

Private Hospitals (Amendment) Bill, 1938.

EXPLANATORY NOTE.

THIS Bill amends the Private Hospitals Act, 1908, by making further provision with respect to the licensing, management and control of private hospitals, and by providing for the licensing, management and control of rest homes, i.e., buildings established or used or intended to be established or used for the treatment for gain of patients who, on account of senility, chronic ill health or other condition, require nursing care but only occasional attention by a medical practitioner and also by inserting provisions of a machinery character designed to facilitate the administration of that Act.

In particular, provision is made in the Bill for the following:—

- (a) The procedure to be followed for obtaining a license, or transfer or renewal of license in respect of any private hospital or rest home and the fees to be paid in respect of licenses, and transfers and renewals of license.
- (b) The granting of interim licenses.
- (c) The supervision of the accommodation provided for the nursing and other staff of a private hospital or rest home.
- (d) The qualifications of managers and resident assistants.
- (e) Empowering the Board of Health to require the licensee of any private hospital or rest home to effect repairs, alterations and additions or improvements to the private hospital or rest home or to the accommodation provided for the nursing and other staff thereof.
- (f) The revocation by the Minister on the recommendation of the Board of Health of any license in respect of any private hospital or rest home subject to the licensee's right of appeal to a district court against such revocation.

The Bill provides also for the making of regulations by the Governor—see Section 18 as contained in clause 3 (j) of the Bill.

Licenses granted under the Private Hospitals Act, 1908, and in force immediately before the commencement of the Bill are to continue in force until 31st December but are to be subject to the amendments made by the Bill except to the extent provided in Clause 5.

301

[CONFIDENTIAL.]
(Rough Draft for Consideration Only.)

No. , 1938.

A BILL

To make further provision with respect to the licensing, management and control of private hospitals and rest homes; to amend the Private Hospitals Act, 1908, and certain other Acts in certain respects; and for purposes connected therewith.

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

1. (1) This Act may be cited as the "Private Hos-
pitals (Amendment) Act, 1938."

77489 —

(2)

Short title,
citation and
commence-
ment.

Private Hospitals (Amendment).

(2) The Private Hospitals Act, 1908, as amended by subsequent Acts, including this Act, may be cited as the Private Hospitals Act, 1908-1938.

(3) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

2. The Private Hospitals Act, 1908, as amended by subsequent Acts, is amended—

Amendment of Act No. 14, 1908.

(a) by omitting section two and by inserting in lieu thereof the following section:—

Substituted sec. 2.

2. In this Act, unless the context or subject matter otherwise indicates or requires,—

Definitions.

“Birth” includes still-birth and miscarriage at any period.

“Building” includes any house, structure, tent, or place, or any part thereof, and the curtilage of any building.

“License” means license granted under this Act.

“Licensed” means licensed under this Act.

“Licensee” means holder of a license under this Act.

“Manager” means resident manager of a private hospital or rest home.

“Patient” means a person received and lodged in a private hospital or rest home for treatment therein.

“Premises” means a building with the appurtenances thereto, and includes land whether built upon or not.

“Prescribed” means prescribed by this Act or the regulations.

“Private hospital” means a building established or used or intended to be established or used for the treatment for gain of patients but does not include—

(a) an institution wholly or in part supported by or receiving financial aid from the State; or

(b)

Private Hospitals (Amendment).

- (b) an incorporated hospital or separate institution within the meaning of the Public Hospitals Act, 1929-1937; or
- (c) a rest home; or
- (d) a licensed house within the meaning of the Lunacy Act of 1898.

“Registered” as applied to a nurse means registered under the provisions of the Nurses Registration Act, 1924-1932.

“Regulation” means regulation made under this Act.

