



SUPPORTED RESIDENTIAL FACILITIES ACT 1992

No. 90 of 1992

SUMMARY OF PROVISIONS

PART 1 PRELIMINARY

- | | |
|----------------|--------------------|
| Section | |
| 1. | Short title |
| 2. | Commencement |
| 3. | Interpretation |
| 4. | Application of Act |
| 5. | Act to bind Crown |

PART 2 GENERAL OBJECTS AND PRINCIPLES

- | | |
|----|---------------------------|
| 6. | Objects of Act |
| 7. | Principles to be observed |

PART 3 ADMINISTRATION DIVISION 1—GENERAL

- | | |
|-----|-----------------------|
| 8. | Role of Minister |
| 9. | Role of councils |
| 10. | Licensing authorities |

DIVISION 2—THE SUPPORTED RESIDENTIAL FACILITIES ADVISORY COMMITTEE

- | | |
|-----|---|
| 11. | Establishment of the Committee |
| 12. | Appointment of presiding member |
| 13. | Conditions of office |
| 14. | Allowances and expenses |
| 15. | Procedures at meetings of the Committee |
| 16. | Personal interest of member |
| 17. | Functions of the Committee |
| 18. | Annual Report |

DIVISION 3—ASSESSORS

- 19. Appointment and selection of assessors
- 20. Associated provisions relating to exercise of jurisdiction by the Court

DIVISION 4—AUTHORIZED OFFICERS

- 21. Appointment of authorized officers
- 22. Powers of authorized officers

PART 4

LICENSING SCHEME

DIVISION 1—GENERAL LICENSING PROVISIONS

- 23. Requirement to be licensed
- 24. Application for a licence
- 25. Matters to be considered in granting a licence
- 26. Term of licence
- 27. Application for renewal of a licence
- 28. Matters to be considered in renewing a licence
- 29. Licence conditions
- 30. Transfer and surrender of licences
- 31. Cancellation of licences

DIVISION 2—LICENSING APPEALS

- 32. Appeal against a decision or order

DIVISION 3—SUPPLEMENTARY PROVISIONS

- 33. Existing facilities
- 34. Appointment of manager
- 35. Death of licensee
- 36. Display of notice

PART 5

RIGHTS OF RESIDENTS

DIVISION 1—DOCUMENTATION

- 37. Prospectuses
- 38. Resident contracts
- 39. Rescission of resident contract by proprietor
- 40. Service plans

DIVISION 2—ADDITIONAL ASSISTANCE

- 41. Extension of care
- 42. Extension of care—residential-only premises

DIVISION 3—SETTLEMENT OF DISPUTES

- 43. Disputes, etc.
- 44. Right of appeal
- 45. Non-derogation

PART 6

MISCELLANEOUS

- 46. Delegation of resident's rights
- 47. Attendance by health service providers, etc.
- 48. Orderly conduct about facilities, etc.
- 49. Complaints
- 50. No contracting out
- 51. Confidential information
- 52. Prosecutions
- 53. Continuing offences
- 54. Default notices
- 55. Expiation of offences
- 56. Indemnity fund
- 57. Regulations
- 58. Amendment of the Mental Health Act
- 59. Amendment of the South Australian Health Commission Act

APPENDIX



ANNO QUADRAGESIMO PRIMO

ELIZABETHAE II REGINAE

A.D. 1992

No. 90 of 1992

An Act to make provision in relation to the care of persons in certain residential facilities; to make related amendments to the Mental Health Act 1977 and the South Australian Health Commission Act 1976; and for other purposes.

[Assented to 10 December 1992]

The Parliament of South Australia enacts as follows:

PART I

PRELIMINARY

Short title

1. This Act may be cited as the *Supported Residential Facilities Act 1992*.

Commencement

2. (1) Subject to subsection (2), this Act will come into operation on a day to be fixed by proclamation.

(2) Sections 58 and 59 will come into operation three months after the commencement of section 33.

Interpretation

3. In this Act, unless the contrary intention appears—

“the Administrative Appeals Court” means the Administrative Appeals Division of the District Court:

“the Advisory Committee” means the Supported Residential Facilities Advisory Committee established under Part 3:

“authorized officer” means an authorized officer appointed under this Act:

“business day” means any day except Saturday, Sunday or a public holiday:

“controlling authority” means a controlling authority established by one or more councils under the *Local Government Act 1934*:

“council” means a municipal or district council:

“immediate family” of a person means any of the following:

(a) a spouse (including a *de facto* spouse);

(b) a brother or sister;

- (c) a parent;
- (d) a grandparent;
- (e) a child or grandchild;
- (f) an uncle or aunt;
- (g) a nephew or niece,

whether the relationship is of whole blood or half-blood or by affinity:

“licensing authority” *see section 10*:

“personal care services” means any of the following:

- (a) the provision of nursing care;
- (b) assistance or supervision in—
 - (i) bathing, showering or personal hygiene;
 - (ii) toileting or continence management;
 - (iii) dressing or undressing;or
 - (iv) consuming food,

(but not including assistance to a person who can undertake the relevant activity himself or herself but who needs some form of preliminary or incidental assistance to enable him or her to do so);

- (c) the provision of direct physical assistance to a person with mobility problems (but not including assistance to a person who can undertake the relevant activity himself or herself but who needs some form of preliminary or incidental assistance to enable him or her to do so);
 - (d) the management (or assistance with the management) of medication;
 - (e) the provision of substantial rehabilitative or developmental assistance;
- or
- (f) the management of personal finances,

but does not include—

- (g) the provision of routine advice or information;
- (h) the provision of services to a person on a short-term basis in response to an accident or some other unanticipated or exceptional circumstance;
- (i) the provision of services to a person on a short-term basis while arrangements are being made for the person to be provided with personal care services in alternative premises;
- (j) any other matter excluded from the ambit of this definition by the regulations:

“proprietor” in relation to a supported residential facility means the owner of the undertaking carried on at the facility:

“representative” of a person means—

- (a) a person appointed in writing by that person to act as his or her representative for the purposes of this Act;

or

(b) any person who is otherwise entitled at law to act on behalf of that person:

“resident contract” means a contract between the proprietor (or former proprietor) of a supported residential facility and a resident relating to—

- (a) the provision of personal care services to the resident;
- (b) the terms and conditions of residency;
- (c) such other matters relevant to the care or accommodation of the resident agreed between the parties:

“residential-only premises” means—

(a) premises used as a boarding-house or lodging-house that are not required to be licensed under this Act;

or

(b) premises that are of a class prescribed by regulation for the purposes of this definition:

“supported residential facility” or **“facility”** means premises at which, for monetary or other consideration (but whether or not for profit), residential accommodation is provided or offered together with personal care services (other than for members of the immediate family of the proprietor of the facility).

Note: For definition of divisional penalties see Appendix.

Application of Act

4. (1) Subject to this section, this Act applies to supported residential facilities established either before or after the commencement of this Act.

(2) This Act does not apply to or in relation to—

(a) any premises that form part of an educational institution or college;

(b) any premises that form part of—

(i) a recognized hospital within the meaning of the *South Australian Health Commission Act 1976*;

or

(ii) a private hospital licensed under the *South Australian Health Commission Act 1976*;

(c) any premises that form part of—

(i) a home used for the provision of foster care by a foster parent approved under the *Community Welfare Act 1972*;

or

(ii) a facility established or licensed under the *Community Welfare Act 1972* to the extent that personal care services are provided to children under that Act;

(d) any premises where not more than two persons are provided with personal care services;

or

(e) any premises where services are provided by an agency or organization of a prescribed kind, or in prescribed circumstances.

(3) The Minister may, by notice in the *Gazette*, confer exemptions from this Act or specified provisions of this Act—

(a) on specified persons or persons of a specified class;

or

(b) in relation to specified facilities or facilities of a specified class.

