revised criteria for determining whether licences should be granted (including the removal of restrictions related to the location of a proposed nursing home and the adequacy of existing facilities);
- (c) restriction of licensing standards for nursing homes to standards which deal with matters affecting the safety, care or quality of life of residents;
- (d) removal of provisions which expressly enable the Secretary to control the types of services and the facilities that are to be provided at nursing homes; and
- (e) provision for applications to the Minister for review of decisions of the Secretary under the proposed Act to be referred to a Committee of Review for advice.

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### PART 1—PRELIMINARY

**Clause 1** specifies the short title of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

**Clause 3** defines certain terms for the purposes of the proposed Act.

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**PART 2—LICENSING OF NURSING HOMES****Division 1—Licensing standards**

**Clause 4** enables licensing standards to be prescribed by regulation with respect to any matter relating to the safety, care or quality of life of residents at nursing homes.

**Division 2—Applications for and issue of licences**

**Clause 5** enables a person who proposes to conduct a new nursing home to apply to the Secretary of the Department of Health for a licence for that nursing home. An applicant must provide with the application such documents or other information relating to the proposed nursing home as are required by the prescribed application form.

**Clause 6** requires the Secretary to either approve the application for a licence in principle or refuse the application. The Secretary may, when granting approval in principle, impose conditions, including conditions relating to the construction and design of the proposed nursing home and submission to the Secretary of a development timetable. Clause 6 also provides that the Secretary may refuse an application for a licence—

- if an applicant is not a fit and proper person to be a licensee; or
- if the Secretary is satisfied that the nursing home is not capable of being conducted in accordance with relevant licensing standards.

**Clause 7** provides that an approval of an application in principle is effective for a period of 1 year, but authorises the Secretary to extend the approval for further periods of up to 1 year.

**Clause 8** provides for the Secretary to grant an application for a licence which the Secretary has approved in principle after the construction or alteration of any building to which the application relates has been completed. The Secretary may refuse an application at this stage only if the approval in principle has expired, any construction or alteration has not been carried out in accordance with that approval or a condition of the approval has not been complied with.

**Clause 9** enables the Secretary to issue a temporary licence.

**Division 3—Provisions relating to licences**

**Clause 10** provides for the regulations to prescribe classes of nursing homes.

**Clause 11** requires a licence to specify (among other matters) the class or classes of nursing homes in respect of which the licence is issued and the maximum number of residents who may be accommodated overnight at the nursing home at any one time (which is determined by the Secretary).

**Clause 12** authorises the Secretary to impose conditions on licences.

**Clause 13** provides that a licence (other than a temporary licence) remains in force until cancelled.

**Clause 14** requires the licensee of a nursing home to pay an annual licence fee.

**Clause 15** empowers the Secretary to transfer a licence for a nursing home to a person who intends to conduct the nursing home.

**Clause 16** makes it an offence to alter or extend a nursing home without the approval of the Secretary.

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**Clause 17** empowers the Secretary to require repairs, maintenance, alterations, extensions or improvements to be made to a nursing home. The maximum penalty for a failure to comply with a requirement of the Secretary is \$2,000.

**Clause 18** authorises the Secretary to amend a licence for a nursing home either on the written application of a licensee or if the Secretary considers it necessary.

**Division 4—General provisions relating to applications for licences etc.**

**Clause 19** authorises the Secretary to require a person who makes an application under the proposed Act to provide the Secretary with additional information necessary to determine the application.

**Clause 20** requires the Secretary, when refusing an application under the proposed Act, to give written reasons for the refusal.

**Clause 21** requires the Secretary to publicly advertise certain applications under the proposed Act before determining them.

**Clause 22** allows an applicant to amend an application under the proposed Act with the Secretary's approval.

**Division 5—Review of decisions of Secretary**

**Clause 23** defines "decision of the Secretary" for the purposes of the proposed Division. The term includes a decision of the Secretary to refuse an application under the proposed Act, a determination of the conditions of a licence or the classes of nursing homes in respect of which a licence is issued, and a decision of the Secretary to require a licensee to carry out repairs or improvements to a nursing home.

**Clause 24** provides for the appointment of a Chairperson of Committees of Review by the Minister. (The Chairperson is to be Chairperson of each Committee of Review required to be established by clause 25).

**Clause 25** confers on a person adversely affected by a decision of the Secretary a right to apply to the Minister for a review of that decision. On receipt of such an application for review, the Minister must forward it to the Chairperson of Committees of Review who must establish a Committee of Review.

**Clause 26** provides that a Committee of Review is to consist of the Chairperson of Committees of Review and 3 other persons appointed by the Chairperson to represent, respectively, the interests of the nursing home industry, the health care professions and consumers.

**Clause 27** requires a Committee of Review, after investigating an application for review, to provide a written report to the Minister setting out its recommendation as to whether the Minister should allow the application and the reasons for its recommendation.

**Clause 28** provides for the Minister, after considering the report of the Committee of Review, to confirm the Secretary's decision, or to revoke it and, in the case of a decision to refuse an application, direct the Secretary to grant the application concerned. The Secretary is required to give effect to the Minister's direction.

**Clause 29** enables the Minister or a Committee of Review to require an applicant for review of a decision of the Secretary to undertake to provide any relevant additional information and to allow access to the licensed nursing home or proposed nursing home.

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**Division 6—Cancellation of licences**

**Clause 30** authorises the Secretary to cancel the licence for a nursing home without holding an inquiry or giving notice to the licensee in the following circumstances:

- the licensee requests that the Secretary cancel the licence;
- the premises to which the licence relates are no longer being used as a nursing home of a class in respect of which the licence was issued;
- the licence is a temporary licence.

**Clause 31** authorises the Secretary to cancel the licence for a nursing home in other specified circumstances, but only after giving the licensee notice, reasons for the proposed cancellation and an opportunity to make submissions to the Secretary. The Secretary may appoint a person to hold an inquiry into the matter, before determining whether or not to cancel the licence.

**Clause 32** confers on a licensee a right of appeal to the District Court against a decision of the Secretary to cancel the licensee's licence (except under clause 30).

**PART 3—CONDUCT OF NURSING HOMES**

**Clause 33** makes it an offence (the maximum penalty for which is \$10,000) to conduct a nursing home without a licence.

