



New South Wales

Private Health Facilities Bill 2007

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are to repeal the *Private Hospitals and Day Procedure Centres Act 1988* and to provide for the licensing of private health facilities and the conduct of those facilities.

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called 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 sets out the objects of the proposed Act.

Clause 4 defines certain words and expressions used in the proposed Act.

Part 2 Licensing of private health facilities

Division 1 Licensing standards

Clause 5 permits the regulations to prescribe standards in relation to the safety, care or quality of life of patients at private health facilities.

Division 2 Applications for and issue of licences

Clause 6 provides that a person who intends to conduct a private health facility may apply to the Director-General of the Department of Health (the *Director-General*) for a licence in respect of the facility.

Clause 7 provides that the Director-General must, after considering an application for a licence under the proposed Division, approve the application in principle or refuse the application. The Director-General may only refuse the application in certain circumstances.

Clause 8 provides that an approval in principle is effective for one year but that period may be extended.

Clause 9 provides that the Director-General must grant an application and issue a licence to an applicant if the Director-General has approved the application in principle and all conditions to which the approval in principle was subject have been complied with unless the approval in principle has expired or the applicant is not a fit and proper person to be a licensee.

Division 3 Provisions relating to licences

Clause 10 permits the regulations to prescribe different classes of private health facilities for the purposes of the proposed Act and sets out how fees under the proposed Act are to be determined if a facility falls into more than one class.

Clause 11 sets out certain particulars that are to be specified in a licence.

Clause 12 permits the Director-General to issue a licence subject to any conditions that are specified in the licence.

Clause 13 provides that a licence remains in force until cancelled under the proposed Act.

Clause 14 provides for the payment of an annual licence fee.

Clause 15 enables the Director-General to transfer the licence for a private health facility to a person who intends to take over conduct of the facility.

Clause 16 provides that a licensee of a private health facility must not cause or permit the facility to be altered or extended unless the Director-General has approved the alteration or extension.

Clause 17 provides for the Director-General to amend a licence for a private health facility.

Division 4 General provisions relating to applications

Clause 18 enables the Director-General to direct an applicant for a licence to provide any information that the Director-General requires to determine the application.

Clause 19 requires the Director-General to notify an applicant for a licence of certain matters if the Director-General refuses an application for a licence.

Clause 20 provides for the advertising of applications.

Clause 21 permits an applicant for a licence to amend an application.

Division 5 Review of decisions of Director-General

Clause 22 defines *decision of the Director-General* for the purposes of the proposed Division.

Clause 23 provides for the appointment of a Chairperson of Committees of Review.

Clause 24 provides for the review of decisions of the Director-General by the Minister. On receipt of an application for review, the Minister is to forward the application to the Chairperson of Committees of Review, who is to establish a Committee of Review to advise the Minister on the application.

Clause 25 provides for the composition of a Committee of Review.

Clause 26 provides for a Committee of Review to investigate a matter and make a recommendation to the Minister.

Clause 27 provides for the determination of an application for review by the Minister.

Clause 28 permits the Minister or a Committee of Review to which an application for review is referred to require the applicant to provide additional information or allow the Minister or members of the Committee to enter and inspect any premises to which the application for review relates.

Division 6 Suspension and cancellation of licences

Clause 29 permits the Director-General to suspend a licence for a private health facility if the licensee is in breach of a licensing standard and that breach is likely to cause a serious and substantial risk to the health or safety of patients at the facility or if the licensee does not have a medical advisory committee appointed in accordance with the proposed Act in respect of the facility.

Clause 30 sets out the circumstances in which the Director-General may cancel the licence for a private health facility without notice.

Clause 31 sets out the circumstances in which the Director-General may cancel the licence for a private health facility with notice.

Clause 32 provides that a licensee of a private health facility may apply to the Administrative Decisions Tribunal for a review of a decision of the Director-General to suspend or cancel the licence for the facility (except cancellation under proposed section 30).

Part 3 Conduct of private health facilities

Clause 33 creates an offence (maximum penalty \$550,000) if a person conducts a private health facility unless the private health facility is licensed and the person is the licensee.

Clause 34 provides for an executor or administrator to be taken to be the licensee of a private health facility if the licensee of the facility dies and he or she was the only licensee of the facility.

Clause 35 sets out the purposes for which licensed premises may be used and creates an offence (maximum penalty \$110,000) if the premises are used for other purposes.

Clause 36 provides that the licensee of a private health facility must not cause or permit the number of patients accommodated at any one time in a ward of the facility to exceed the number of patients specified in the licence in relation to that ward (maximum penalty \$110,000).

Clause 37 provides that the licensee of a private health facility must not conduct the facility unless a registered nurse is on duty at the facility at all times during which there is a patient at the facility and there is a registered nurse appointed as director of nursing of the facility who is responsible for the care of the patients at the facility (maximum penalty \$110,000).

Clause 38 requires the licensee of a private health facility to cause a register of patients to be kept at the facility (maximum penalty \$110,000).

Clause 39 requires a licensee of a private health facility to appoint a medical advisory committee for the facility to advise the licensee on the accreditation of medical practitioners and dentists to provide services at the facility, clinical practice at the facility and patient care and safety (maximum penalty \$110,000). Any such committee is to report to the Director-General on any repeated failure by the licensee of the facility to act on the committee's advice where that failure is likely to adversely impact on the health or safety of patients.

