

MENTAL HEALTH.

No. 32 of 1976.

AN ACT to amend the Mental Health Act, 1962-1973.

[Assented to 9th June, 1976.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the *Mental Health Act Amendment Act, 1976.* Short title and citation.
 - (2) In this Act the Mental Health Act, 1962-1973 is referred to as the principal Act. Reprinted as approved for reprint 18th November, 1974.
 - (3) The principal Act as amended by this Act may be cited as the Mental Health Act, 1962-1976. Commencement.
2. This Act shall come into operation on a date to be fixed by proclamation.

Section 3
amended.

3. Section 3 of the principal Act is amended by adding after the passage "Division 3—General Provisions as to Hospitals, ss. 25-26" the passage—

PART IIIA.—PRIVATE SERVICES OTHER THAN HOSPITALS.

Division 1—General, ss. 26A-26C.

Division 2—Approved Private Psychiatric Hostels, ss. 26D-26P.

Division 3—Approved Private Hostels, Day Activity Centres and Sheltered Workshops, ss. 26Q-26T.

Division 4—Regulations, s. 26U.

Section 5
amended.

4. Section 5 of the principal Act is amended—

- (a) by adding after the word "Act" in line four of the interpretation "approved hospital" the passage "but does not include an approved private psychiatric hostel, approved private hostel, approved private day activity centre or approved private sheltered workshop within the meaning of Part IIIA of this Act" and
- (b) by adding immediately before the word "means" in line one of the interpretation "Board" the passage ", except in Part IIIA,".

Headings
and
section 26A
added.

5. The principal Act is amended by adding immediately after section 26 the following headings and section—

PART IIIA.—PRIVATE SERVICES OTHER THAN HOSPITALS.

Division 1—General.

Interpre-
tation.

26A. In this Part, unless the context otherwise requires—

"approved" means approved under this Part;

- “attender” means an intellectually handicapped person who attends a private day activity centre or a private sheltered workshop;
- “intellectual handicap” means an intellectual defect, not being a mental illness, affecting mental capacity or health, and derivatives of the term have corresponding meanings;
- “licensed” means licensed under this Part;
- “private” means not established or operated by or on behalf of the Department or any agency or instrumentality of the Crown in right of the State or the Commonwealth;
- “private day activity centre” means a private non-residential establishment providing training for intellectually handicapped persons who do not attend private or governmental sheltered workshops;
- “private hostel” means a private hostel or like establishment providing residential accommodation and care for intellectually handicapped persons;
- “private psychiatric hostel” means a private establishment or premises in which three or more persons, not being members of the proprietor’s family, and who are socially dependent, are received and lodged;
- “private sheltered workshop” means a private establishment or premises wherein intellectually handicapped persons who are unable to obtain employment in the normal work force are employed;
- “Psychiatrist Superintendent” means a Psychiatrist Superintendent of the Community Psychiatric Division of the Department;

“resident”, in relation to a private hostel, means an intellectually handicapped person who is accommodated in the private hostel;

“resident”, in relation to a private psychiatric hostel, means a socially dependent person who is residing at the hostel and is—

- (a) not dangerous to himself or other persons;
- (b) not physically infirm or requiring general nursing care; and
- (c) capable of managing himself with minimal supervision and not requiring reception or detention in an approved hospital;

“socially dependent”, in relation to a person, means socially dependent by reason of a mental disorder. .

Section 26B added.

6. The principal Act is amended by adding a section as follows—

Premises not to be operated unless approved.

26B. A person shall not conduct or cause or permit to be conducted any establishment or premises as—

- (a) a private psychiatric hostel;
- (b) a private hostel;
- (c) a private day activity centre; or
- (d) a private sheltered workshop,

unless the premises are approved for the purpose under this Part and the appropriate class of licence for the conduct of the establishment or premises has been issued to that person and is in force under this Act. .

7. The principal Act is amended by adding a section as follows—

Section 26C added.

26C. (1) The Minister may from time to time on the recommendation of the Director, by notice in writing, require any person to whom a licence has been issued under this Part to produce to the Minister within such time as is specified in the notice a properly audited statement of the financial accounts relating to the business of conducting the approved establishment or premises to which the licence relates, including income and expenditure accounts and balance sheets.

Minister may require production of financial records.

(2) A person shall not fail to comply with a requirement contained in a notice given under subsection (1) of this section. .

8. The principal Act is amended by adding a heading and section as follows—

Heading and section 26D added.

Division 2—Approved Private Psychiatric Hostels.

26D. (1) Any person may, either on his own behalf or on behalf of any body corporate or unincorporate, apply to the Minister in a form approved by the Minister, for a private psychiatric hostel to be approved under this Division.

Approval of private psychiatric hostels.