**Clause 34** makes transitional arrangements to apply on the death of a licensee.

**Clause 35** prohibits a nursing home from being used for any purpose other than a purpose permitted by its licence or a purpose prescribed by the regulations.

**Clause 36** makes it an offence for a licensee of a nursing home to allow the number of residents at the nursing home to exceed the maximum number specified in the licence.

**Clause 37** requires the appointment in a nursing home of a chief nurse who is responsible for the care of residents. The licensee of the nursing home must notify the Secretary of the name and qualifications of the chief nurse.

**Clause 38** makes it an offence for the licensee or an employee of a nursing home to use the title "matron" or "director of nursing" unless the licensee or employee is the chief nurse.

**Clause 39** requires a licensee of a nursing home to ensure that a registered nurse is on duty at all times in the nursing home.

**Clause 40** prohibits the licensee of a nursing home from using the title "hospital" in relation to the nursing home.

**Clause 41** requires the licensee of a nursing home to ensure that a register of residents is kept at the nursing home and that certain particulars are recorded in the register.

**Clause 42** requires the licensee of a nursing home to ensure that a copy of the proposed Act and regulations is available at all times to the chief nurse of the nursing home.

**PART 4—MISCELLANEOUS**

**Clause 43** makes it an offence for a medical practitioner to refer a patient to, or provide treatment to a patient at, a nursing home in which he or she has a pecuniary interest without first disclosing that interest to the patient.



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**Clause 44** empowers a person authorised by the Secretary to enter and inspect licensed nursing homes or premises proposed to be licensed. An authorised person must produce his or her certificate of authority if requested to do so by the person in charge of the premises concerned.

**Clause 45** empowers a person authorised by the Secretary under clause 44 to inspect and take copies of certain records and registers of a nursing home.

**Clause 46** makes it an offence to hinder, obstruct or delay persons in the exercise of their functions under the proposed Act.

**Clause 47** makes it an offence to make false or misleading statements or provide any false or misleading information in connection with applications or inquiries under the proposed Act.

**Clause 48** provides for the issue of certain evidentiary certificates.

**Clause 49** prescribes the procedure for the giving or serving of notices or other documents by the Secretary.

**Clause 50** provides that in certain circumstances a director of a corporation or a person concerned in the management of the corporation is guilty of an offence if the corporation contravenes a provision of the proposed Act or regulations.

**Clause 51** provides for offences under the proposed Act or regulations to be dealt with summarily by a Local Court constituted by a Magistrate sitting alone.

**Clause 52** provides for the making of regulations for the general purposes of the proposed Act. A maximum penalty of up to \$500 may be imposed for an offence against the regulations.

**Clause 53** is a formal provision that gives effect to Schedule 3 which contains savings and transitional provisions.

**SCHEDULE 1—PROVISIONS RELATING TO CHAIRPERSON  
OF COMMITTEES OF REVIEW**

**Schedule 1** contains provisions relating to the Chairperson of Committees of Review, dealing with matters such as appointment of a deputy of the Chairperson, vacation of office by the Chairperson and remuneration of the Chairperson.