(4) Without limiting the operation of subsection (3), the Minister may, by notice in the *Gazette*, confer an exemption from this Act in relation to Commonwealth subsidised nursing homes or aged care hostels if he or she is satisfied as to the adequacy of Commonwealth monitoring of outcome standards for residents.

(5) Subsection (4) is subject to the qualification that the Minister may, by notice in the *Gazette*, determine that an exemption conferred under that subsection does not apply in relation to particular premises specified in the notice.

(6) The Minister may, at any time, by further notice in the *Gazette*, revoke a determination under subsection (5).

(7) An exemption under subsection (3) or (4) may be granted by the Minister on such conditions as the Minister thinks fit.

(8) The Minister may, at any time, by further notice in the *Gazette*—

(a) vary or revoke an exemption under subsection (3) or (4);

(b) vary or revoke a condition under subsection (7).

(9) A person who contravenes or fails to comply with a condition of an exemption is guilty of an offence.

Penalty: Division 5 fine.

Act to bind Crown

5. (1) Subject to subsection (2), this Act binds the Crown not only in right of the State but also (so far as the legislative power of the State extends) in all its other capacities.

(2) No criminal liability attaches to the Crown itself (as distinct from its agencies or instrumentalities) under this Act.

PART 2

GENERAL OBJECTS AND PRINCIPLES

Objects of Act

6. The objects of this Act are as follows:

(a) to establish standards for the provision of personal care services in supported residential facilities in this State;

(b) to recognize and protect the rights of persons who reside in supported residential facilities;

(c) to ensure that a resident or prospective resident of a supported residential facility has ready access to information about the scope, quality and cost of care within the facility;

(d) to regulate the responsibilities of service providers in supported residential facilities;

and

(e) to ensure accountability in relation to supported residential facilities.

Principles to be observed

7. The following principles must be applied in relation to the management and administration of supported residential facilities:

- (a) residents are entitled to high quality care, to their choice of medical practitioner or other provider of health services, and to an informed choice in the provision of appropriate care;
- (b) residents are, having regard to their needs and the type of service offered at the particular facility, entitled to receive reasonable levels of nutrition, comfort and shelter in a home-like environment;
- (c) services should be provided in a safe physical environment;
- (d) residents are entitled to be treated with dignity and respect and afforded reasonable degrees of privacy;
- (e) residents are entitled to independence and freedom of choice, including—
 - (i) the right to choose and pursue friendships with members of either sex;
 - (ii) the right to practice religious and cultural customs;and
 - (iii) the right to participate in activities of their choosing,(so long as they do not unreasonably infringe upon the rights of others);
- (f) residents are entitled to manage their own affairs (wherever possible) and must not be subjected to exploitation of their financial or other assets;
- (g) residents are entitled to freedom to comment (either publicly or confidentially) to persons of their choice about the provision of accommodation or personal care services.

PART 3**ADMINISTRATION****DIVISION 1—GENERAL****Role of Minister**

8. (1) The Minister has the following functions:

- (a) to promote the objects of this Act throughout the State;
- (b) to be responsible for licensing certain supported residential facilities;
- (c) to undertake the administration and enforcement of this Act outside council areas;
- (d) such other functions as are assigned to the Minister by this Act.

(2) The Minister may, by instrument in writing, delegate any of the Minister's powers or functions under this Act (including a power or function as a licensing authority under this Act)—

- (a) to a particular person or body;

or

- (b) to the person for the time being occupying a particular office or position.

(3) A delegation under subsection (2)—

- (a) may be absolute or conditional;

(b) does not derogate from the power of the Minister to act personally in any matter,
and

(c) is revocable at will by the Minister.

(4) In any legal proceedings an apparently genuine certificate, purportedly signed by the Minister, containing particulars of a delegation under this section will, in the absence of proof to the contrary, be accepted as proof that the delegation was made in accordance with the particulars.

Role of councils

9. (1) A council has the following functions:

(a) to undertake the administration and enforcement of this Act within its area;

(b) to be responsible for licensing supported residential facilities that are situated within the area of the council;

(c) such other functions as are assigned to a council by this Act.

(2) A council may, by instrument in writing, delegate any of its powers or functions under this Act (including a power or function as a licensing authority under this Act)—

(a) to a controlling authority;

(b) to an authorized officer;

(c) to an officer or employee of the council or to the person for the time being occupying a particular office or position in the council;

or

(d) with the approval of the Minister, to any other person or body.

(3) A delegation under subsection (2)—

(a) may be absolute or conditional;

(b) may authorize the delegate to subdelegate any power or function;

(c) does not derogate from the power of the council to act in any matter;

and

(d) is revocable at will by the council.

(4) In any legal proceedings an apparently genuine certificate, purportedly signed by the Chief Executive Officer of a council, containing particulars of a delegation under this section will, in the absence of proof to the contrary, be accepted as proof that the delegation was made in accordance with the particulars.

(5) If, in the opinion of the Minister, a council has failed to discharge its duties under this Act, the Minister must consult with the council in relation to the matter.

(6) If, after taking action to comply with subsection (5), the Minister considers that the matter remains unresolved, the Minister may take such action as appears appropriate.

(7) Without limiting the generality of subsection (6), the Minister may, by notice in the *Gazette*, withdraw powers or functions under this Act from a council and vest them in a person or body specified by the Minister.

(8) Before taking action under subsection (7)—

(a) the Minister must, by notice in writing—

- (i) inform the council of its proposed course of action (setting out the grounds on which the action is proposed);
 - and
 - (ii) invite the council to make written submissions in relation to the matter;
- and
- (b) if the council so requests in written submissions to the Minister—the Minister must discuss the matter with a delegation representing the council.
- (9) The Minister must, as soon as is reasonably practicable after publishing a notice under subsection (7), furnish the council with written reasons for the Minister's decision.
- (10) The Minister may, by further notice in the *Gazette*—
- (a) transfer any power or function withdrawn under subsection (7) to another person or body specified in the notice;
 - (b) revoke a previous notice under this section.
- (11) Any expenses reasonably incurred by a person or body in exercising or performing powers or functions vested under this section may be recovered as a debt from the relevant council in a court of competent jurisdiction.

Licensing authorities

10. The licensing authority for a particular supported residential facility is as follows:

- (a) subject to paragraphs (b) and (c), the council for the area in which the facility is situated is the licensing authority;
- (b) subject to paragraph (c), where the licensing powers of the council have been withdrawn, the person or body in which the powers are vested is the licensing authority;
- (c) where—
 - (i) the facility is situated outside the area of a council;
 - or
 - (ii) the proprietor of the facility is a council,the Minister is the licensing authority.

DIVISION 2—THE SUPPORTED RESIDENTIAL FACILITIES ADVISORY COMMITTEE

Establishment of the Committee

11. (1) The *Supported Residential Facilities Advisory Committee* is established.
- (2) The Advisory Committee consists of 13 members appointed by the Governor as follows:
- (a) two will be persons nominated by the Minister, being persons who have had extensive experience in acting as the proprietor or manager of a supported residential facility;
 - (b) three will be persons selected by the Minister from panels of three persons nominated, at the invitation of the Minister, by organizations that act as advocates for the interests of people who are elderly, disabled or intellectually impaired;
 - (c) one will be a person selected by the Minister from a panel of three persons nominated by the United Trades and Labor Council;

- (d) four will be persons nominated by the Local Government Association of South Australia, subject to the qualification that—
- (i) one must have experience in inspecting and monitoring supported residential facilities;
 - (ii) one must have experience in the provision of community care services;
- and
- (iii) one must be a person who is suitable to represent the interests of people who live outside the Adelaide metropolitan area;
- (e) one will be a legally qualified medical practitioner nominated by the Minister;
- (f) one will be a person nominated by the Minister after consultation with the South Australian Health Commission;
- and
- (g) one will be a person nominated by a Commonwealth Department selected by the Minister for the purposes of this provision on the basis that the Department is interested in the provision of personal care services within the community.