(2) If the Minister, after considering a report thereon from the Director, together with any other report he may require, is satisfied—

- (a) that the proposed premises are suitable to be approved;
- (b) that the applicant is a fit and proper person to conduct an approved private psychiatric hostel; and
- (c) that arrangements for the management, equipment and staffing of the premises are satisfactory,

he may, subject to any conditions he thinks fit to impose, declare the private psychiatric hostel to be an approved private psychiatric hostel, and grant to an applicant therefor or other person (in this Division called the "licence holder") a licence to conduct the premises as an approved private psychiatric hostel.

(3) Unless revoked or surrendered, every declaration of approval and licence issued under this section is valid for one year and may be renewed annually until revoked or surrendered.

(4) Where a licence issued under this section is revoked or surrendered or the licence holder dies or becomes incapable of conducting the hostel, the Minister may issue a licence to some other approved person; but unless a licence is issued to such other person within one month of the revocation or surrender or being no longer in operation by reason of the death or incapacity of the licence holder or within such further period as the Minister may allow, the hostel in respect of which it was issued shall, at the termination of that period, cease to be an approved private psychiatric hostel, and the Director may thereupon transfer and convey any resident therein to another approved private psychiatric hostel, or if the resident is subject to section forty-three, to the appropriate approved hospital.

(5) A declaration of approval and a licence issued under this section shall, unless issued in respect of a hostel not conducted for profit, be issued only on the payment of the prescribed fee. .

Section 26E
added.

9. The principal Act is amended by adding a section as follows—

Revocation
of
approval
or licence.

26E. (1) Where at any time after considering the report of the Director the Minister is satisfied that a hostel is no longer

suited to be a hostel approved under this Division, or that the person to whom a licence is issued is no longer a fit person, or able to conduct an approved private psychiatric hostel, he may, subject to subsection (2) of this section, revoke the declaration of approval or the licence in respect of that hostel as he thinks fit.

(2) A declaration of approval or licence shall not be revoked until one month after a copy of the report mentioned in subsection (1) of this section has been delivered to the licence holder, together with a notice of the Minister's intention to consider the revocation at the end of that period.

10. The principal Act is amended by adding a section as follows—

Section 26F added.

26F. (1) The Governor may, out of moneys appropriated by Parliament, make grants and give annual subsidies towards the cost of the maintenance of a private psychiatric hostel approved under this Division.

Power to make grants or subsidies.

(2) Notwithstanding the provisions of any other Act, the making or giving of a grant or subsidy to a hostel under this section does not affect the status of that hostel as a private hostel.

(3) A grant or subsidy shall not be made or given to a hostel approved under this Division unless the licence holder agrees to conduct the hostel in accordance with any regulations or conditions prescribed for approved private psychiatric hostels, and to comply with the directions of the Minister.

(4) A licence holder who fails to comply with a prescribed condition or to comply with a direction of the Minister, is guilty of an offence against this Act.

Section 26G
added.

11. The principal Act is amended by adding a section as follows—

Duty of
Psychiatrist
Super-
intendent.

26G. (1) The Psychiatrist Superintendent shall ensure that adequate medical care is available to residents.

(2) Nothing under this section relieves a licence holder of the responsibility for the proper conduct of the approved private psychiatric hostel in respect of which his licence is issued.

Section 26H
added.

12. The principal Act is amended by adding a section as follows—

Board of
Visitors.

26H. (1) There shall be a Board of Visitors (in this Part referred to as a Board) for every approved private psychiatric hostel, but—

- (a) one Board may be appointed for any number of hostels not exceeding ten; and
- (b) any person may be appointed a member of more than one Board.

(2) Subject to subsection (3) of this section, each Board shall consist of five members, including a chairman appointed by the Minister, and of those members—

- (a) one shall be a representative of the Western Australian Mental Health Association;
- (b) one shall be a person who is a member of a voluntary community service organisation; and
- (c) one shall represent the interests of the local authority or local authorities within the meaning of the Local Government Act, 1960, in which the hostel or hostels is or are situated.

(3) A person who is a member of the Department or who is directly or indirectly interested in an approved private psychiatric hostel shall not be a member of a Board. .

13. The principal Act is amended by adding a section as follows— Section 26I added.

26I. (1) Subject to subsection (2) of this section and section twenty-six J, a person appointed a member of a Board holds office for three years but is eligible for re-appointment. Tenure of office.

(2) A person appointed to fill a vacancy caused otherwise than by the retirement of a member on the expiration of his term of office, holds office only for the unexpired portion of the term of the office of the member in whose place he is appointed. .

14. The principal Act is amended by adding a section as follows— Section 26J added.

26J. (1) A casual vacancy in the office of member of a Board occurs if a member— Casual vacancy.