Clause 40 provides that the licensee of a private health facility must ensure that the director of nursing of the facility has ready access to a copy of the proposed Act and the regulations under the proposed Act (maximum penalty \$5,500).

Part 4 Root cause analysis teams

Clause 41 defines certain words and expressions used in the proposed Part.

Clause 42 provides that the licensee of a private health facility must appoint a root cause analysis team (*a team*) when a reportable incident involving the facility is reported to the licensee (maximum penalty \$11,000).

Clause 43 imposes certain restrictions on root cause analysis teams including a restriction on a team from conducting an investigation relating to the competence of an individual in providing services and a restriction on publication of identifying information about any provider or recipient of services in any report or other information made available by a team.

Clause 44 sets out the responsibilities of a root cause analysis team in relation to a reportable incident, including notification of the licensee and the chair of the medical advisory committee for the relevant facility if the reportable incident may relate to professional misconduct, unsatisfactory professional conduct or unsatisfactory professional performance. The team is also required to prepare a written report in relation to the reportable incident. The licensee commits an offence (maximum penalty \$5,500) if the licensee fails to provide the report of the team to the Director-General.

Clause 45 prevents a person who is or was a member of a root cause analysis team disclosing certain information (maximum penalty \$5,500).

Clause 46 provides that a person who is or was a member of a root cause analysis team and the licensee and chair of the medical advisory committee of the facility for which the team was appointed are neither competent nor compellable to give evidence.

Clause 47 provides that a notification or report of a root cause analysis team is not admissible as evidence in any proceedings that a procedure or practice is or was careless or inadequate.

Clause 48 protects a root cause analysis team, a member of a team or any person acting under the direction of a team from personal liability for anything done in good faith for the purposes of the exercise of the team's functions.

Clause 49 permits regulations to be made in relation to root cause analysis teams.

Part 5 Enforcement

Clause 50 enables the Director-General to appoint a member of staff of the Department, or a person of a class prescribed by the regulations, to be an authorised officer for the purposes of the proposed Act.

Clause 51 permits an authorised officer to enter and inspect premises for the purpose of determining whether there has been a contravention of the proposed Act, the regulations or a licence condition.

Clause 52 enables an authorised officer to give an improvement notice to a licensee of a private health facility requiring the licensee to take the action specified in the notice within the period (if any) specified in the notice for the purpose of ensuring that the licensee complies with the proposed Act or the regulations. An offence is created (maximum penalty \$22,000) for failing to comply with an improvement notice.

Clause 53 creates offences (maximum penalty \$22,000) of obstructing or delaying an authorised officer in the exercise of the officer's functions under the proposed Act and of failing to comply with requirement to produce a document, record or other thing.

Part 6 Private Health Facilities Advisory Committee

Clause 54 establishes the Private Health Facilities Advisory Committee (the *Advisory Committee*).

Clause 55 provides that the principal function of the Advisory Committee is to provide advice to the Minister and the Director-General on certain matters.

Clause 56 enables the Advisory Committee to establish sub-committees.

Part 7 Miscellaneous

Clause 57 permits the Director-General to direct the licensee of a private health facility to engage an expert to provide advice on the conduct of the facility if the Director-General has reason to believe that the licensee is not conducting the facility in accordance with the proposed Act, the regulations or a licence condition.

Clause 58 provides for the circumstances under which a practitioner, who has a pecuniary interest in a private health facility, must notify a patient of that interest.

Clause 59 provides that in any proceedings for an offence against a provision of the proposed Act or the regulations, the onus of proving that a person had a reasonable excuse (as referred to in the provision) lies with the defendant.

Clause 60 enables the Director-General to issue certificates in relation to licensed private health facilities and gives evidentiary status to such a certificate.

Clause 61 provides for the service of documents under the proposed Act.

Clause 62 provides for proceedings for offences in relation to officers of corporations.

Clause 63 makes provision for proceedings for an offence under the proposed Act or regulations to be dealt with summarily before a Local Court.

Clause 64 enables the Director-General to delegate his or her functions under the proposed Act.

Clause 65 enables the Governor to make regulations for the purposes of the proposed Act.

Clause 66 is a formal provision that gives effect to the savings, transitional and other provisions set out in Schedule 4.

Clause 67 is a formal provision that gives effect to the amendments to the Acts and instruments set out in Schedule 5.

Clause 68 provides for the review of proposed section 7 (4) (c) (i) in 5 years.

Clause 69 repeals the *Private Hospitals and Day Procedure Centres Act 1988*.

Schedule 1 Provisions relating to Chairperson of Committees of Review

Schedule 1 sets out provisions relating to the Chairperson of Committees of Review.

Schedule 2 Provisions relating to Committees of Review

Schedule 2 sets out provisions relating to Committees of Review.

Schedule 3 Constitution and procedure of Private Health Facilities Advisory Committee

Schedule 3 sets out provisions relating to the constitution and procedure of the Private Health Facilities Advisory Committee.

Schedule 4 Savings, transitional and other provisions

Schedule 4 contains savings, transitional and other provisions consequent on the proposed Act and the repeal of the *Private Hospitals and Day Procedure Centres Act 1988*.

Schedule 5 Amendment of other Acts and instruments

Schedule 5 amends a number of other Acts and instruments as a consequence of the proposed Act.