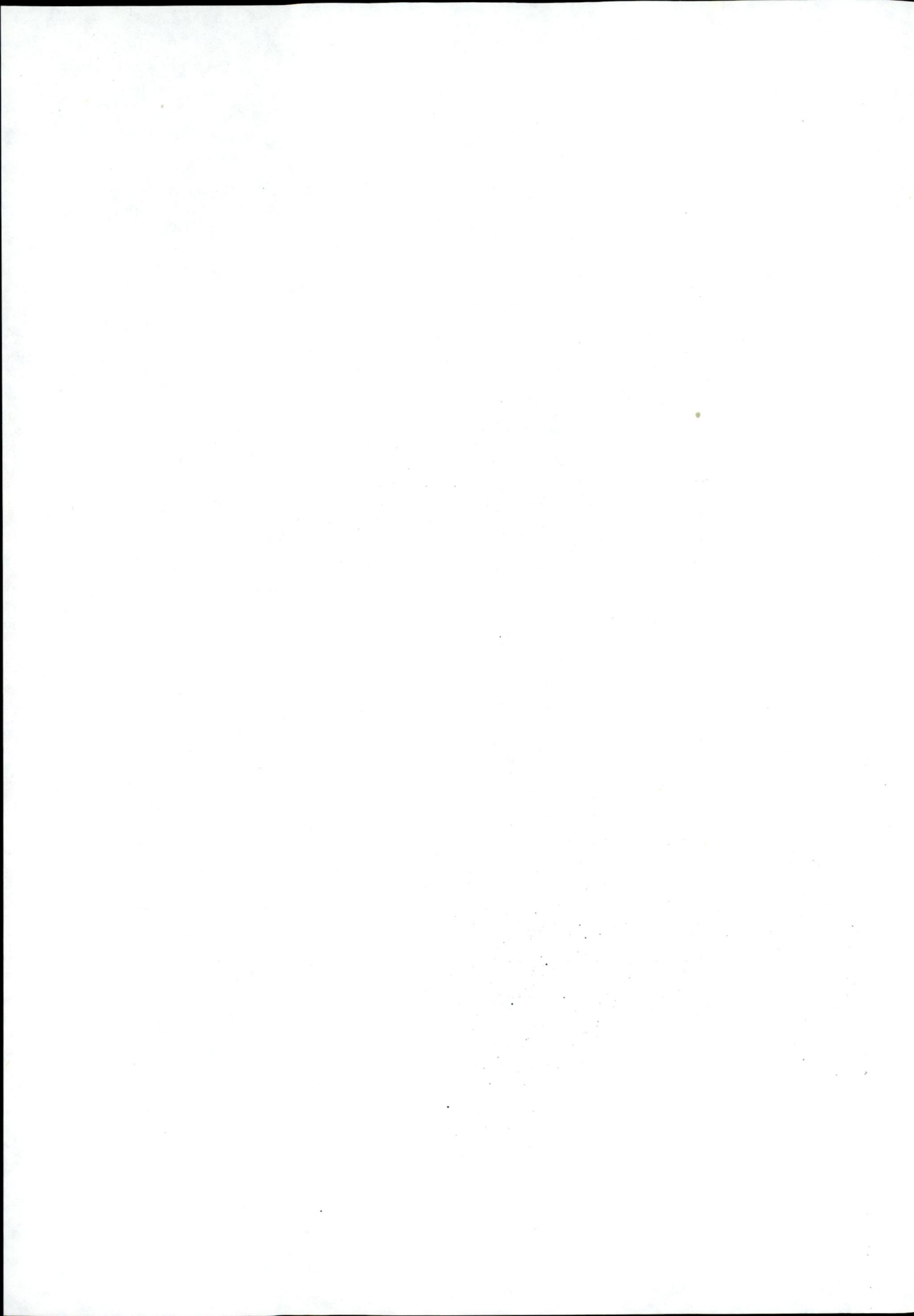
**SCHEDULE 2—PROVISIONS RELATING TO COMMITTEES  
OF REVIEW**

**Schedule 2** contains provisions relating to members of a Committee of Review and the procedure of such a Committee.

**SCHEDULE 3—SAVINGS AND TRANSITIONAL PROVISIONS**

**Schedule 3** contains savings and transitional provisions. Part 1 authorises the making of savings and transitional regulations consequent on the enactment of the proposed Act. Part 2 contains provisions consequent on the enactment of the proposed Act, including provisions that save existing licences for nursing homes and pending applications relating to nursing homes under the Private Health Establishments Act 1982.

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# NURSING HOMES BILL 1988

NEW SOUTH WALES



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# NURSING HOMES BILL 1988

NEW SOUTH WALES



No. , 1988

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## A BILL FOR

An Act to provide for the licensing and control of nursing homes; and for other purposes.

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**The Legislature of New South Wales enacts:****PART 1—PRELIMINARY****Short title**

1. This Act may be cited as the Nursing Homes Act 1988.

**5 Commencement**

2. This Act commences on a day or days to be appointed by proclamation.

**Definitions**

3. (1) In this Act—

10 “application” means—

- (a) an application for a licence under section 5; or
  - (b) an application to transfer a licence under section 15; or
  - (c) an application to alter or extend a nursing home under section 16;
- or

15 (d) an application for amendment of a licence under section 18;

“chief nurse” means the chief nurse of a nursing home as referred to in section 37;

“licence” means a licence issued under section 8 and in force under this Act, and includes a temporary licence;

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

“licensing standards” means the standards prescribed under section 4;

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

- 25 (a) who are recuperating from illness or childbirth and who require nursing care; or
- (b) who require nursing care on account of age, infirmity, chronic ill-health or other condition,

but does not include—

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

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

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

(f) a private hospital or a day procedure centre within the meaning of the Private Hospitals and Day Procedure Centres Act 1988; or

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- (g) a residential rehabilitation establishment licensed under the Drug and Alcohol Rehabilitation Establishments Act 1987;
- “premises” includes any land, building and part of any building;
- 5 “register of residents” means the register that is required by section 41 to be kept at a nursing home;
- “registered nurse” means a nurse registered under the Nurses Registration Act 1953;
- “resident” means a person accommodated in a nursing home who receives nursing care;
- 10 “Secretary” means the Secretary of the Department of Health;
- “temporary licence” means a licence issued under section 9 and in force under this Act;
- “ward” means any room in a nursing home in which residents are accommodated.
- 15 (2) A reference in this Act to the conduct of a nursing home (however expressed) is a reference to the carrying on of the business of the nursing home.
- (3) A reference in this Act to a person who conducts a nursing home (however expressed) is a reference—
- 20 (a) to a corporation which conducts the nursing home, except where that corporation is acting only in its capacity as an agent; or
- (b) to a natural person who conducts the nursing home (whether jointly with other persons or alone), except where that person is acting only in the person’s capacity as an employee or an agent.
- 25 (4) For the purposes of this Act, a corporation is not a fit and proper person to be a licensee unless each director and each person concerned in the management of the corporation is a fit and proper person to be a licensee.
- (5) 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.

**PART 2—LICENSING OF NURSING HOMES****35 Division 1—Licensing standards****Licensing standards**

4. The regulations may prescribe standards for or with respect to any matter relating to the safety, care or quality of life of residents at nursing homes, including the following matters:
- 40 (a) design and construction of premises;

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- (b) facilities and equipment;
- (c) staffing, including qualifications of staff members, number of staff and duties;
- (d) operational matters, including administration and support services;
- 5 (e) clinical records, including access by residents to, and confidentiality of, those records.

**Division 2—Applications for and issue of licences**

**Application for licence**

- 10 **5. (1)** An application for a licence for a nursing home may be made to the Secretary by the person who intends to conduct the nursing home.
- (2)** Any such application shall—
- (a) be in or to the effect of the form prescribed by the regulations; and
  - (b) specify the class or classes of nursing homes in respect of which the licence is sought; and
  - 15 (c) be accompanied by such particulars or documents as may be required by the prescribed application form; and
  - (d) be accompanied by such application fee as may be prescribed by the regulations.

**Approval in principle or refusal of application**

- 20 **6. (1)** The Secretary shall, after considering an application for a licence under section 5—
- (a) approve the application in principle; or
  - (b) refuse the application.
- (2)** The Secretary may impose conditions on an approval of an
- 25 application in principle, including—
- (a) conditions relating to the design and construction of any building to be constructed, altered or extended for the purposes of the proposed nursing home; and
  - 30 (b) the preparation and submission to the Secretary of a development timetable for any such building specifying the dates by which it is proposed that different stages in construction, alteration or extension will be completed.
- (3)** The Secretary may refuse, under this section, an application for a licence only if—
- 35 (a) the applicant, or any of the applicants, is not a fit and proper person to be a licensee; or
  - (b) the Secretary is satisfied that the proposed nursing home is not capable of being conducted in accordance with the licensing standards applicable to it.



(4) If the Secretary approves an application in principle, the Secretary shall give the applicant written notice of that approval and any conditions to which the approval is subject.

**Approval in principle to remain effective for 1 year**

5 7. (1) An approval of an application for a licence in principle is effective for a period of 1 year from the date on which the applicant is given notice of that approval under section 6 (4) and for any such further period or periods as the Secretary may, at the request of the applicant, allow.

(2) More than one request may be made by an applicant under subsection  
10 (1), but any such request must be made while the approval of the application in principle is effective.

(3) If the Secretary has, as a condition of an approval of an application in principle, required the applicant to provide a development timetable, the Secretary may grant an extension of the period for which that approval is  
15 effective only if the Secretary is satisfied that the applicant has made a reasonable attempt to comply with that timetable.