- (a) dies;
- (b) tenders his resignation from the office, in writing addressed to the Minister;
- (c) absents himself from three consecutive meetings of the Board, without having obtained leave of absence from the Board;
- (d) is removed from office by the Minister;
or
- (e) becomes incapable of performing his duties as a member.

(2) The Minister may appoint a member to fill any casual vacancy.

(3) A Board may grant leave of absence to a member for such term and upon such conditions as the Board determines.

(4) A Board may act notwithstanding there being a vacancy or vacancies in its membership or there being any irregularity in, or in connection with, the appointment of a member; but a meeting of the Board is not valid unless there is a quorum present, as provided by section twenty-six L.

Section 26K
added.

15. The principal Act is amended by adding a section as follows—

Chairman.

26K. (1) The Minister may appoint one of the members of a Board to be chairman.

(2) The member so appointed holds office as chairman for the term of his office as member, unless the appointment is sooner determined by the Minister.

(3) Where a member ceases to hold office as chairman before the expiration of the term for which he is appointed, another member may be appointed chairman by the Minister for the unexpired portion of the term of office of the latter appointee.

(4) The chairman of a Board may, by notice in writing addressed to the Minister, resign his office as chairman; and where at any time the chairman ceases to be a member he ceases to be chairman.

(5) Where the chairman is absent from any meeting, the members present at the meeting shall elect a member from among those present to preside at the meeting and the person so elected has, during the absence of the chairman, all the powers of the chairman. .

16. The principal Act is amended by adding a section as follows—

Section 26L
added.

26L. (1) A Board shall conduct its proceedings in such manner as may be prescribed and, until prescribed, as the Board determines, but in any case—

Proceedings
of Board.

- (a) three members constitute a quorum for the conduct of business;
- (b) each member, including the person presiding at a meeting, is entitled to one vote only on the determination of any question; and
- (c) the majority of the votes of the members present determines any question and, in the event of there being an equality of the votes in favour of, and against, any proposal, the question shall be resolved in the negative.

(2) A meeting of a Board may be summoned by the chairman or any three members.

17. The principal Act is amended by adding a section as follows—

Section 26M
added.

26M. The members of a Board shall receive, out of moneys appropriated by Parliament, such fees as may be prescribed, and every member is entitled to recover any travelling and other expenses reasonably incurred by him in the performance of his duties.

Remunera-
tion of
members.

18. The principal Act is amended by adding a section as follows—

Section 26N
added.

26N. A Board is responsible to, and subject to the control of, the Minister and no other person.

Board
subject to
Minister
only.

Section 26P
added.

19. The principal Act is amended by adding a section as follows—

Powers and
duties of
Board.

26P. (1) The Board of an approved private psychiatric hostel or a majority of the members—

- (a) shall visit that hostel at least once in every two months and at such other times as the Minister may direct;
- (b) shall be present at the hostel at least once in every two months for the purpose of interviewing such of the residents there as may wish to see the Board and of receiving complaints or recommendations affecting the welfare of residents;
- (c) may from time to time interview any resident;
- (d) may make such enquiries, examinations and inspections as it may from time to time think necessary in the interests of residents; and
- (e) shall, at least once in every four months, inspect every part of the hostel where residents are accommodated or that appertains to the welfare of residents.

(2) A Board may, with or without previous notice and at such hours of the day or night and for such length of time as it thinks fit, but so as not unduly to interfere with the administration thereof, enter and examine any hostel for which it is appointed.

(3) A Board shall enter in its minutes a record of the proceedings and transactions of every meeting of, and inspection by, the Board and may, whenever it thinks fit, and shall whenever required so to do by the Minister, transmit a copy of its minutes, and may make any recommendations in so far as the welfare of residents or the management of a hostel is concerned, to the Minister.

(4) A Board may order a resident to be examined by a psychiatrist selected by it and that psychiatrist is thereupon authorised to carry out the examination and shall submit a report of the result thereof to the Board which shall furnish a copy of the report to the Minister and to the Director. .

20. The principal Act is amended by adding a heading and section as follows—

Heading
and
section 26Q
added.

*Division 3—Approved Private Hostels, Day Activity Centres
and Sheltered Workshops.*

26Q. (1) Any person may, either on his own behalf or on behalf of any body corporate or unincorporate, apply to the Minister in a form approved by the Minister, for a private hostel, day activity centre or sheltered workshop to be approved under this Division.

Approval
of private
hostels,
day
activity
centres
and
sheltered
workshops.