“Rest home” means a building established or used or intended to be established or used for the treatment for gain of patients who, on account of senility, chronic ill-health or other condition, require nursing care but only occasional attention by a medical practitioner, but does not include—

- (a) an institution wholly or in part supported by or receiving financial aid from the State; or
- (b) an incorporated hospital or separate institution within the meaning of the Public Hospitals Act, 1929-1937; or
- (c) a licensed house within the meaning of the Lunacy Act of 1898.

“Treatment” includes the care of or attendance upon a patient, the nursing of a patient, and any treatment of a medical or surgical nature, whether by a medical practitioner or not.

“Ward” means any room, verandah or balcony of a private hospital or rest home in which patients are received or lodged for treatment, but does not include any labour room or operating theatre.

[REDACTED] (b)

Private Hospitals (Amendment).

(b) by inserting at the end of the short heading appearing immediately before section six the words "and rest homes"; Short heading.

(c) (i) by inserting next after subsection one of section six the following new subsection:— Sec. 6.
(Licenses.)

(1A) From and after the expiration of one month after the commencement of the Private Hospitals (Amendment) Act, 1938, no rest home shall be carried on, used or conducted except under the authority of a license issued by the Minister on the recommendation of the Board of Health.

(ii) by omitting from subsection three of the same section the word "hospital" and by inserting in lieu thereof the words "private hospital or rest home";

(iii) by inserting in subsection four of the same section after the word "hospital" the words "or rest home";

(d) (i) by inserting at the end of subsection one of section seven the following paragraph:— Sec. 7.
(Application for license.)

The amount of the prescribed license fee shall be paid upon lodgment of any such application made after the commencement of the Private Hospitals (Amendment) Act, 1938.

Such amount shall be refunded if a license is not granted upon such application.

(ii) by omitting subsection two of the same section and by inserting in lieu thereof the following subsection:—

(2) Every such application shall be accompanied by the prescribed particulars.

Different particulars may be prescribed—

(a) according to the class of private hospital or rest home for which a license is sought;

(b).

Private Hospitals (Amendment).

(b) for applications for the first license after the commencement of the Private Hospitals (Amendment) Act, 1938, for any private hospital or rest home or for a new license for the same private hospital or rest home upon the expiration of the period for which an earlier license (granted after such commencement) remained in force;

(e) by inserting next after section seven the following new section:— New sec. 7A.

7A. (1) Where application is made for a license the President of the Board of Health may, pending consideration of the application, grant to the applicant an interim license. Interim license.

(2) An interim license shall remain in force for such period, not exceeding two months, as may be specified in the interim license or until a license is granted whichever is the shorter period.

(3) An interim license may be revoked before the expiration of the period specified therein if the application for the license is refused.

(f) (i) By inserting in subsection one of section eight after the words "private hospital" wherever occurring the words "or rest home"; Sec. 8. (Granting of license.)

(ii) By inserting in the same subsection after the word "thereto" the words "and the provision made for the accommodation of the nursing and other staff of the private hospital or rest home (whether in such house or buildings or elsewhere)";

(iii)

(iii) by omitting subsection three of the same section and by inserting in lieu thereof the following subsections:—

(3) A license shall be granted in respect of one or more classes of private hospital or rest home.

(4) Every license shall specify—

- (a) the particular class or classes of private hospital or rest home in respect of which it is issued; and
- (b) the maximum number of patients who may be lodged at any one time in each ward of the private hospital or rest home.

(5) The Minister may, on the recommendation of the Board of Health, vary the particulars specified in any license by endorsement on the license.

No such variation shall be made except upon the application of the licensee.

(g) by omitting from section nine the words "The license" and by inserting in lieu thereof the words "Any license (other than an interim license)";

Sec. 9.
(Period of
license.)

(h) by inserting next after section nine the following new sections:—

New secs.
9A and 9B.

9A. (1) Where a license is granted to two or more persons jointly or in common and, during the period for which the license remains in force, any of such persons dies, the license shall, subject to this Act, continue in force for the balance of such period, and shall have effect as if granted to the survivors or survivor of such persons.