(3) At least one member of the Advisory Committee must be a woman and at least one member must be a man.

(4) The Governor may appoint suitable persons to be deputies to the members of the Advisory Committee (and a deputy to a member must be appointed in the same manner as the member is appointed and must have the same qualifications, if any, for membership of the committee as the member).

(5) A deputy may, in the absence of a member, act as a member of the Advisory Committee.

Appointment of presiding member

12. The Minister must appoint a member (the presiding member) to preside at meetings of the Advisory Committee and another member (the deputy presiding member) to preside at meetings of the Advisory Committee in the absence of the presiding member.

Conditions of office

13. (1) Subject to this section, a member of the Advisory Committee will be appointed for a term not exceeding two years and will, on the expiration of a term of office, be eligible for reappointment.

(2) A member may be removed from office by the Governor—

(a) for misconduct;

(b) for neglect of duty;

(c) for incompetence;

or

(d) for mental or physical incapacity to carry out duties of office satisfactorily.

(3) The office of a member becomes vacant if the member—

(a) dies;

(b) completes a term of office and is not reappointed;

(c) resigns by written notice addressed to the Minister;

or

(d) is removed from office by the Governor under subsection (2).

(4) Upon the office of a member becoming vacant, a person must be appointed in accordance with this Act to the vacant office.

Allowances and expenses

14. A member of the Advisory Committee is entitled to such allowances and expenses as the Minister may determine.

Procedures at meetings of the Committee

15. (1) The presiding member will preside at meetings of the Advisory Committee or, in his or her absence, the deputy presiding member will preside or, in the absence of both of them, a member chosen by those present will preside.

(2) Subject to subsection (3), the Advisory Committee may act notwithstanding vacancies in its membership.

(3) Seven members constitute a quorum of the Advisory Committee and no business may be transacted at a meeting of the committee unless a quorum is present.

(4) Each member present at a meeting of the Advisory Committee is entitled to one vote on a matter arising for decision at the meeting and, in the event of an equality of votes, the person presiding is entitled to a second, or casting vote.

(5) A decision carried by a majority of the votes cast by the members present at a meeting of the Advisory Committee is a decision of the committee.

(6) Subject to this Act, the Advisory Committee may determine its own procedures.

Personal interest of member

16. A member who has a personal interest or a direct or indirect pecuniary interest in a matter under consideration by the Advisory Committee is disqualified from participating in the committee's consideration of the matter.

Functions of the Committee

17. (1) The functions of the Advisory Committee are—

(a) to advise the Minister and councils on—

(i) the administration of this Act;

(ii) the policies that should govern that administration;

and

(iii) other matters relating to supported residential facilities in this State;

(b) to provide general advice to the licensing authorities in respect of the granting of licences under this Act;

(c) to formulate policies and strategies in relation to the regulation of supported residential facilities and the enforcement of this Act;

(d) to report to the Minister, on its own initiative or when requested to do so by the Minister, on any matter relating to supported residential facilities or the provision of personal care services in the community;

(e) to advise the Minister in respect of the formulation of regulations, codes and other instruments and documents for the purposes of this Act;

- (f) to keep the operation, administration and enforcement of this Act under review and to recommend to the Minister any legislative or administrative change that appears necessary or appropriate;
- (g) to inform the public of the work and policies of the Advisory Committee and to encourage interested persons to make known to the Advisory Committee their views on issues that relate to supported residential facilities or the provision of personal care services in the community;
- (h) to perform other functions assigned by the Minister.
- (2) For the purposes, or in the course, of performing its functions, the Advisory Committee may—
- (a) establish committees (which may, but need not, consist of or include members of the Advisory Committee) to advise the Advisory Committee on any aspects of its functions, or to assist in the performance of its functions;
- (b) consult with any government department, agency or instrumentality, any licensing authority, any non-government organization or consumer group, and other interested persons;
- (c) do any other thing that is necessary for, or incidental to, the performance of its functions.
- (3) The Advisory Committee must, as it thinks fit, prepare and publish guidelines—
- (a) to assist licensing authorities in the performance of their functions and to encourage consistency in the exercise of powers and the administration of this Act;
- (b) to assist proprietors of supported residential facilities to fulfil their responsibilities under this Act;
- and
- (c) to assist residents of supported residential facilities to understand their rights and responsibilities.
- (4) The Advisory Committee may delegate any of the Advisory Committee's functions under this Act—
- (a) to a member of the Advisory Committee;
- (b) to a committee established by the Advisory Committee;
- (c) to a particular person or body;
- or
- (d) to a person for the time being occupying a particular office or position.
- (5) A delegation under subsection (4)—
- (a) may be absolute or conditional;
- (b) does not derogate from the power of the Advisory Committee to act in any matter;
- and
- (c) is revocable at will by the Advisory Committee.

Annual Report

18. (1) The Advisory Committee must, on or before 30 September in each year, present a report to the Minister on the activities of the committee during the preceding financial year.

(2) The Minister must, within 12 sitting days after receipt of a report under this section, cause copies of the report to be laid before both Houses of Parliament.

DIVISION 3—ADMINISTRATIVE APPEALS COURT

Appointment and selection of assessors

19. (1) The Administrative Appeals Court will, in exercising its jurisdiction under this Act, sit with assessors selected under this section.

(2) The Advisory Committee will, for the purposes of this section, establish a panel of persons (who may, but need not be, members of the committee) who may act as assessors.

(3) The panel will consist of persons who, in the opinion of the Advisory Committee, have extensive experience in—

(a) the provision or supervision of personal care services;

(b) acting as advocates for people who are elderly, disabled or intellectually impaired;

(c) developing or implementing policies that relate to the control or development of supported residential facilities within the State;

or

(d) monitoring or inspecting supported residential facilities.

(4) A person appointed to a panel holds office upon terms and conditions determined by the Minister except that a term of office cannot exceed three years (although a person is, on the expiration of a term of office, eligible for reappointment).

(5) Subject to subsection (6), where proceedings are brought before the Administrative Appeals Court under this Act, the judicial officer who is to preside at those proceedings will choose two members of the panel to sit with him or her as assessors.

(6) A member of the panel who has a personal interest or a direct or indirect pecuniary interest in a matter before the Administrative Appeals Court is disqualified from participating in the hearing of the matter.

(7) If an assessor dies or is for any reason unable to continue with any proceedings under this Act, the Court constituted of the judicial officer who is presiding at those proceedings and the other assessor may, if the judicial officer so determines, continue and complete the proceedings.

Associated provisions relating to exercise of jurisdiction by the Court

20. (1) A person appearing in proceedings before the Administrative Appeals Court under this Act—

(a) is entitled to appear personally or by counsel;

or

(b) may, by leave of the Court, be represented by some other person.

(2) The Administrative Appeals Court may allow a person, on application, to intervene in any proceedings before the Court under this Act if the person has satisfied the Court that the person has a proper interest in the proceedings.

(3) If a person is allowed to intervene in any proceedings, he or she may intervene in the manner and to the extent directed by the Administrative Appeals Court, and on such conditions as the Administrative Appeals Court may direct.

(4) The Administrative Appeals Court may make an order for costs in any proceedings under this Act in accordance with the scale set by Rules of the Court for that purpose—

(a) where in the opinion of the Court the proceedings are frivolous or vexatious;

or

(b) where in the opinion of the Court the proceedings have been instituted for the purpose of delay or obstruction.