(2) If the Minister, after considering a report thereon from the Director, together with any other report he may require, is satisfied—

- (a) that the proposed premises are suitable to be approved;
- (b) that the applicant is a fit and proper person to conduct an approved private hostel, day activity centre or sheltered workshop, as the case requires; and
- (c) that arrangements for the management, equipment and staffing of the premises are satisfactory,

he may, subject to any conditions he thinks fit to impose, declare the private hostel, day activity centre or sheltered workshop, as the case requires, to be approved as such for the purposes of this Part, and grant to an applicant therefor or other person (in this Division called the "licence holder") a licence to conduct the premises as an approved private hostel, day activity centre or sheltered workshop.

(3) Unless revoked or surrendered, every declaration of approval and licence issued under this section is valid for one year and may be renewed annually until revoked or surrendered.

(4) Where a licence issued under this section is revoked or surrendered or the licence holder dies or becomes incapable of conducting the hostel, day activity centre or sheltered workshop, the Minister may issue a licence to some other approved person; but unless a licence is issued to such other person within one month of the revocation or surrender or being no longer in operation by reason of the death or incapacity of the licence holder or within such further period as the Minister may allow, the hostel, day activity centre or sheltered workshop in respect of which it was issued shall, at the termination of that period, cease to be approved for the purposes of this Act, and the Director may thereupon transfer and convey any resident or attender therein to another approved private hostel, day activity centre or sheltered workshop.

(5) An approval and licence issued under this section shall, unless issued in respect of a hostel, day activity centre or sheltered workshop not conducted for profit, be issued only on the payment of the prescribed fee. .

Section 26R
added.

21. The principal Act is amended by adding a section as follows—

Revocation
of
approval of
licence.

26R. (1) Where at any time after considering the report of the Director the Minister is satisfied that a hostel, day activity centre or sheltered workshop is no longer suited to be approved as such under this Division, or that the person to whom a licence is issued is no longer a fit person, or able to conduct an approved private hostel, day activity centre or sheltered workshop, he may, subject to

subsection (2) of this section, revoke the declaration of approval or the licence in respect of that hostel, day activity centre or sheltered workshop as he thinks fit.

(2) A declaration of approval or a licence shall not be revoked until one month after a copy of the report mentioned in subsection (1) of this section has been delivered to the licence holder, together with a notice of the Minister's intention to consider the revocation at the end of that period. .

22. The principal Act is amended by adding a section as follows—

Section 26S added.

26S. (1) The Governor may, out of moneys appropriated by Parliament, make grants and give annual subsidies towards the cost of the maintenance of a private hostel, day activity centre or sheltered workshop approved under this Division.

Power to make grants or subsidies.

(2) Notwithstanding the provisions of any other Act, the making or giving of a grant or subsidy to a hostel, day activity centre or sheltered workshop under this section does not affect its status as a private hostel, day activity centre or sheltered workshop.

(3) A grant or subsidy shall not be made or given to a hostel, day activity centre or sheltered workshop approved under this Division unless the licence holder agrees to conduct the hostel, day activity centre or sheltered workshop in accordance with any regulations or conditions prescribed for approved private hostels, day activity centres or sheltered workshops, and to comply with the directions of the Minister.

(4) A licence holder who fails to comply with a prescribed condition or to comply with a direction of the Minister, is guilty of an offence against this Act. .

Section 26T
added.

23. The principal Act is amended by adding a section as follows—

Responsi-
bility of
licence
holder.

26T. The licence holder is responsible to the Minister for the proper conduct of the hostel, day activity centre or sheltered workshop in respect of which the licence is issued. .

Heading
and
section 26U
added.

24. The principal Act is amended by adding a heading and section as follows—

Division 4—Regulations.

Regula-
tions.

26U. (1) The Governor may make such regulations as he thinks fit for carrying out and giving effect to this Part.

(2) Without limiting the generality of subsection (1) of this section, regulations may be made—

- (a) making provision for the payment of fees;
- (b) prescribing standards of construction and hygiene of, and the fittings and equipment to be provided in, premises approved or for which approval is sought under this Part;
- (c) providing for the safety, health and welfare of residents in, and attenders at, premises approved under this Part, and in particular, and without limiting the generality of the foregoing—
 - (i) ensuring proper supervision of the conduct of such premises;
 - (ii) requiring persons supervising the conduct of such premises to be approved by the Director;
 - (iii) requiring persons employed to supervise the conduct of such premises and the staff of such premises to undergo prescribed courses of training;

- (iv) prescribing minimum nutritional standards for food supplied to residents at such premises;
 - (v) prescribing, in relation to residents at approved private psychiatric hostels or approved private hostels who are in receipt of pension payable under laws of the Commonwealth, the minimum proportion of such pension that is to be paid or remitted to the resident for his own use;
 - (d) prescribing returns and other particulars to be furnished to the Director;
 - (e) providing that any contravention of the regulations shall be an offence and imposing penalties not exceeding one hundred dollars for any such offence. .
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