Death of
licensee.

(2) (a) Where a licensee, who was either the sole licensee or the last survivor of any two or more licensees who held the license jointly or in common, dies during the period for which the license

license remains in force, the license shall, subject to this Act, continue in force for the balance of such period, and shall have effect as if granted to the executor or administrator of such licensee.

(b) The Minister may revoke any license continued in force by the operation of paragraph (a) of this subsection unless within two months after the death of the licensee or within such further period as the Minister may allow, the license is transferred.

9B. (1) A license may be transferred by the Minister on the recommendation of the Board of Health. Transfer of license.

(2) Application for a transfer of a license shall be made by the licensee and the proposed transferee of the license, and shall be accompanied by the prescribed particulars.

The prescribed fee shall be paid upon lodgment of any such application.

(3) Where a license is transferred it shall have effect for the balance of the period for which it remains in force as if granted to the transferee.

3. The Private Hospitals Act, 1908, as amended by subsequent Acts, is further amended—

(a) by inserting at the end of the short heading appearing immediately before section ten the words "and rest homes"; Further amendment of Act No. 14, 1908. Short heading.

(b) by omitting section ten and by inserting in lieu thereof the following section:— Substituted sec. 10.

10. (1) For every private hospital or rest home there shall be a manager who may be either the licensee himself or some person appointed by the licensee. Managers and resident assistants.

(2) The manager shall be—

(a) a legally qualified medical practitioner; or

(b) a registered nurse; or

(c) a person approved by the Board of Health. (3)

308

Private Hospitals (Amendment).

8

(3) A legally qualified medical practitioner may be the manager of a private hospital or rest home of any class.

Where a legally qualified medical practitioner is the manager of a private hospital or rest home, the licensee shall appoint one or more resident assistants.

Any such resident assistant shall be a nurse who holds the qualifications prescribed in relation to private hospitals or rest homes of the class or classes to which such private hospital or rest home belongs.

(4) A registered nurse may be the manager of a private hospital or rest home if she holds the qualifications prescribed in relation to private hospitals or rest homes of the class or any of the classes to which such private hospital or rest home belongs.

Where any such nurse does not hold the qualifications prescribed in relation to any class of private hospital or rest home to which such private hospital or rest home belongs the licensee shall appoint a resident assistant who shall be a registered nurse who holds the qualifications prescribed in relation to that class of private hospital or rest home.

(5) The full name and qualifications of any person intended to be appointed as manager or as resident assistant shall be submitted to the Board of Health for approval.

Any appointment of a person as manager or as resident assistant shall be deemed to be made subject to the approval of the Board of Health, and shall be terminated forthwith if the Board of Health notifies the licensee that it does not approve of the appointment.

(6) Where for any cause whatsoever a manager or a resident assistant is unable to carry out his duties as such for a period of more than one day, the licensee shall appoint a person holding

Private Hospitals (Amendment).

holding the appropriate qualifications required by this section to act as manager or resident assistant, as the case may be.

Where an appointment for a period of more than two days becomes necessary under this subsection, the full name and qualifications of the person appointed shall be submitted to the Board of Health for its approval. Any such appointment shall be deemed to have been made subject to the approval of the Board of Health and shall be terminated forthwith if the Board of Health notifies the licensee that it does not approve of the appointment.

(7) If the provisions of this section are not duly complied with the licensee shall be guilty of an offence against this Act.

- (c) (i) by inserting in subsection one of section thirteen after the words "private hospital" the words "or rest home";
- (ii) by omitting from paragraph (a) of the same subsection the word "hospital" and by inserting in lieu thereof the words "private hospital or rest home";
- (iii) by omitting from paragraph (c) of the same subsection the word "hospital" and by inserting in lieu thereof the words "private hospital or rest home";
- (iv) by inserting at the end of the same section the following new subsections:—

Sec. 13.
(Keeping of register.)

