

**PRIVATE HEALTH ESTABLISHMENTS (DAY
PROCEDURE CENTRES) AMENDMENT ACT 1987 No. 231**

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Amendment of Act No. 130, 1982

SCHEDULE 1—AMENDMENTS

**PRIVATE HEALTH ESTABLISHMENTS (DAY PROCEDURE
CENTRES) AMENDMENT ACT 1987 No. 231**

NEW SOUTH WALES



Act No. 231, 1987

An Act to amend the Private Health Establishments Act 1982 with respect to day procedure centres and the establishment of a Private Hospitals and Day Procedure Centres Advisory Committee. [Assented to 16 December 1987]

*Private Health Establishments (Day Procedure Centres) Amendment 1987***The Legislature of New South Wales enacts:****Short title**

1. This Act may be cited as the Private Health Establishments (Day Procedure Centres) Amendment Act 1987.

Amendment of Act No. 130, 1982

2. The Private Health Establishments Act 1982 is amended as set out in Schedule 1.

SCHEDULE 1—AMENDMENTS

(Sec. 2)

(1) Long title—

After “hospitals”, insert “, day procedure centres”.

(2) Section 4 (Definitions)—

(a) Section 4 (1)—

After the definition of “chief nurse”, insert:

“Committee” means the Private Hospitals and Day Procedure Centres Advisory Committee established under this Act;

“day procedure centre” means premises at which patients are admitted and discharged on the same day for such medical, surgical or other treatment (for fee, gain or reward), and in such circumstances, as may be prescribed by the regulations, but does not include—

- (a) any such premises conducted by the State;
- (b) an incorporated hospital or a separate institution within the meaning of, or a hospital specified in the Fifth Schedule to, the Public Hospitals Act 1929;
- (c) a hospital or other health service under the control of an area health service constituted under the Area Health Services Act 1986;
- (d) a private hospital or a nursing home; or
- (e) a residential rehabilitation establishment licensed under the Drug and Alcohol Rehabilitation Establishments Act 1987;

(b) Section 4 (1), definition of “establishment”—

After “hospital”, insert “, day procedure centre”.

(c) Section 4 (1), definition of “nursing home”—

- (i) From paragraph (f), omit “or”.

*Private Health Establishments (Day Procedure Centres) Amendment 1987*SCHEDULE 1—AMENDMENTS—*continued*

- (ii) At the end of paragraph (g), insert:
; or
(h) a day procedure centre;
- (d) Section 4 (1), definition of “patient”—
Omit the definition, insert instead:
“patient”—
(i) in relation to a private hospital or nursing home, means a person lodged in the private hospital or nursing home;
or
(ii) in relation to a day procedure centre, means a person admitted to the day procedure centre for treatment;
- (e) Section 4 (1), definition of “private hospital”—
(i) From paragraph (d), omit “or”.
(ii) At the end of paragraph (e), insert:
; or
(f) a day procedure centre;
- (f) Section 4 (1), definitions of “register of patients”, “ward”—
Omit the definitions, insert instead:
“register of patients”, in relation to an establishment, means the register that is required by section 32 to be kept at the establishment;
“ward”, in relation to a private hospital or nursing home, means any room in the private hospital or nursing home in which patients are lodged, but does not include any labour room or operating theatre.
- (3) Part IA—
After Part I, insert:
PART IA—PRIVATE HOSPITALS AND DAY PROCEDURE CENTRES ADVISORY COMMITTEE
Constitution of Committee
4A. (1) There is established by this Act a Private Hospitals and Day Procedure Centres Advisory Committee.
(2) The Committee shall consist of such number of members, not being less than 5, as the Minister may determine.
(3) The members shall be appointed by the Minister.
(4) Of the members—
(a) at least one shall be an officer of the Department of Health;

*Private Health Establishments (Day Procedure Centres) Amendment 1987***SCHEDULE 1—AMENDMENTS—*continued***

- (b) at least one shall be a person nominated by the Private Hospitals Association of New South Wales;
 - (c) at least one shall be a person nominated by the Medical Services Committee established under the Health Administration Act 1982;
 - (d) at least one shall be a person nominated by the Labor Council of New South Wales; and
 - (e) at least one shall be a person appointed to represent the interests of consumers.
- (5) Schedule 1A has effect with respect to the members and procedure of the Committee.