**Issue of licence approved in principle**

8. (1) If the Secretary has approved an application for a licence in principle and the construction, alteration or extension of any building to  
20 which the application relates has been completed, the Secretary shall either—

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

(2) In any such case, the Secretary may not refuse the application for a  
25 licence unless—

- (a) the approval of the application in principle expired before the completion of the construction, alteration or extension of any building to which the application relates; or
- (b) any such building was not constructed, altered or extended in  
30 accordance with the approval in principle; or
- (c) any other condition to which the approval in principle was subject has not been complied with.

**Temporary licences**

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

- (2) A temporary licence remains in force until—
  - (a) the date of expiry of the temporary licence; or
  - (b) the application for the licence is granted; or

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(c) the temporary licence is cancelled,  
whichever first occurs.

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

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

### **Division 3—Provisions relating to licences**

#### **10 Classes of nursing homes**

10. For the purposes of this Act, there shall be such classes of nursing homes as may be prescribed by the regulations.

#### **Form of licence**

15 11. Without limiting the particulars that may be included in a licence, a licence shall specify—

- (a) the person to whom it is issued; and
- (b) the address of the nursing home for which it is issued; and
- (c) the class or classes of nursing homes in respect of which it is issued; and
- 20 (d) the maximum number of residents who may be accommodated overnight at any one time in each ward of the nursing home, as determined by the Secretary.

#### **Conditions of licence**

25 12. The Secretary may issue a licence subject to such conditions as may be specified in the licence.

#### **Duration of licence**

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

#### **Annual licence fees**

30 14. The licensee of a nursing home shall, on or before 31 December in each year, pay to the Secretary such annual licence fee as may be prescribed by the regulations in relation to the nursing home.

#### **Transfer of licence to another licensee**

35 15. (1) The Secretary may, if application is made in accordance with this section, transfer the licence for a nursing home to the person who intends to conduct the nursing home—

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

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- (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 form prescribed by the regulations; and
- 5 (b) be accompanied by such particulars or documents as may be required by the prescribed form; and
- (c) be accompanied by such application fee as may be prescribed by the regulations.
- (3) The Secretary may refuse an application if the proposed licensee, or
- 10 any of the proposed licensees, is not a fit and proper person to be a licensee.

**Alterations or extensions to licensed nursing homes**

16. (1) The licensee of a nursing home shall not cause or permit the nursing home to be altered or extended unless—
- (a) the approval of the Secretary to the alteration or extension is first
- 15 obtained; and
- (b) the nursing home is altered or extended in accordance with plans and specifications approved by the Secretary.

Maximum penalty: 20 penalty units.

- (2) An application for approval under this section shall—
- 20 (a) be in or to the effect of the form prescribed by the regulations; and
- (b) be accompanied by such particulars or documents as may be required by the prescribed form.
- (3) The Secretary may refuse an application under this section for any reason the Secretary might refuse under Division 2 an application for a
- 25 licence for the nursing home as altered or extended.
- (4) The approval of the Secretary is not required under this section for any alteration or extension required to be carried out under section 17.

**Provision for repairs etc.**

17. (1) The Secretary may, by notice in writing, require the licensee of
- 30 a nursing home to carry out such repairs, maintenance, alterations, extensions or improvements to the nursing home as may be specified in the notice.
- (2) A licensee shall comply with the requirements of any such notice within the time specified in the notice or within such further time as the
- 35 Secretary may allow.

Maximum penalty: 20 penalty units.

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(3) Any such notice shall not take effect—

- (a) until the expiration of 14 days after the notice has been given to the licensee; or
- (b) if the licensee applies for a review of the Secretary's decision under section 25 before the expiration of the period referred to in paragraph (a)—until the application for review is dealt with or withdrawn.

**Amendment of licences**

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

- (a) by specifying in the licence additional classes of nursing homes;
- (b) by omitting any class of nursing homes specified in the licence;
- (c) by increasing or decreasing the number of residents specified in the licence as the number of residents who may be accommodated overnight at any one time in any ward of the nursing home;
- (d) by amending or revoking any condition to which the licence is subject or attaching further conditions to the licence.

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

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

(3) A licence is amended under this section—

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

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

Maximum penalty: 5 penalty units.

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

**Division 4—General provisions relating to applications for licences etc.****35 Additional information**

19. (1) The Secretary may, by notice in writing served on an applicant, direct the applicant to provide such information to the Secretary as the Secretary may reasonably require for the purpose of determining the application.

(2) The Secretary may refuse an application on the ground that the applicant has failed to comply with any such direction.

**Notice of reasons for refusal of application**

20. If the Secretary refuses an application, the Secretary shall  
5 immediately cause the applicant to be notified in writing—

- (a) that the Secretary has refused the application; and
- (b) of the grounds on which the Secretary has refused the application; and
- 10 (c) if the Secretary refuses the application on the ground that the applicant is not a fit and proper person to be a licensee—of the reasons why the applicant is not a fit and proper person to be a licensee.

**Advertising of applications**

21. Before—

- 15 (a) approving an application for a licence in principle, or refusing any such application, under section 6; or
- (b) determining an application to transfer a licence,

the Secretary shall cause the application to be publicly advertised in such manner as the Secretary thinks fit and shall take into consideration any  
20 representations made in relation to the application within the time specified in the advertisement.

**Amendment of applications**

22. An applicant may, with the approval of the Secretary, amend an application.

25 **Division 5—Review of decisions of Secretary**

**Definition**

23. In this Division, “decision of the Secretary” means—

- (a) a decision of the Secretary to refuse an application; or
- 30 (b) a determination by the Secretary, when issuing a licence, of the class or classes of nursing homes for which the licence is issued; or
- (c) a determination by the Secretary, when issuing a licence for a nursing home, of the maximum number of residents who may be accommodated overnight at any one time in any ward of the nursing home; or
- 35 (d) a determination by the Secretary of the conditions subject to which a licence is issued; or
- (e) a decision of the Secretary to require the licensee of a nursing home to carry out repairs, maintenance, alterations, extensions or improvements to the nursing home; or

- (f) a decision of the Secretary to amend a licence (otherwise than on the application of the licensee).

#### **Chairperson of Committees of Review**

24. (1) The Minister may appoint a person to be Chairperson of  
5 Committees of Review.