(5) Where a party to proceedings before the Administrative Appeals Court under this Act applies for an adjournment of the hearing of those proceedings, the Court may make an order of costs in accordance with the scale set by Rules of the Court for that purpose against the applicant for the adjournment in favour of any other party to the proceedings.

(6) If, before or during the hearing of any proceedings under this Act, it appears to the Administrative Appeals Court, either from the nature of the case or from the attitude of the parties, that there is a reasonable possibility of the matters in dispute being settled by conciliation, one or more members of the Court may—

(a) interview the parties;

and

(b) endeavour to bring about a settlement of the proceedings.

(7) Nothing said or done in the course of an attempt to settle proceedings under this section can subsequently be given in evidence in any proceedings, nor is a member of the Court involved in the attempt disqualified from sitting to continue the hearing of the proceedings.

(8) Where proceedings are settled under this section, the Court may embody the terms of the settlement in an order.

(9) At the conclusion of proceedings under this Act the Administrative Appeals Court must, if requested to do so, furnish a party with a written statement of the reasons for its decision (although the statement may take the form of a transcript of reasons delivered orally).

(10) The Administrative Appeals Court must, in hearing and determining any proceedings under this Act, act with as much expedition as is reasonably practicable in the circumstances.

DIVISION 4—AUTHORIZED OFFICERS

Appointment of authorized officers

21. (1) Authorized officers may be appointed by the Minister or by a council.

(2) Each authorized officer must be furnished with an appropriate identity card.

(3) An authorized officer must produce the identity card for inspection by any person who questions his or her authority to exercise the powers of an authorized officer under this Act.

(4) The Minister may, by notice in writing served on the authorized officer, revoke an appointment made by the Minister and a council may, by notice in writing served on the authorized officer, revoke an appointment made by the council.

Powers of authorized officers

22. (1) An authorized officer may—

(a)—

(i) at any time, enter and inspect land or premises where the authorized officer reasonably suspects that an offence against this Act has been or is being committed or where necessary for the purpose of determining whether a provision of this Act is being or has been complied with;

(ii) at any reasonable time, enter and inspect land or premises for the purposes of the performance of any other function connected with the administration or operation of this Act;

or

(iii) at any reasonable time, enter and inspect any premises in relation to which an exemption under section 4 applies for the purpose of investigating any matter relevant to determining whether or not the exemption should continue (and may, for that purpose, exercise any of the powers set out below);

(b) subject to subsection (2), where reasonably necessary, break into or open any part of, or anything in or on, the land or premises;

(c) require any person to produce any books, papers, records or documents reasonably required in connection with the administration of this Act;

(d) examine, copy and take extracts from any books, papers, records or documents so produced;

(e) take photographs, films or video recordings as reasonably necessary in connection with the administration of this Act;

(f) require a person who the authorized officer reasonably suspects has committed, or is about to commit, an offence against this Act to state the person's full name and usual place of residence;

(g) require a person who the authorized officer reasonably suspects has knowledge concerning any matter relating to the administration of this Act to answer questions in relation to those matters;

(h) require a person holding or required to hold a licence under this Act to produce the licence for inspection.

(2) An authorized officer may only exercise the power conferred by subsection (1) (b) on the authority of a warrant issued by a justice unless the authorized officer believes, on reasonable grounds, that the circumstances require immediate action to be taken.

(3) A justice must not issue a warrant under subsection (2) unless satisfied, on information given on oath—

(a) that there are reasonable grounds to suspect that an offence against this Act has been, is being, or is about to be, committed;

or

(b) that the warrant is reasonably required in the circumstances.

(4) In the exercise of powers under this Act an authorized officer may be assisted by such persons as may be reasonable in the circumstances.

(5) The person in charge of premises at the relevant time must give to an authorized officer or a person assisting an authorized officer such assistance and provide such facilities as are necessary to enable the powers conferred by this section to be exercised.

Penalty: Division 6 fine.

(6) Subject to subsection (7), a person who—

(a) without reasonable excuse, hinders or obstructs an authorized officer, or a person assisting an authorized officer, in the exercise of powers conferred by this Act;

- (b) uses abusive, threatening or insulting language to an authorized officer, or a person assisting an authorized officer;
- (c) without reasonable excuse, refuses or fails to comply with a requirement or direction of an authorized officer under this Act;
- (d) without reasonable excuse, fails to answer, to the best of the person's knowledge, information and belief, a question put by an authorized officer;
- or
- (e) falsely represents, by words or conduct, that he or she is an authorized officer,

is guilty of an offence.

Penalty: Division 6 fine.

(7) A person is not required to answer a question put by an authorized officer if the answer would tend to incriminate him or her of an offence.

(8) A person who assaults an authorized officer, or a person assisting an authorized officer, acting in the exercise of powers under this Act is guilty of an offence.

Penalty: Division 5 fine or division 5 imprisonment.

PART 4

LICENSING SCHEME

DIVISION 1—GENERAL LICENSING PROVISIONS

Requirement to be licensed

23. (1) Premises must not be used as a supported residential facility unless licensed under this Act.

(2) If premises are used as a supported residential facility in contravention of subsection (1), the proprietor of the facility is guilty of an offence.

Penalty: Division 5 fine.

Application for a licence

24. (1) The proprietor of a supported residential facility (or proposed supported residential facility) must apply to the relevant licensing authority for a licence under this Act.

(2) An application for a licence—

(a) must be in such manner and form as is determined by the Minister for the purposes of this section;

and

(b) must be accompanied by the prescribed fee.

(3) Where application is made for a licence and the licensing authority requires further information to determine the application, the licensing authority may, by notice in writing served on the applicant not later than two months after the application is made, require the applicant to furnish specified information.

(4) Where a notice is served under subsection (3), the application is taken, for the purposes of subsection (7), not to have been duly made until the information is furnished.

(5) The licensing authority may require any information included in an application or required by a notice under subsection (3) to be verified by statutory declaration.

(6) The regulations may specify the time within which a licensing authority should decide an application for a licence.

(7) If a licensing authority does not decide an application within the prescribed time, the applicant may, by notice in writing served on the licensing authority, require the licensing authority to determine the application within a period (being a period of not less than one month) specified by the applicant in the notice.

(8) A licensing authority is taken to have refused an application that is not decided within the period specified in a notice under subsection (7).

(9) A licensing authority may, subject to such conditions as the licensing authority thinks fit, conditionally approve the issue of a licence in respect of proposed premises and if the licensing authority is subsequently satisfied that the premises have been established in substantial compliance with those conditions (and within such period, if any, as the licensing authority may have determined), the licensing authority must grant a licence.

(10) If a licensing authority refuses an application for a licence, the licensing authority must notify the applicant in writing of—

(a) the refusal;

(b) the reasons for the refusal;

and

(c) any appeal rights that the applicant may have under this Act.

Matters to be considered in granting a licence

25. (1) Subject to this Act, the licensing authority must, in considering an application for a licence in respect of the use of premises as a supported residential facility, take into account—

(a) the suitability of the applicant to be granted a licence;

(b) the suitability of the premises;

(c) the scope and quality of personal care services to be provided in pursuance of the licence;

(d) the qualifications and experience of the person, or persons, who will be operating or managing the facility, and of any staff, or proposed staff, of the facility;

(e) any relevant guideline published by the Advisory Committee;

and

(f) any matter prescribed by the regulations for the purposes of this provision,

and may take into account such other matters as the licensing authority thinks fit.

(2) In determining whether or not an applicant is suitable to be granted a licence, the licensing authority must have regard to—

(a) whether the applicant is a fit and proper person to hold a licence;

(b) where the applicant is a body corporate (other than a council or a department or agency or instrumentality of the Crown), whether every person who is, in the opinion of the licensing authority, in a position to control or influence substantially the affairs of the body corporate is a fit and proper person to exercise such control or influence in respect of a body corporate that is the holder of a licence;

(c) the applicant's proposals for—

(i) the management of the facility and the provision of personal care services;

and

(ii) the staffing of the facility;

and

(d) the ability of the applicant to fulfil the obligations required by this Act,

and may have regard to such other matters as the licensing authority thinks fit.