(4) The medical practitioner attending any patient shall forthwith on demand furnish to the person required by the regulations to make any entry referred to in this section such particulars as may be necessary for the making of such entry.

Any such medical practitioner who refuses or neglects or fails to furnish particulars as required by this subsection or who furnishes any false particulars shall be guilty of an offence against this Act.

Private Hospitals (Amendment).

(5) Any person who, except as required or permitted by this Act or except in reply to any question which he is legally compellable to answer, discloses to any person any information which comes to his knowledge by reason of having to make or of having seen any entry in the register, shall be guilty of an offence against this Act.

(d) by inserting in section fourteen after the words "private hospital" the words "or rest home"; Sec. 14.
(Inspection.)

(e) by inserting next after section fourteen the following new section:— New sec.
14A.

14A. (1) The Board of Health may by notice in writing require the licensee of any private hospital or rest home to effect such repairs, alterations, additions or improvements to the private hospital or rest home or to the accommodation provided for the nursing and other staff of the private hospital or rest home (wheth̄er such accommodation is provided in the premises of the private hospital or rest home or elsewhere) as may be specified in the notice. Provision
for repairs,
etc.

(2) Any licensee who neglects or fails to comply with the requirements of any such notice within the time specified in the notice or within such further time as the Board of Health with the approval of the Minister may allow, shall be guilty of an offence against this Act.

(f) (i) by inserting in section fifteen after the words "private hospital" the words "or rest home"; Sec. 15.
(Use of
hospital.)

(ii) by inserting at the end of the same section the following words and new subsections:—
"or as a private hospital or rest home of a class not specified in the license.

(2) No patient shall be lodged in any part of a private hospital or rest home other than a ward.

(3)

311

Private Hospitals (Amendment).

(3) The number of patients lodged in any ward of a private hospital or rest home at any one time shall not exceed the maximum number specified in the license in respect of that ward.

(4) If the provisions of this section are not duly complied with in relation to any private hospital or rest home the licensee shall be guilty of an offence against this Act."

- (g) by inserting in section sixteen after the words "private hospital" wherever occurring the words "or rest home";
- (h) by inserting next after section sixteen the following new sections:—

Sec. 16.
(Inquiry as to management.)

New secs.
16A-16C.

Revocation
of licenses.

16A. (1) The Minister may, on the recommendation of the Board of Health, revoke the license granted in respect of any private hospital or rest home if—

- (a) the licensee has been convicted of any offence against this Act or against the Nurses Registration Act, 1924-1932; or
- (b) the licensee has been convicted, either in New South Wales or elsewhere, of any other offence which, if committed in New South Wales, would be a felony or misdemeanour; or
- (c) the manager or a resident assistant is unable to carry out his duties as such for a period of more than one day, and no appointment of an acting manager or acting resident assistant is made; or
- (d) the requirements of any notice given pursuant to section 14A of this Act are not duly complied with; or
- (e) in the opinion of the Board of Health the premises of the private hospital or rest home are insanitary, or insufficiently equipped, or the private hospital or rest home

home is managed or conducted in such a manner that the revocation of the license is necessary in the public interest; or

- (f) if the licensee has for a period of six months or upwards been absent from New South Wales without having made arrangements to the satisfaction of the Board of Health, for the carrying on, use or conduct of the private hospital or rest home during his absence.

(2) Before making a recommendation that any license be revoked under this section the Board of Health shall serve notice in writing upon the licensee that it proposes to make such a recommendation.

Any such notice—

- (a) shall specify the grounds upon which it will be recommended that the license be cancelled;
- (b) appoint a time within which the licensee may show cause why the recommendation should not be made.

16B. A revocation, pursuant to section sixteen or section 16A of this Act, of the license granted in respect of a private hospital or rest home shall not take effect until the expiration of a period of twenty-one days after notification in the prescribed manner by the Minister to the licensee, of such revocation.