(2) Schedule 1 has effect with respect to the Chairperson of Committees of Review.

#### **Application for review of Secretary's decision**

25. (1) A person aggrieved by a decision of the Secretary may apply, in  
10 or to the effect of the form prescribed by the regulations, to the Minister to review the decision of the Secretary.

(2) On receipt of an application for review, the Minister shall forward the application to the Chairperson of Committees of Review, who shall establish a Committee of Review to advise the Minister on the application.

#### **15 Constitution of Committee of Review**

26. (1) A Committee of Review established under this Division shall comprise the Chairperson of Committees of Review and 3 other persons appointed by the Chairperson to represent, respectively, the interests of the nursing home industry, the health care professions and consumers.

20 (2) The Chairperson may not appoint any such person if the Chairperson knows, or has reason to believe, that the person has a pecuniary interest in the subject-matter of the application for review.

(3) Schedule 2 has effect with respect to Committees of Review.

#### **Committee of Review to make recommendation to Minister**

27. (1) After such investigation as it considers necessary in relation to  
25 an application for review, a Committee of Review may, in a written report to the Minister—

(a) recommend that the decision of the Secretary be confirmed, or that the decision be revoked and—

30 (i) in the case of a decision to refuse an application, the application concerned be granted; or

(ii) in any other case, the Secretary be directed to take such other action under this Act as the Committee considers appropriate; and

35 (b) give the reasons for its recommendation.

(2) If the members of a Committee of Review are unable to agree on the recommendation that the Committee should make to the Minister, the Committee's report shall include the recommendation, and the reasons for the recommendation, of each member.

**Determination of application for review by Minister**

28. (1) The Minister may, after such investigation as the Minister considers necessary in relation to an application for review, and after having regard to the report of the Committee of Review to which the application  
5 has been referred, either—

- (a) confirm the decision of the Secretary; or
- (b) revoke that decision and—
  - (i) in the case of a decision to refuse an application, direct the Secretary to grant the application concerned; or
  - 10 (ii) in any other case, direct the Secretary to take such other action under this Act as the Minister considers appropriate.

(2) The Secretary shall give effect to any such direction of the Minister.

(3) The Minister is not required, before determining an application for review under this section, to have regard to a report of the Committee of  
15 Review to which the application has been referred if that Committee has failed to submit a report to the Minister within such time as the Minister may have communicated to the Chairperson of Committees of Review.

**Applicant to provide information etc.**

29. The Minister or a Committee of Review to which an application for  
20 review is referred may (as a condition of dealing with the application) require the applicant—

- (a) to provide the Minister or the Committee (as the case may require) with such additional information as the Minister or the Committee may reasonably require to determine the application; and
- 25 (b) to allow the Minister or members of the Committee (or a person nominated by the Minister or the Committee) to enter and inspect any premises to which the application for review relates.

**Division 6—Cancellation of licences****Cancellation of licence without notice**

30 30. The Secretary may cancel the licence for a nursing home without holding an inquiry or giving any notice to the licensee—

- (a) if the licensee requests the Secretary in writing to cancel the licence; or
- 35 (b) if the premises to which the licence relates have ceased to be a nursing home of a class in respect of which the licence was issued; or
- (c) in the case of a temporary licence—if the Secretary considers that it is appropriate to do so.

**Cancellation of licence with notice**

**31. (1)** The Secretary may cancel the licence for a nursing home—

- (a) if the annual licence fee payable under section 14 in respect of the nursing home has not been paid by the due date; or
- 5 (b) if the licensee is no longer a fit and proper person to be a licensee; or
- (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; or
- 10 (d) if the licensee (or, where the licensee is a corporation, any director or other person concerned in the management of the corporation) is convicted in New South Wales of an offence punishable by 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; or
- 15 (e) if the licensee breaches any condition to which the licence is subject; or
- (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; or
- 20 (g) where the licensee is a corporation, if a receiver or manager has been appointed in respect of the property of the licensee or if the licensee is commenced to be wound up or is under official management; or
- 25 (h) if the nursing home has not been conducted in accordance with the licensing standards applicable to it; or
- (i) if the nursing home is conducted in such a manner—
  - 30 (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.

(2) The Secretary may, for the purpose of exercising any of the Secretary's powers under subsection (1), cause an inquiry to be made by some person  
35 appointed by the Secretary for the purpose.

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

- (a) has given notice to the licensee that the Secretary intends to cancel the licence; and
- 40 (b) has specified in that notice the reasons for the Secretary's intention to cancel the licence; and



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- (c) has given the licensee (whether in the course of an inquiry under subsection (2) or otherwise) a reasonable opportunity to make submissions to the Secretary in relation to the proposed cancellation; and
- 5 (d) has taken into consideration any such submissions by the licensee.
- (4) The cancellation of a licence under this section shall not take effect—
- (a) until the expiration of 14 days after notice of the Secretary's decision is given to the licensee; and
- 10 (b) where the licensee lodges an appeal under section 32 before the expiration of the period referred to in paragraph (a)—until the appeal is dealt with or withdrawn.

**Right to appeal to District Court**

32. (1) The licensee of a nursing home may appeal to the District Court, in accordance with the rules of court, against a decision of the Secretary to

15 cancel the licence for the nursing home (except under section 30).

(2) An appeal under this section in respect of a decision of the Secretary shall be dealt with by way of a new hearing, but new evidence 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.

20 (3) The District Court may, pending the determination of an appeal under this section, make such orders as it thinks fit in relation to the matter the subject of the appeal, including an order prohibiting the licensee from conducting a nursing home.

(4) The District Court may, in determining such an appeal—

25 (a) confirm the decision of the Secretary; or

(b) revoke that decision and make such order as the District Court considers appropriate.

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

30 **PART 3—CONDUCT OF NURSING HOMES**

**Unlicensed nursing homes**

33. (1) A person shall not conduct a nursing home unless—
- (a) the nursing home is licensed; and
- (b) the person is the licensee.
- 35 Maximum penalty: 100 penalty units.
- (2) Evidence that, at any premises—
- (a) during any month—2 or more persons (not being members of the occupier's family); or

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

have been accommodated in the premises shall, if the persons have been provided at the premises with nursing care only, be evidence that the premises are a nursing home (whether or not there is any evidence that a charge was made for the nursing care).