(3) In determining whether or not premises are suitable to be used as a supported residential facility, the licensing authority must have regard to—

(a) the standards of construction, facilities, furnishings, fittings and equipment of the premises;

(b) the design and layout of the premises;

(c) the state of repair of the premises;

and

(d) any arrangements that exist or are proposed for the ongoing maintenance of the premises,

and may have regard to such other matters as the licensing authority thinks fit.

(4) The licensing authority must not grant a licence if it appears that the facility would not be administered in accordance with the principles prescribed by Part 2.

Term of licence

26. Subject to this Act, a licence remains in force for such period (not exceeding two years) as is stated in the licence.

Application for renewal of a licence

27. (1) An application for the renewal of a licence—

(a) must be in such manner and form as is determined by the Minister for the purposes of this section;

and

(b) must be accompanied by the prescribed fee.

(2) An application for renewal must be made not less than the prescribed number of days before the date of expiry of the licence.

(3) The licensing authority may, in the licensing authority's discretion, determine a late application for renewal provided that the applicant pays the prescribed late application fee.

(4) The licensing authority must, by notice in writing served on the applicant, give a decision on an application for the renewal of a licence before the date of expiry of the licence and, in the case of a decision refusing an application, state in the notice—

(a) the reasons for the refusal;

and

(b) any appeal rights that the applicant may have under this Act.

Matters to be considered in renewing a licence

28. A licensing authority may refuse to renew a licence on any ground on which a licence may be cancelled under this Act.

Licence conditions

29. (1) A licence under this Act is subject to—

(a) any condition prescribed by the regulations;

and

(b) any condition imposed by the licensing authority.

(2) The licensing authority may impose licence conditions with respect to such matters as are contemplated by this Act or as the licensing authority considers necessary or expedient for the purposes of this Act.

(3) Conditions of a licence imposed by the licensing authority—

(a)—

(i) if imposed at the time of grant or renewal of the licence—must be included in the licence itself;

or

(ii) if imposed during the currency of the licence—must be imposed by notice in writing served on the holder of the licence;

and

(b) may be varied or revoked at any time by notice in writing served on the holder of the licence.

(4) The licensing authority must, in formulating or varying a condition under this section, take into account any relevant guideline published by the Advisory Committee.

(5) The holder of a licence who contravenes, or fails to comply with, a condition of the licence is guilty of an offence.

Penalty: Division 6 fine.

Transfer and surrender of licences

30. (1) An application may be made to the relevant licensing authority for the transfer of a licence under this Act.

(2) An application for the transfer of a licence—

(a) must be in such manner and form as is determined by the Minister for the purposes of this section;

and

(b) must be accompanied by the prescribed fee.

(3) An applicant must furnish the licensing authority with such further information as the licensing authority may require to determine the application.

(4) The licensing authority must, upon due application under this section and payment of the prescribed fee, transfer the licence to the proposed transferee if the licensing authority is satisfied that the proposed transferee would be a suitable person to be granted a licence under this Act (*see section 25*).

(5) The holder of a licence under this Act may, at any time, surrender the licence, and the licence then ceases to be of force or effect.

Cancellation of licences

31. (1) The relevant licensing authority may cancel a licence if satisfied, on reasonable grounds—

- (a) that the licence has been obtained improperly;
- (b) that the holder of the licence has contravened, or failed to comply with, a condition of the licence;
- (c) that the holder of the licence has contravened, or failed to comply with, a provision of this Act;
- (d) that there has been a failure to administer the facility in accordance with the principles prescribed by Part 2;
- (e) that serious irregularities have occurred in the management of the facility, or in relation to the care of any resident;
- (f) that there has been a failure to provide a resident of the facility with personal care services to which he or she is entitled;
- (g) that the holder of the licence, or any person involved in the management of the facility or the provision of services within the facility, has been guilty of negligent or improper conduct that has adversely affected the interests of a resident of the facility;
- (h) that the holder of the licence is insolvent or in imminent danger of becoming insolvent, and as a result the care of any resident of the facility is in jeopardy;
- (i) that the holder of the licence is no longer a fit and proper person to hold a licence under this Act or, in the case of a body corporate, that a person who has gained or is in a position to control or influence substantially the affairs of the body corporate is not or has ceased to be a fit and proper person to exercise such control or influence in respect of a body corporate that is the holder of a licence;

or

- (j) that the state of the premises renders the premises unsuitable for use as a supported residential facility.

(2) Before a licensing authority acts under this section, the licensing authority must—

- (a) notify the holder of the licence in writing of the proposed cancellation of the licence;

and

- (b) allow the holder of the licence at least 28 days within which to make submissions in relation to that proposed action.

(3) The licensing authority may, pending the cancellation (or possible cancellation) of a licence under this section, impose conditions to protect the interests of the residents of the facility.

(4) Where a licensing authority acts under this section, the licensing authority may—

- (a) appoint an administrator of the facility;

- (b) take such other steps as may be reasonable to secure the proper care of the residents of the facility.

(5) Where a condition is imposed in relation to a licence under subsection (3), the holder of the licence must not contravene, or fail to comply with, the condition.

Penalty: Division 5 fine.

(6) The following provisions apply in relation to the appointment of an administrator under subsection (4):

- (a) the administrator may be appointed before or after the cancellation of the licence takes effect, but the appointment cannot take effect before the cancellation takes effect unless the licensing authority considers that the imposition of conditions under subsection (3) would not adequately protect the interests of the residents of the facility pending any cancellation of the licence;
 - (b) the administrator has, during the period of his or her appointment, full and exclusive power to manage the facility and to provide for the care of any resident;
 - (c) the administrator is entitled to reasonable remuneration during the period of his or her appointment;
 - (d) the remuneration of the administrator and all other costs and expenses arising out of the management of the facility or the care of any resident must be paid by the proprietor of the facility (and any unpaid amount may be recovered as a debt from the proprietor in a court of competent jurisdiction);
 - (e) the administrator may, by notice in writing, require the proprietor of the facility, or any person who has been involved in the management of the facility, to provide a report orally or in writing on any matter that may be relevant to the management of the facility or the care of any resident and a person who fails to comply with such a requirement within a reasonable time is guilty of an offence and liable to a penalty not exceeding a division 6 fine;
 - (f) the administrator must report regularly to the licensing authority;
 - (g) the appointment of the administrator will cease—
 - (i) if the administrator was appointed before the cancellation of the licence took effect—upon the determination of the licensing authority not to cancel the licence;
 - (ii) upon the revocation of the appointment by the licensing authority;
 - or
 - (iii) upon the expiration of six months from the date on which the licence was cancelled,(whichever first occurs);
 - (h) the administrator must, on the termination of his or her appointment, fully account to the licensing authority and the proprietor of the facility for his or her management of the facility;
- and
- (i) if a dispute arises in relation to any act of an administrator under this section, a party to the dispute may apply to the Administrative Appeals Court for resolution of the matters in dispute (and the Administrative Appeals Court may, on such an application, make such orders and give such directions as it thinks appropriate in the circumstances of the particular case).

DIVISION 2—LICENSING APPEALS

Appeal against a decision or order

32. (1) A right of appeal to the Administrative Appeals Court lies against any decision or order of a licensing authority under this Part.

(2) An appeal must be instituted within 28 days after the appellant receives notice of the decision or order appealed against unless the Administrative Appeals Court allows a longer time for the institution of the appeal.