Functions of Committee

4B. (1) The principal function of the Committee is to provide advice to the Minister (in respect of private hospitals and day procedure centres) on the following matters:

- (a) the effective operation of this Act;
 - (b) proposed regulations;
 - (c) requests by applicants to review decisions of the Secretary under section 19;
 - (d) such other matters as may be referred to it by the Minister.
- (2) The Committee may establish sub-committees to assist it in connection with the exercise of any of its functions.
- (3) It does not matter that any or all of the members of a sub-committee are not members of the Committee.
- (4) The procedure for the calling of meetings of a sub-committee and for the conduct of business at those meetings shall be as determined by the Committee or (subject to any determination of the Committee) by the sub-committee.

- (4) Part II, heading—

Omit the heading, insert instead:

PART II—LICENSING OF ESTABLISHMENTS

- (5) Section 5 (**Classes of establishments**)—

Omit “private hospitals and of nursing homes”, insert instead “establishments”.

- (6) Section 7 (**Applications for licences**)—

Section 7 (2) (b)—

Omit the paragraph, insert instead:

*Private Health Establishments (Day Procedure Centres) Amendment 1987***SCHEDULE 1—AMENDMENTS—*continued***

(b) specify any 1 or more classes of establishments in respect of which the licence is sought;

(7) Section 11 (Refusal of application for licence)—

Section 11 (c)—

Omit “where the application relates to a private hospital or nursing home—if the Secretary is satisfied that the conduct of a private hospital or nursing home”, insert instead “if the Secretary is satisfied that the conduct of an establishment”.

(8) Section 12 (Form of licence)—

Section 12 (c), (d)—

Omit the paragraphs, insert instead:

(c) the class or classes of establishments in respect of which it is issued; and

(d) in the case of a private hospital or nursing home—the maximum number of patients who may be lodged at any one time in each ward of the private hospital or nursing home, as determined by the Secretary.

(9) Section 13 (Conditions of licence)—

Section 13 (2)—

Omit “a private hospital or nursing home”, insert instead “an establishment”.

(10) Section 18 (Amendment of licences)—

Section 18 (1) (a)–(c)—

Omit the paragraphs, insert instead:

(a) by specifying in the licence additional classes of establishments;

(b) by omitting classes of establishments specified in the licence;

(c) in the case of a private hospital or nursing home—by increasing or decreasing the number of patients specified in the licence as the number of patients who may be lodged in any ward of the private hospital or nursing home;

(11) Section 19 (General provisions regarding applications)—

(a) Section 19 (5)—

Omit “a private hospital or nursing home”, insert instead “an establishment”.

(b) Section 19 (8)—

*Private Health Establishments (Day Procedure Centres) Amendment 1987*SCHEDULE 1—AMENDMENTS—*continued*

After “necessary”, insert “(and, if the matter has been referred to the Committee, after having regard to any advice of the Committee)”.

(12) Section 24—

After section 23, insert:

Unlicensed day procedure centres

24. On and from the day appointed by proclamation for the purposes of this section, a person shall not conduct a day procedure centre unless—

- (a) the day procedure centre is licensed; and
- (b) the person is the licensee.

Penalty: \$10,000.

(13) Section 26 (**Purposes for which establishments may be used**)—

(a) Section 26 (1), (2)—

Omit “a private hospital or nursing home” wherever occurring, insert instead “an establishment”.

(b) Section 26 (1) (a)—

Omit “, as the case may be,”.

(c) Section 26 (2)—

Omit “the private hospital or nursing home”, insert instead “the establishment”.

(14) Section 27 (**Overcrowding**)—

(a) Section 27 (1), (2)—

Omit “an establishment” wherever occurring, insert instead “a private hospital or nursing home”.

(b) Section 27 (1)—

Omit “the establishment”, insert instead “the private hospital or nursing home”.

(15) Section 28 (**Chief nurse of private hospital or nursing home**)—

Section 28 (1)—

Before section 28 (2), insert:

(1) In this section, “establishment” does not include a day procedure centre.

*Private Health Establishments (Day Procedure Centres) Amendment 1987***SCHEDULE 1—AMENDMENTS—*continued***

(16) Section 29—

Omit the section, insert instead:

Title of “matron” and “director of nursing”

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

(2) The licensee of a private hospital or nursing home shall not permit a person employed at the private hospital or nursing home to contravene subsection (1).

Penalty: \$2,000.

(17) Schedule 1 (**Matters with respect to which licensing standards may be prescribed**)—

Item 12—

Omit the item, insert instead:

12. The duties of licensees of establishments and chief nurses of private hospitals and nursing homes.

(18) Schedule 1A—

After Schedule 1, insert:

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

(Sec. 4A (5))

Chairperson of Committee

1. (1) Of the members, one shall (in and by the member's instrument of appointment or a subsequent instrument executed by the Minister) be appointed as Chairperson of the Committee.