#### **Executor or administrator regarded as licensee**

34. If a licensee of a nursing home dies and he or she was the only licensee of the nursing home, the executor of the will or administrator of the estate of the licensee shall be taken to be the licensee for a period not exceeding 2 months or such longer period as the Secretary may, in any particular case, approve.

#### **Purposes for which nursing homes may be used**

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

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

Maximum penalty: 20 penalty units.

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

#### **Overcrowding**

36. (1) The licensee of a nursing home shall not cause or permit the number of residents accommodated overnight at any one time in any ward of the nursing home to exceed the number of residents specified in the licence in relation to that ward.

Maximum penalty: 20 penalty units.

(2) The licensee of a nursing home is not guilty of an offence under this section in respect of anything done in an emergency.

#### **Chief nurse of nursing home**

37. (1) The licensee of a nursing home shall not conduct the nursing home unless—

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

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

Maximum penalty: 20 penalty units.

- 5 (2) The licensee of a nursing home is not guilty of an offence under subsection (1) 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 is a registered nurse, who holds the prescribed qualifications that are applicable to the chief nurse of the nursing home and  
10 who carries out the duties of chief nurse of the nursing home.

(3) Except as may be provided by the regulations, the licensee of a nursing home shall notify the Secretary in writing of the full name and the qualifications of the person who carries out the duties of chief nurse of the nursing home.

- 15 Maximum penalty: 5 penalty units.

(4) A notification under subsection (3)—

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

(5) Nothing in this Act prevents the licensee of a nursing home (being a natural person) from carrying out the duties of chief nurse of the nursing home if the licensee is qualified to carry out those duties.

- 25 (6) It shall be 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 are reasonable in the circumstances to avoid being guilty of the offence.

#### **Title of “matron” and “director of nursing”**

- 30 **38. (1)** The licensee of a nursing home or a person employed at the nursing home shall not use the title “matron” or “director of nursing” unless the licensee or person is the chief nurse of the nursing home.

(2) The licensee of a nursing home shall not permit a person employed at the nursing home to contravene this section.

Maximum penalty: 20 penalty units.

#### **Registered nurse to be on duty**

- 35 **39.** The licensee of a nursing home shall, at all times while the nursing home is being conducted, cause a registered nurse to be on duty in the nursing home.

Maximum penalty: 20 penalty units.

**Title of "hospital" not to be used by nursing home**

40. The licensee of a nursing home shall not permit it to be held out to be a hospital by the use of the title "hospital", whether as part of its name or otherwise.

5 Maximum penalty: 20 penalty units.

**Register of residents**

41. (1) The licensee of a nursing home shall cause a register of residents to be kept, in or to the effect of the prescribed form, at the nursing home.

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

- 10 (a) the name, age and residential address of each resident at the nursing home;
- (b) the date when the resident was received at the nursing home;
- (c) the date when the resident left the nursing home or, in the event of the resident's death, the date of death;
- 15 (d) the name of the medical practitioner attending the resident;
- (e) such other particulars as may be prescribed.

(3) The particulars referred to in subsection (2) 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.

20 (4) A person shall not—

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

Maximum penalty: 20 penalty units.

**Copy of Act and regulations to be available**

42. The licensee of a nursing home shall, at all times while the nursing home is being conducted, cause a copy of this Act and the regulations to be  
30 readily available at the nursing home for inspection by the chief nurse.

Maximum penalty: 5 penalty units.

**PART 4—MISCELLANEOUS****Disclosure of pecuniary interests to residents**

43. (1) In this section, "practitioner" means a medical practitioner.

35 (2) If a practitioner has a pecuniary interest in a nursing home, the practitioner shall not—

- (a) advise a person to be admitted to the nursing home; or

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- (b) arrange the admission of a person to the nursing home; or
- (c) provide medical or other treatment to, or arrange the provision of any such treatment to, any resident in the nursing home,

5 unless, before so doing, the practitioner has notified the person or resident, in the prescribed manner, that the practitioner has a pecuniary interest in the nursing home.

Maximum penalty: 20 penalty units.

(3) The regulations may prescribe, for the purposes of subsection (2), that the manner of notification shall be any 1 or more of the following:

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

15 (4) A person is not guilty of an offence under subsection (2) if the person proves that he or she—

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

(5) For the purposes of this section, a practitioner has a pecuniary interest in a nursing home only if the practitioner has an interest in the nursing home which is prescribed by the regulations as a pecuniary interest in the nursing home.

25 (6) The regulations may prescribe an interest of a relative or associate of a practitioner as a pecuniary interest of the practitioner.

#### **Power to enter and inspect nursing homes**

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

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

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

#### **Power to inspect registers and records**

45. (1) In this section, “prescribed records”, in relation to a nursing home, means the register of residents or any other records required by or under this Act to be kept at the nursing home.

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- (2) A person authorised by the Secretary under section 44—
- (a) may inspect and take copies of, or extracts from, any prescribed records of a nursing home; or
  - (b) may take and retain possession of any prescribed records of a nursing home for such period as is necessary to enable those records to be inspected and copies of, or extracts from, those records to be taken.
- (3) Where a person retains possession of any prescribed records of a nursing home pursuant to subsection (2) (b), the person shall, during the period for which 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 entitled to inspect; and
  - (b) permit a person who is required by or under this Act to make an entry in those records to make the entry at any reasonable time.
- (4) Subsection (2) (b) does not authorise a person who takes possession of any prescribed records of a nursing home to remove those records from the nursing home if those records—
- (a) relate to a person who is then a resident of the nursing home; and
  - (b) may be required to be referred to for the purposes of providing the resident with nursing care or medical or other treatment.
- (5) Subject to subsections (6) and (7), in any legal proceedings (whether or not proceedings under this Act) a copy of or extract from a prescribed record is admissible in evidence as if it were the original record or the relevant part of the original record.
- (6) A copy of or extract from a prescribed record is not admissible in evidence under subsection (5) unless it is proved that the copy or extract is a true copy of the record or of the relevant part of the record.
- (7) For the purposes of subsection (6), evidence that a copy of or extract from a prescribed record is a true copy of the record or of a part of the record may be given by a person who has compared the copy or extract with the record or the relevant part of the record and may be given either orally or by an affidavit sworn, or by a declaration made, before a person authorised to take affidavits or statutory declarations.