(3) The Administrative Appeals Court may, on the hearing of the appeal, do one or more of the following, according to the nature of the case:

- (a) affirm, vary or quash the decision or order appealed against or substitute, or make in addition, any decision or order that the Court thinks fit;
- (b) remit the subject matter of the appeal to the licensing authority for further consideration;
- (c) make any further or other order as to any other matter that the case requires.

(4) Where the licensing authority or the Administrative Appeals Court is satisfied that an appeal against a decision or order of the licensing authority has been instituted, or is intended, the licensing authority or the Court may suspend the operation of the decision or order until the determination of the appeal.

(5) Without derogating from the operation of subsection (4), if an appeal relates to a decision of a licensing authority—

- (a) to refuse to renew a licence;
 - (b) to refuse to transfer a licence;
- or
- (c) to cancel a licence,

the licensing authority or the Administrative Appeals Court may order that the licence remain in force until the determination of the appeal.

(6) A licensing authority or the Administrative Appeals Court may, in acting under subsection (4) or (5), impose such conditions as the licensing authority or Court thinks fit.

(7) If a person contravenes, or fails to comply with, a condition imposed under subsection (6)—

- (a) the licensing authority or Administrative Appeals Court may revoke any suspension or order to which the condition relates;
- and
- (b) the person is guilty of an offence.

Penalty: Division 6 fine.

DIVISION 3—SUPPLEMENTARY PROVISIONS

Existing facilities

33. (1) Notwithstanding the preceding provisions of the Part, where application is made for a licence in respect of a facility that was in operation during the period of three months immediately preceding the commencement of this section, the relevant licensing authority must, upon payment of the prescribed fee, grant the licence in accordance with this Act for a term of one year.

(2) A licence may not be granted under this section unless the application is made within three months after the commencement of this section.

(3) A licence granted under this section comes into operation three months after the commencement of this section.

(4) Where—

- (a) a facility in respect of which a licence is granted under this section was, immediately before the commencement of this Act, licensed under another Act;
 - (b) a provision of the other Act did not apply to the facility by virtue of an exemption granted under that Act;
- and
- (c) the regulations under this Act contain a provision that corresponds to the provision of the other Act,

it will be taken that the proprietor has been granted a similar exemption under this Act.

(5) An exemption applying by virtue of subsection (4) ceases to apply on the first anniversary of the commencement of the licence under this Act.

(6) Section 23 does not apply in relation to a facility that was in operation during the period of three months immediately preceding the commencement of this section until three months after the commencement of this section.

Appointment of manager

34. (1) Where—

- (a) the proprietor of a facility is not directly involved in the management of the facility;
- or
- (b) the proprietor of a facility is a body corporate,

the facility must be managed under the personal supervision of a natural person approved by the relevant licensing authority.

(2) If a facility is not managed as required by subsection (1) for a period exceeding 28 days, or such longer period as may be allowed by the licensing authority, the proprietor of the facility is guilty of an offence.

Penalty: Division 6 fine.

Death of licensee

35. Where the holder of a licence dies, the personal representative of the deceased, or some other person approved by the relevant licensing authority, is to be taken to be the holder of the licence (on the same conditions as were applicable to the former holder of the licence) as from the date of death until the expiration of six months from that date or until such later date as may be fixed by the licensing authority.

Display of notice

36. The proprietor of a facility in respect of which a licence has been issued must ensure that a prescribed notice is displayed in a conspicuous place on the premises.

Penalty: Division 10 fine.

PART 5

RIGHTS OF RESIDENTS

DIVISION 1—DOCUMENTATION

Prospectuses

37. (1) The proprietor of a supported residential facility must prepare a prospectus containing the information required by the regulations relating to the facility and the personal

care services provided or offered at the facility.

(2) Copies of the prospectus must be kept on display in a conspicuous place on the premises.

(3) The proprietor must, at the request of a prospective resident of the facility (or his or her representative), provide that person with a copy of the prospectus.

(4) A copy of the prospectus (and a copy of any alterations to the prospectus) must be lodged with the relevant licensing authority in accordance with the regulations.

(5) If a preceding provision of this section is not observed, the proprietor of the facility is guilty of an offence.

Penalty: Division 6 fine.

(6) Where there is an untrue statement in a prospectus, the proprietor is guilty of an offence unless the proprietor proves—

(a) that the statement was immaterial;

or

(b) that the proprietor had reasonable grounds to believe, and at all relevant times did believe, that the statement was true.

Penalty: Division 6 fine.

Resident contracts

38. (1) A proprietor of a supported residential facility must, in accordance with the regulations, enter into a resident contract with a resident of the facility to whom personal care services are provided.

(2) A resident contract must be in writing.

(3) Before a person enters into a resident contract, the proprietor of the facility must ensure that the person is given—

(a) a statement in the prescribed form completed by or on behalf of the proprietor containing the information required by the regulations;

and

(b) any other prescribed documents.

(4) Where a person enters into a resident contract, the contract will be taken to include a warranty on the part of the proprietor of the relevant facility of the correctness of the information contained in a statement under subsection (3) (a) (subject to any written alteration made by the proprietor with the consent of the resident on or before the signing of the contract by the proprietor), and the warranty prevails over any inconsistent contractual term.

(5) A resident (or prospective resident) is entitled to rescind the resident contract—

(a) at any time within 15 business days after the date of the contract;

or

(b) if subsection (3) is not complied with—at any time before the expiration of 15 business days after the date on which the documents required under that subsection are given to the resident or prospective resident.

(6) A contract is rescinded under subsection (5) by notice in writing, given personally or by post, to the proprietor.

(7) A contract may be enforced against the proprietor, for the time being, of the facility.

(8) If a provision of this section is not observed, the proprietor of the facility is guilty of an offence.

Penalty: Division 6 fine.

(9) It is a defence to a prosecution under subsection (8) for the proprietor to prove that he or she took all reasonable steps to comply with this section.

Rescission of resident contract by proprietor

39. (1) A proprietor of a supported residential facility must, before exercising any right to terminate a resident contract, give to the resident notice of the proposed termination in accordance with subsection (2).

(2) The notice must—

(a) be in writing and conform with any requirement prescribed by the regulations;

(b) unless otherwise approved by the relevant licensing authority, be given to the resident, or to his or her representative, personally or by post at least 28 days before the proposed termination takes effect;

(c) specify and give particulars of the grounds of the proprietor's decision to terminate the contract;

and

(d) set out the rights that the resident has to make application for a review of the decision under this Act.

(3) This section does not apply—

(a) to the extent of any inconsistency with another Act;

or

(b) in any circumstance prescribed by the regulations.

(4) This section does not restrict the ability of the parties to a resident contract to enter into a further agreement to discharge the contract by mutual agreement.

(5) If a provision of this section is not observed, the proprietor of the facility is guilty of an offence.

Penalty: Division 6 fine.

Service plans

40. (1) The proprietor of a supported residential facility must ensure that a service plan is prepared and implemented for each resident of the facility to whom personal care services are provided in consultation with the resident (or, if appropriate, a representative of the resident).

(2) The service plan must set out details of the personal care services that are to be provided to the resident on a day to day (or other periodical) basis.

(3) A service plan must be reviewed and, if necessary, revised as often as may be reasonably appropriate taking into account the kinds of service provided and the circumstances and needs of the resident.

(4) If a provision of this section is not observed, the proprietor of the facility is guilty of an offence.

Penalty: Division 6 fine.