When
revocation
to take
effect.

If within such period the licensee gives due notice of appeal to a district court, such revocation shall not take effect unless and until the revocation is confirmed by the district court or the appeal is for any reason dismissed by that court.

16c. (1) There shall be a right of appeal to a district court against the revocation, pursuant to section sixteen or section 16A of this Act, of the license granted in respect of a private hospital or rest home, and the district court shall have jurisdiction to hear and determine the appeal.

Appeal
against
revocation.

(2).

(2) Every such appeal shall be made to the district court having jurisdiction in the district within which the private hospital or rest home is situated and on such appeal the district court may make such order as it thinks proper, having regard to the merits of the case and the public welfare.

(3) Any such appeal shall be in the nature of a rehearing, and shall be made in accordance with rules of court.

- (i) by inserting in section seventeen after the words "private hospital" the words "or rest home"; Sec. 17.
- (j) by omitting section eighteen and by inserting in lieu thereof the following section:— Substituted sec. 18.

18. (1) The Governor may, on the recommendation of the Board of Health, make regulations not inconsistent with this Act prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act. Regulations.

(2) Without prejudicē to the generality of the power conferred by subsection one of this section the Governor may, on the recommendation of the Board of Health, make regulations—

- (a) for the licensing, management and inspection of private hospitals and rest homes;
- (b) prescribing classes of private hospitals and rest homes and the class of patient who may be received and lodged in any specified class of private hospital or rest home;
- (c) prescribing the forms to be used for the purposes of this Act;
- (d) prescribing structural requirements as to buildings carried on, used or conducted or intended to be carried on, used or conducted as a private hospital or rest home including lighting, ventilation, drainage and

- and provision of fire escapes, and the accommodation to be provided for patients, nurses, domestic staff and other persons;
- (e) prescribing requirements as to furnishing and equipment of private hospitals and rest homes and the provision and structural requirements of operating theatres, labour rooms, nurseries or other specified portions of a private hospital or rest home;
 - (f) prescribing requirements as to the number and qualifications of nursing staff in private hospitals or rest homes;
 - (g) prescribing requirements as to the number of domestic staff in private hospitals or rest homes;
 - (h) prescribing requirements as to methods and apparatus to be used in cleansing or disinfecting buildings, furnishings or equipment in or in connection with private hospitals or rest homes;
 - (i) prescribing requirements as to isolation or removal from a private hospital or rest home of persons suffering from infectious disease;
 - (j) regulating or prohibiting the admission into a private hospital or rest home of persons suffering from any infectious disease or other specified condition;
 - (k) prescribing the number and type of sanitary conveniences in private hospitals or rest homes to be provided for each sex;
 - (l) prescribing the methods of disposal of refuse and other material from private hospitals or rest homes;
 - (m) for preventing and remedying overcrowding of any ward in a private hospital or rest home;

(n)

315

Private Hospitals (Amendment).

- (n) regulating the keeping of birds or animals on the premises of private hospitals or rest homes;
- (o) regulating the disposition of dead bodies on the premises of private hospitals or rest homes;
- (p) regulating the cleanliness of premises, furnishings or equipment in private hospitals or rest homes;
- (q) regulating or prohibiting the performance of any specified surgical operation in private hospitals or rest homes;
- (r) prescribing the fee to be paid for the license or the transfer of the license of a private hospital or rest home, and different fees may be prescribed for the first license after the commencement of the Private Hospitals (Amendment) Act, 1938, for any private hospital or rest home and for a new license for the same private hospital or rest home upon the expiration of the period for which an earlier license (granted after such commencement) remains in force;
- (s) prescribing requirements as to site, situation and distance from other premises of private hospitals or rest homes;
- (t) for the prevention or destruction of flies or other vermin on the premises of private hospitals or rest homes.

(3) Any regulation may be made to apply generally to all private hospitals or rest homes, or to any specified class of private hospitals or rest homes or to all private hospitals or rest homes other than those of a specified class.