**Obstruction of officers**

- 35 46. A person shall not wilfully hinder, obstruct or delay any person in the exercise of any function under this Act.

Maximum penalty: 20 penalty units.

**False or misleading statements etc.**

47. A person shall not, in any application under this Act (including an application for review under section 25), or in support of any such application, or for the purposes of any inquiry under this Act—

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

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

Maximum penalty: 20 penalty units.

**10 Evidentiary certificates**

48. A certificate which purports to be signed by the Secretary or a prescribed officer and which states that, on a date specified in the certificate—

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

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

**25 Service of notices by Secretary**

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

- (a) a natural person—  
 30 (i) by delivering it to the person personally; or  
 (ii) by leaving it at his or her place of residence last known to the Secretary with a person who apparently resides there or, if the person is a licensee, by leaving it at the nursing home to which the licence relates with a person apparently employed at the  
 35 nursing home (being in either case a person who is apparently 16 years of age or more); or  
 (iii) 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; or
- 5 (ii) by leaving it at the registered office of the corporation with a person who is apparently employed at that office or, if the corporation is a licensee, by leaving it at the nursing home to which the licence relates with a person who is apparently employed at the nursing home (being in either case a person who is apparently 16 years of age or more); or
- 10 (iii) by sending it by post addressed to the corporation at that registered office or that nursing home.

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

### **Offences by corporations**

50. (1) If a corporation contravenes any provision of this Act or the regulations, each person who is a director of the corporation or who is concerned in the management of the corporation shall be taken to have  
20 contravened the same provision if the person knowingly authorised or permitted the contravention.

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

25 (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.

### **Proceedings for offences**

30 51. Proceedings for offences against this Act or the regulations shall be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

### **Regulations**

35 52. (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) In particular, the regulations may make provision for or with respect to the following:

- (a) the display of licences at nursing homes;



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- (b) the supply by the licensee of a nursing home to the Secretary of information relating to—
- (i) any particulars that are required to be provided when an application for a licence is made; and
  - 5 (ii) the number of residents, and the length of stay of residents, at the nursing home and the provision of health services to those residents; and
  - (iii) staffing at the nursing home;
- (c) the supply by the licensee of a nursing home to the Secretary of a copy of the register of residents for the nursing home or a copy of a part of the register.
- 10 (3) A regulation (including a regulation prescribing a licensing standard) may create an offence punishable by a penalty not exceeding 5 penalty units.

**Savings and transitional provisions**

- 15 53. Schedule 3 has effect.

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**SCHEDULE 1—PROVISIONS RELATING TO CHAIRPERSON OF COMMITTEES OF REVIEW**

(Sec. 24 (2))

**Deputy for Chairperson**

- 20 1. (1) The Minister may, from time to time, appoint a person to be the deputy of the Chairperson.
- (2) The deputy of the Chairperson may act in the office of the Chairperson during the illness or absence of the Chairperson and, while so acting, has all the functions of the Chairperson.
- 25 (3) The Minister may remove a person from the office of deputy of the Chairperson at any time.
- (4) The deputy while so acting in the office of Chairperson is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the deputy.
- 30 (5) For the purposes of this clause, a vacancy in the office of Chairperson shall be taken to be an absence of the Chairperson.

**Term of office**

- 35 2. A person shall, subject to this Schedule, hold office as Chairperson for such term, not exceeding 3 years, as is specified in the person's instrument of appointment, but is eligible for re-appointment.

**Remuneration**

3. The Chairperson is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the Chairperson.

*Nursing Homes 1988*SCHEDULE 1—PROVISIONS RELATING TO CHAIRPERSON OF COMMITTEES OF REVIEW—*continued***Vacation of office**

4. (1) A person shall be taken to have vacated office as Chairperson if the person—
- (a) dies; or
  - 5 (b) 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; or
  - 10 (c) becomes a temporary resident or a continued treatment resident within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983; or
  - (d) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 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; or
  - 15 (e) resigns the office by instrument in writing addressed to the Minister; or
  - (f) is removed from office by the Minister under subclause (2).
- (2) The Minister may remove a person from the office of Chairperson at any time.

**Filling of vacancy in office of member**

5. If the office of Chairperson becomes vacant, a person shall, subject to this Act, be  
20 appointed to fill the vacancy.

**Effect of certain other Acts**

6. (1) The Public Sector Management Act 1988 does not apply to or in respect of the appointment of a person to the office of Chairperson and a person is not, as Chairperson, subject to that Act (except Part 8).
- 25 (2) If by or under any other Act provision is made—
- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or
  - (b) prohibiting the person from engaging in employment outside the duties of that office,
- 30 that provision does not operate to disqualify the person from holding that office and also the office of Chairperson or from accepting and retaining any remuneration payable to the person under this Act as Chairperson.

## SCHEDULE 2—PROVISIONS RELATING TO COMMITTEES OF REVIEW

(Sec. 26 (3))

**35 Disclosure of pecuniary interests**

1. (1) If the Chairperson or any other member of a Committee of Review has a direct or indirect pecuniary interest in the subject-matter of an application for review, the Chairperson or other member shall, as soon as possible after the relevant facts have come to his or her knowledge, disclose the nature of the interest to the Minister.

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 SCHEDULE 2—PROVISIONS RELATING TO COMMITTEES OF REVIEW—  
*continued*

- (2) After the Chairperson has disclosed the nature of an interest in the subject-matter of an application for review—
- 5 (a) the Chairperson shall not, unless the Minister otherwise determines, act as Chairperson of the Committee of Review to which that application is referred; and
- (b) the deputy of the Chairperson shall act as Chairperson of that Committee.
- (3) The deputy of the Chairperson, while acting as Chairperson under subclause (2), has all the functions of the Chairperson and shall be taken to be the Chairperson.
- 10 (4) After a member of a Committee of Review (other than the Chairperson) has disclosed the nature of an interest in the subject-matter of an application for review—
- (a) the member shall not, unless the Minister otherwise determines, act as a member of the Committee of Review; and
- (b) the Chairperson shall appoint another person to be a member of that Committee.
- 15 (5) Notwithstanding that the Chairperson or other member of a Committee of Review contravenes the provisions of this clause, that contravention does not invalidate any recommendation of the Committee of Review or any recommendation of the Chairperson or the member (as the case may require).