DIVISION 2—ADDITIONAL ASSISTANCE

Extension of care

41. (1) If a resident of a supported residential facility is in need of care that is not provided at the facility, the person in charge of the facility must—

(a) offer to assist the resident to obtain that additional care and, at the request of the resident, render reasonable assistance to him or her in obtaining that care;

(b) if the resident does not obtain that additional care within a reasonable time, report the matter to—

(i) a person who is, to his or her knowledge, a representative of the resident;

or

(ii) if no such person is known under subparagraph (i)—a person who is, to his or her knowledge, a member of the immediate family of the resident;

(c) if—

(i) no person is known under paragraph (b);

or

(ii) the person in need of care does not obtain that care within a reasonable time after a report is made under paragraph (b),

report the matter to an appropriate government agency.

Penalty: Division 8 fine.

(2) No civil liability arises from a statement made honestly in a report under subsection (1).

Extension of care—residential-only premises

42. (1) If a person who is residing at residential-only premises is in need of care, the person in charge of the premises must—

(a) offer to assist the resident to obtain the care and, at the request of the resident, render reasonable assistance to him or her in obtaining that care;

(b) if the person does not obtain that care within a reasonable time, report the matter to—

(i) a person who is, to his or her knowledge, a representative of the resident;

or

(ii) if no such person is known under subparagraph (i)—a person who is, to his or her knowledge, a member of the immediate family of the resident;

(c) if—

(i) no person is known under paragraph (b);

or

(ii) the person in need of care does not obtain that care within a reasonable time after a report is made under paragraph (b),

report the matter to an appropriate government agency.

Penalty: Division 8 fine.

(2) No civil liability arises from a statement made honestly in a report under subsection (1).

DIVISION 3—SETTLEMENT OF DISPUTES

Disputes, etc.

43. (1) An application may be made to a licensing authority under this section if—

(a) a dispute arises between a resident of a supported residential facility and the proprietor of the facility;

(b) a resident of a supported residential facility objects to a decision of the proprietor of the facility to terminate his or her resident contract;

or

(c) a resident of a supported residential facility believes—

(i) that the proprietor has failed to comply with the terms of their resident contract or a provision of this Act;

or

(ii) that the proprietor has acted in any other unauthorized manner.

(2) The licensing authority should, on an application under subsection (1), explore any possible avenues of achieving conciliation between the parties.

(3) Subject to compliance with subsection (2), the licensing authority may, as it thinks fit—

(a) make recommendations to the parties in settlement of any dispute;

(b) if the licensing authority considers that the proprietor has acted—

(i) in breach of contract;

(ii) in a harsh or unreasonable manner;

or

(iii) in a manner that is contrary to the best interests of the resident,

order that the proprietor vary or reverse a decision or take such action as is in the opinion of the licensing authority necessary to remedy the breach or to reverse the effect of any act of the proprietor;

(c) if the licensing authority considers that a resident has acted in an unreasonable manner or in a manner that is contrary to the best interests of the other residents of the facility, order the resident to refrain from any future action of a kind specified in the order or take such action as is in the opinion of the licensing authority appropriate in the circumstances of the particular case;

(d) order a party to the dispute to take such action as is in the opinion of the licensing authority necessary to remedy any default or to correct any unauthorized act, as is specified in the order;

(e) take such other action as may appear to be appropriate in the circumstances of the particular case.

(4) Subject to this Act, a person in relation to whom an order is made under subsection (3) must comply with that order.

Penalty: Division 6 fine.

(5) An application to a licensing authority under this section—

(a) must be made to the licensing authority in writing;

(b) must specify the grounds of the application;

and

(c) subject to the regulations, must be accompanied by the prescribed fee.

(6) The licensing authority may require an applicant—

(a) to furnish such further information in relation to the subject matter of the application as the licensing authority thinks necessary;

and

(b) to verify any information by statutory declaration.

(7) The licensing authority must give the applicant and the respondent reasonable notice of the time and place of any hearing of the application.

(8) The licensing authority in investigating or determining the subject matter of an application is not bound by the rules of evidence but may obtain information in such manner as the licensing authority thinks fit.

(9) Where an application for an order is made under this section and the licensing authority is satisfied that an interim order is justified by the urgent circumstances of the case, the licensing authority may make an interim order pending final resolution of the matter.

(10) An interim order—

(a) has effect for such period, not exceeding two months, as the licensing authority may determine and specifies in the order (unless revoked by the licensing authority in the meantime);

and

(b) may be made whether or not notice of the application has been given to the other party in the matter.

(11) The power of a licensing authority to make an order under this section includes the power to vary or revoke an order.

(12) A licensing authority may—

(a) decline to proceed with an application under this section until it is satisfied that reasonable steps have been taken to resolve the dispute pursuant to other procedures specified by the licensing authority;

(b) decline to proceed with an application under this section if it considers that it would be more appropriate for proceedings to be taken in a court or tribunal constituted by law;

or

(c) decline to proceed (or further proceed) with an application under this section if proceedings related to the subject matter of the application have been commenced in a court or tribunal constituted by law.

(13) A licensing authority must, in determining any application under this section, act with as much expedition as is reasonably practicable in the circumstances.

Right of appeal

44. (1) Subject to this section, a resident or proprietor who is dissatisfied with a decision or order of a licensing authority under section 43 may appeal against that decision or order to the Administrative Appeals Court.

(2) An appeal must be instituted within 28 days after the appellant receives notice of the decision or order appealed against unless the Administrative Appeals Court allows a longer time for the institution of the appeal.

(3) The Administrative Appeals Court may, on the hearing of the appeal, do one or more of the following, according to the nature of the case:

- (a) affirm, vary or quash the decision or order appealed against or substitute, or make in addition, any decision or order that the Court thinks appropriate;
- (b) remit the subject matter of the appeal to the licensing authority for further consideration;
- (c) make any further or other order as to any other matter that the case requires.

(4) Unless otherwise determined by the Administrative Appeals Court, where an appeal is instituted against an order of a licensing authority, the operation of the order is suspended until the determination of the appeal.

Non-derogation

45. The provisions of this Division do not limit or derogate from any civil remedy at law or in equity.

PART 6 MISCELLANEOUS

Delegation of resident's rights

46. Subject to any order of the Supreme Court, the rights and powers of a resident of a supported residential facility under this Act or under any resident contract may be exercised on his or her behalf by his or her representative.

Attendance by health service providers, etc.

47. (1) A health service provider, social worker, or any person approved by a licensing authority for the purposes of this provision may at any reasonable time enter any premises that comprise a supported residential facility, or any residential-only premises, for the purpose of visiting or attending on any person residing at those premises.

(2) A person who hinders any person acting under subsection (1) is guilty of an offence.

Penalty: Division 6 fine.

(3) The person in charge of the premises must, on request, provide reasonable assistance to any person acting under subsection (1) while he or she is present at the premises.

Penalty: Division 7 fine.

(4) In this section—

“health service provider” means a person who provides any of the following services—

- (a) medical or nursing services;
- (b) dental services;
- (c) psychiatric services;
- (d) pharmaceutical services;
- (e) community health services;
- (f) services provided by podiatrists, physiotherapists, chiropractors, dietitians or optometrists;
- (g) services provided by occupational therapists or speech therapists;

“social worker” means a person who holds a qualification recognized by the Australian Association of Social Workers Limited.

Orderly conduct about facilities, etc.

48. The person in charge of a supported residential facility or any residential-only premises must ensure, so far as is reasonably practicable, that a resident of the facility or premises does not unreasonably interfere with the peace, comfort or privacy of—

(a) another resident;

or

(b) any other person who resides in the locality of the facility or premises.

Penalty: Division 9 fine.

Complaints

49. (1) A complaint—

(a) about the management of a supported residential facility or any residential-only premises;

or

(b) about the conduct of a resident of a supported residential facility or any residential-only premises,

may be made to a licensing authority under this Act.

(2) A complaint under this section must, if the licensing authority so requires, be reduced to writing.

(3) The licensing authority may take such action as it thinks fit in view of the complaint.