(4) The regulations may impose a penalty not exceeding *fifty* pounds for any breach of the regulations.

(5)

- (5) The regulations shall—
 - (a) be published in the Gazette;
 - (b) take effect from the date of publication or from a later date to be specified in the regulations;
 - (c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

If either House of Parliament passes a resolution of which notice has been given within fifteen sitting days after such regulations have been laid before such House disallowing any regulation or part thereof, such regulation or part shall thereupon cease to have effect.

- (k) by omitting from section nineteen the words "hospitals as defined" and by inserting in lieu thereof the words "any private hospital or rest home licensed." Sec. 19.
(Dispensing
of
medicines.)

4. The Private Hospitals Act, 1908, as amended by subsequent Acts, is further amended by inserting next after section nineteen the following new short heading and sections:— Further
amendment
of Act No.
14, 1908.
New secs. 20-25

General provisions.

20. Any person guilty of an offence against this Act for which no other penalty is specifically provided shall be liable for a first offence to a penalty not exceeding *ten* pounds, and for a second or any subsequent offence to a penalty not exceeding *fifty* pounds. General
penalty.

21. In any proceedings for an offence against this Act the onus shall be on the defendant to prove— Onus of
proof.
cf. Act No.
1,498 (S.A.)
1921, s. 18.

- (a) that the person named in the information as the person by whom a specified private hospital or rest home is carried on, used or conducted was not such person; and

(b),

(b) that any private hospital or rest home mentioned in the information as being unlicensed was licensed.

22. (1) Every licensee shall furnish the Board of Health with an address for the service of notices under this Act. Notices.

Such address shall be so furnished at the time of making any application under this Act for the grant or transfer of a license.

(2) Any change of such address shall be notified to the Board of Health.

(3) Any notice required or authorised by this Act to be given to or served on a licensee shall be deemed to be sufficiently given or served—

- (a) if delivered personally to the licensee; or
- (b) if left for the licensee at the address for service furnished or last notified, as the case may be, to the Board of Health; or
- (c) if sent by post in a prepaid letter addressed to the licensee at the address for service furnished or last notified, as the case may be, to the Board of Health; and shall be deemed to have been given or served at the time when the letter would, in the ordinary course of post, be delivered.

23. Where under this Act or the regulations any person is guilty of an offence or is liable to any penalty the matter may be heard and determined in a summary manner before a stipendiary or police magistrate or any two or more justices in petty sessions. Recovery of penalties.

24. All fees received under this Act shall be paid to the Consolidated Revenue Fund. Fees.

25. No matter or thing done by the Board of Health, or by any member or officer of or person authorised by the Board of Health shall, if the matter or thing was done bona fide for the purpose of executing this Act, subject them or any of them personally to any action, liability, claim or demand whatsoever. Exoneration of certain persons.

318

Private Hospitals (Amendment).

5. (1) All licenses granted under the Private Hospitals Act, 1908, before the commencement of this Act and in force immediately before such commencement shall, subject to the Private Hospitals Act, 1908-1938, continue in force until the thirty-first day of December next after such commencement. Existing licenses.

(2) The Private Hospitals Act, 1908-1938, shall, during the period for which any license is continued in force by the operation of subsection one of this section, apply to and in respect of the private hospital to which such license relates, subject to the following modifications:—

- (a) Such private hospital may be carried on, used or conducted for the purpose or purposes stated in the license and, whilst so carried on, used or conducted, shall be deemed to be carried on, used or conducted as a private hospital of the class or classes specified in the license.
 - (b) Where under section ten of the Private Hospitals Act, 1908-1938, the appointment of a resident assistant would be required, such appointment shall be made not later than one month after the commencement of this Act.
 - (c) The provisions of subsection three of section fifteen of the Private Hospitals Act, 1908-1938, shall not apply to or in respect of such private hospital.
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