(2) The Minister may remove a member from the office of Chairperson.

(3) A person who is a member and Chairperson shall be deemed to have vacated office as Chairperson if the person—

(a) is removed from that office by the Minister under this clause;

(b) resigns that office by instrument in writing addressed to the Minister;
or

(c) ceases to be a member.

Acting members and acting Chairperson

2. (1) The Minister may, from time to time, appoint a person to act in the office of a member during the illness or absence of the member, and the person, while so acting, shall have and may exercise all the functions of the member and shall be deemed to be a member.

*Private Health Establishments (Day Procedure Centres) Amendment 1987*SCHEDULE 1—AMENDMENTS—*continued*

(2) The Minister may, from time to time, appoint a member to act in the office of Chairperson during the illness or absence of the Chairperson, and the member, while so acting, shall have and may exercise all the functions of the Chairperson and shall be deemed to be the Chairperson.

(3) The Minister may remove any person from any office to which the person was appointed under this clause.

(4) A person while so acting in the office of a member 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 person.

(5) For the purposes of this clause, a vacancy in the office of a member or the Chairperson shall be deemed to be an absence from office of the member or Chairperson, as the case may be.

Term of office

3. A member shall, subject to this Schedule, hold office for such term, not exceeding 3 years, as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

Remuneration

4. A member 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 member.

Vacation of office

5. (1) A member shall be deemed to have vacated office if the member—
- (a) dies;
 - (b) absents himself or herself from 4 consecutive meetings of the Committee of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Committee or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Committee for being absent from those meetings;
 - (c) 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;
 - (d) becomes a temporary patient or a continued treatment patient 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;
 - (e) 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;
 - (f) resigns the office by instrument in writing addressed to the Minister; or
 - (g) is removed from office by the Minister under subclause (2) or (3).

(2) The Minister may remove a member from office at any time.

(3) Without affecting the generality of subclause (2), the Minister may remove a member who contravenes the provisions of clause 7.

*Private Health Establishments (Day Procedure Centres) Amendment 1987***SCHEDULE 1—AMENDMENTS—*continued*****Filling of vacancy in office of member**

6. If the office of any member becomes vacant, a person shall, subject to this Act, be appointed to fill the vacancy.

Disclosure of pecuniary interests

7. (1) A member who has a direct or indirect pecuniary interest—

- (a) in a matter that is being considered, or is about to be considered, at a meeting of the Committee; or
- (b) in a thing being done or about to be done by the Committee,

shall, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Committee.

(2) The Committee shall cause particulars of any disclosure made under subclause (1) to be recorded in a book kept for the purpose and that book shall be open at all reasonable hours to the inspection of any person on payment of such fee as may be determined by the Committee from time to time.

(3) After a member has, or is deemed to have, disclosed the nature of an interest in any matter or thing pursuant to subclause (1), the member shall not, unless the Minister otherwise determines—

- (a) be present during any deliberation of the Committee, or take part in any decision of the Committee with respect to that matter; or
- (b) exercise any functions under this Act with respect to that thing,

as the case requires.

(4) Notwithstanding that a member contravenes the provisions of this clause, that contravention does not invalidate any decision of the Committee or the exercise of any function under this Act.

Effect of certain other Acts

8. (1) The Public Service Act 1979 does not apply to or in respect of the appointment of a member and a member is not, as a member, subject to that Act.

(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 a member or from accepting and retaining any remuneration payable to the person under this Act as a member.

(3) The office of a member shall for the purposes of any Act be deemed not to be an office or place of profit under the Crown.

Liability of members etc.

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

Private Health Establishments (Day Procedure Centres) Amendment 1987

SCHEDULE 1—AMENDMENTS—*continued*

General procedure

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

Quorum

11. The quorum for a meeting of the Committee is a majority of the members for the time being appointed by the Minister.

Presiding member

12. (1) The Chairperson or, in the absence of the Chairperson, another member elected to chair the meeting by the members present shall preside at a meeting of the Committee.

(2) The person presiding at any meeting of the Committee has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

Voting

13. A decision supported by a majority of the votes cast at a meeting of the Committee at which a quorum is present shall be the decision of the Committee.

Minutes

14. The Committee shall cause full and accurate minutes to be kept of the proceedings of each meeting of the Committee.

First meeting of Committee

15. The Minister shall call the first meeting of the Committee in such manner as the Minister thinks fit.