**Liability of members etc.**

- 20 2. No matter or thing done by a Committee of Review, the Chairperson or any member, or any person acting under the direction, of a Committee of Review shall, if the matter or thing was done in good faith for the purpose of executing this or any other Act, subject the Chairperson, the member or the person so acting personally to any action, liability, claim or demand.

25 **General procedure**

3. The procedure for the calling of meetings of a Committee of Review and for the conduct of business at those meetings shall, subject to this Act, be as determined by the Chairperson of the Committee.

**Presiding member**

4. The Chairperson shall preside at a meeting of the Committee.

30

**SCHEDULE 3—SAVINGS AND TRANSITIONAL PROVISIONS**

(Sec. 53)

**PART 1—GENERAL****Definition**

1. In this Schedule, "former Act" means the Private Health Establishments Act 1982.

35

**Regulations**

2. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

this Act;

*Nursing Homes 1988*SCHEDULE 3—SAVINGS AND TRANSITIONAL PROVISIONS—*continued*

Miscellaneous Acts (Private Health Establishments) Amendment Act 1988.

(2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later day.

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

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

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

15 (4) If this Act (or any of the provisions of this Act) commences before the repeal of the Private Health Establishments Act 1982, the regulations may provide that the Private Health Establishments Act 1982 (or any specified provision of that Act) is not to apply to nursing homes within the meaning of that Act.

**PART 2—PROVISIONS CONSEQUENT ON ENACTMENT OF THIS ACT****Existing licences**

20 3. (1) A licence for a nursing home that was in force under the former Act immediately before the commencement of section 8 shall be taken to have been issued under that section.

(2) A temporary licence for a nursing home that was in force under the former Act immediately before the commencement of section 9 shall be taken to have been issued under that section.

25 (3) Such a licence or temporary licence shall be taken to be subject to the conditions specified in the licence immediately before the commencement of section 8 or section 9 (as the case may require).

(4) Nothing in subclause (3) affects the operation of section 18 (amendment of licences).

**Pending applications for licences**

30 4. (1) An application for a licence for a nursing home made under the former Act that has not been determined before the repeal of section 10 of the former Act shall be taken to be an application for a licence under section 5.

35 (2) If the Secretary has, under section 9 of the former Act, approved (whether or not subject to conditions) the plans and specifications relating to any building to be constructed, altered or extended that accompany an application for a licence for a nursing home, the Secretary—

(a) may not, under section 6, impose a condition relating to the design or construction of the building on an approval of the application in principle; and

40 (b) may, without limiting the operation of Division 2 of Part 2, refuse an application if the building is not constructed, altered or extended in accordance with those plans and specifications or if a condition to which the approval of the plans and specifications was subject has not been complied with.

*Nursing Homes 1988*SCHEDULE 3—SAVINGS AND TRANSITIONAL PROVISIONS—*continued***Pending applications to transfer licences**

5. An application to transfer a licence for a nursing home made under section 16 of the former Act that has not been determined before the repeal of that section shall be taken to have been made under this Act and shall be dealt with in accordance with the provisions of this Act.

**Pending applications to alter nursing homes**

6. An application to alter or extend a nursing home under section 17 of the former Act that has not been determined before the repeal of that section shall be taken to have been made under this Act and shall be dealt with in accordance with the provisions of this Act.

**Notice to effect repairs**

7. (1) A notice given to a licensee of a nursing home under section 34 of the former Act and in force immediately before the repeal of that section shall be taken to have been given under section 17 and shall have effect according to its tenor.
- (2) If notice was given to a licensee of a nursing home under section 34 of the former Act less than 14 days before the repeal of that section—
- (a) the licensee has a right to apply to the Minister for a review of the decision of the Secretary to issue the notice; and
  - (b) the notice shall not take effect—
    - (i) until the expiration of 14 days after notice has been given to the licensee; or
    - (ii) if the licensee applies for a review of the Secretary's decision under section 25 before the expiration of the period referred to in subparagraph (i)—until the application for review is dealt with or withdrawn.

**25 Pending applications to amend licences**

8. An application for amendment of a licence for a nursing home under section 18 of the former Act that has not been determined before the repeal of that section shall be taken to have been made under this Act and shall be dealt with in accordance with the provisions of this Act.

**30 Requests for review**

9. A request for review of a decision of the Secretary relating to a nursing home that was made under section 19 of the former Act and that has not been determined by the Minister immediately before the repeal of that section shall be taken to be an application for review made under this Act and shall be dealt with in accordance with the provisions of this Act.

**Inquiry**

10. Where, immediately before the repeal of section 21 (3) of the former Act, an inquiry relating to the cancellation of a licence for a nursing home is being made (or continued by the former Act) under that subsection, the inquiry may continue as if it were being made under section 31.

*Nursing Homes 1988*SCHEDULE 3—SAVINGS AND TRANSITIONAL PROVISIONS—*continued***Cancellation**

11. A cancellation of a licence for a nursing home under section 21 (2) of the former Act that has not taken effect immediately before the repeal of that subsection shall be taken to be a cancellation of a licence under section 31 (1) and any notice of the  
5 cancellation given under section 21 (4) of the former Act shall be taken to be a notice given under section 31 (3).

**Appeal**

12. Any appeal against a decision of the Secretary to cancel the licence for a nursing home pending under section 22 of the former Act immediately before the repeal of that  
10 section shall be taken to be pending under section 32, and may be heard and determined accordingly.

**Register of residents**

13. A register of patients kept at a nursing home pursuant to section 32 of the former Act immediately before the repeal of that section shall be taken to be a register of  
15 residents kept pursuant to section 41.

**Authority to enter and inspect premises**

14. (1) Any person who, immediately before the repeal of section 42 of the former Act, is authorised under that section to exercise the functions specified in that section (in relation to any licensed nursing home or any premises of a proposed nursing home)  
20 shall be taken to be a person authorised under section 44.

(2) A certificate of authority provided by the Secretary under section 42 of the former Act to such a person and in force immediately before the repeal of that section shall be taken to be a certificate of authority provided under section 44.

**References to former Act**

15. A reference in any other Act, in any instrument made under any Act or in any other instrument of any kind to, or required (immediately before the repeal of clause 11 of Schedule 3 to the former Act) to be construed as a reference to, the Private Health Establishments Act 1982 shall, in so far as the reference relates to nursing homes, be read as a reference to this Act.