(4) Without limiting the operation of subsection (3), the licensing authority may appoint an authorized officer to carry out an investigation into the circumstances surrounding the complaint and to attempt to resolve the matter as expeditiously as possible.

No contracting out

50. (1) Any agreement or arrangement that is inconsistent with a provision of this Act or purports to exclude, modify or restrict the operation of this Act is (except where such inconsistency, exclusion, modification or restriction is expressly permitted under this Act) to that extent void and of no effect.

(2) Any purported waiver of a right conferred by or under this Act is void and of no effect.

(3) Any person who enters into any agreement or arrangement with intent either directly or indirectly to defeat, evade or prevent the operation of this Act, is guilty of an offence.

Penalty: Division 7 fine.

Confidential information

51. (1) A person performing any function under this Act must not use confidential information gained by virtue of his or her official position for the purpose of securing a private benefit for himself or herself personally or for some other person.

Penalty: Division 5 fine or division 5 imprisonment.

(2) A person performing any function under this Act must not intentionally disclose confidential information gained by virtue of his or her official position unless—

(a) the disclosure is necessary for the proper performance of that function;

- (b) the disclosure is made to another who is also performing a function under this Act;
 - (c) the disclosure is made with the consent of the person who furnished the information or to whom the information relates;
 - (d) the disclosure is authorized or required by a court or tribunal constituted by law;
- or
- (e) the disclosure is authorized by the regulations.

Penalty: Division 5 fine or division 5 imprisonment.

Prosecutions

52. (1) A prosecution for an offence against this Act must be commenced within two years after the date on which the offence is alleged to have been committed or such further period as the Attorney-General may, in a particular case, allow.

(2) A document apparently signed by the Attorney-General and stating that the Attorney-General allows a specified extension of the period for commencing a particular prosecution is to be accepted, in the absence of proof to the contrary, as proof of the fact so stated.

(3) Where a body corporate is guilty of an offence against this Act, a director or manager of the body corporate is also guilty of an offence and liable to the same penalty as is prescribed for the principal offence unless it is proved that he or she could not, by the exercise of reasonable diligence, have prevented the commission of the offence by the body corporate.

(4) In any proceedings for an offence against this Act an allegation in a complaint that premises were not at a specified time licensed under this Act will be taken to be proved in the absence of proof to the contrary.

(5) A penalty for an offence against this Act that is recovered on the complaint of a council or an officer of a council must be paid to that council.

Continuing offences

53. (1) Where a person is convicted of an offence against this Act and after that conviction the act or omission of the person that constituted the offence continues, the person is guilty of a further offence and liable to an additional penalty for each day on which the act or omission continues of an amount not exceeding one-tenth of the maximum penalty for the offence of which the person was convicted.

(2) For the purposes of subsection (1), an obligation to do something is to be regarded as continuing until the act is done notwithstanding that any period within which, or time before which, the act is required to be done has expired or passed.

Default notices

54. (1) Where an authorized officer is of the opinion—

- (a) that the holder of a licence, or any other person involved in the management of a supported residential facility, has contravened, or failed to comply with, a provision of this Act;
 - (b) that there has been a failure to administer a supported residential facility in accordance with the principles prescribed by Part 2;
 - (c) that the holder of a licence has contravened, or failed to comply with, a condition of the licence;
- or

(d) that irregularities or difficulties have otherwise occurred in the management of a supported residential facility, or in relation to the care of any resident,

the authorized officer may issue a notice requiring the person to whom the notice is issued to remedy the matters stated in the notice.

(2) A notice under subsection (1) must include a statement of the grounds upon which the notice is issued.

(3) A notice under subsection (1) may—

(a) include directions as to the measures to be taken to remedy the matter;

(b) specify a day by which any matter referred to in the notice must be remedied.

(4) A person to whom a notice is issued may appeal to the Administrative Appeals Court against the notice.

(5) An appeal must be instituted within 14 days after the appellant receives the notice unless the Administrative Appeals Court allows a longer time for the institution of the appeal.

(6) Pending the determination of an appeal the operation of a notice will, subject to any order of the Administrative Appeals Court to the contrary, be suspended.

(7) The Administrative Appeals Court may, on the hearing of the appeal—

(a) affirm, vary or quash the notice;

(b) issue a different notice in substitution for the notice;

(c) make any further or other order as the Court thinks fit.

(8) Subject to this section, a person who contravenes or fails to comply with a notice under this section is guilty of an offence.

Penalty: Division 8 fine.

Expiation of offences

55. Where it is alleged that a person has committed—

(a) an offence against this Act that is prescribed by the regulations for the purposes of this section;

or

(b) an offence against the regulations,

an authorized officer may cause to be served personally or by post on that person a notice in a form determined by the Minister to the effect that the offence may be expiated by payment of the prescribed expiation fee specified in the notice to the person specified in the notice within 28 days of the date of the notice and, if the offence is so expiated, no prosecution of the alleged offence may be commenced.

Indemnity fund

56. (1) The Minister must establish a fund to be called the *Supported Residential Facilities Indemnity Fund*.

(2) The fund will be administered by a person appointed by the Minister (in this section referred to as “the Fund Manager”).

(3) The Fund Manager may invest money constituting, or forming part of, the fund in a manner approved by the Treasurer.

(4) The fund will consist of—

- (a) money advanced to the fund by the Treasurer;
- (b) a prescribed percentage of licensing fees paid under this Act received from the licensing authorities in accordance with the regulations;
- (c) a prescribed percentage of expiation fees paid under this Act;
- (d) a prescribed percentage of any fines recovered from prosecutions under this Act;
- (e) interest accruing from investment of the fund.

(5) The advancement of money under subsection (4) (a) may be made on such conditions as the Treasurer, after consultation with the Minister, thinks fit.

(6) Subject to directions (if any) given by the Minister, and any condition imposed under subsection (5), money standing to the credit of the fund may be applied by the Fund Manager (in his or her discretion)—

- (a) in payment of the costs of administering the fund;
- (b) in, or towards, satisfaction of claims by any administrator appointed under Division 1 of Part 4 to manage a supported residential facility where the administrator cannot, after taking reasonable steps, recover from the proprietor of the facility his or her remuneration and other costs and expenses associated with the management of the facility or the care of any resident;
- (c) in, or towards, satisfaction of any claim against an administrator appointed under Division 1 of Part 4;
- (d) in payment of any premium or other cost associated with any insurance cover taken out by, or provided to, an administrator appointed under Division 1 of Part 4 in respect of his or her management of a supported residential facility under this Act;
- (e) towards any costs incurred in providing services to any resident of a supported residential facility affected by any default on the part of the proprietor of the facility;

and

- (f) for any other prescribed purpose.

(7) A claim for payment from the fund must be made, assessed and determined in accordance with the regulations.

(8) Any amount paid from the fund as a result of any non-payment or default on the part of the proprietor of a supported residential facility (or a former proprietor of such a facility) is a debt due to the fund and may be recovered by the Fund Manager in a court of competent jurisdiction.

(9) The Fund Manager may insure the fund to such extent (if any) as the Fund Manager thinks fit against claims under this section.

(10) The Fund Manager must keep proper accounts of all money received, disbursed, invested or otherwise dealt with under this section.

(11) The Auditor-General may at any time, and must at least once in every calendar year, audit the accounts referred to in subsection (10).

Regulations

57. (1) The Governor may make regulations for the purposes of this Act.

(2) The regulations may, for example—

- (a) prescribe standards and procedures that must be observed in relation to the provision of personal care services or in relation to any aspect of the operation of a supported residential facility;
- (b) prescribe staffing requirements for supported residential facilities (including requirements as to qualifications, training or experience of staff members);
- (c) prescribe standards in relation to safety, welfare and hygiene in supported residential facilities;
- (d) prescribe standards in relation to the construction, facilities, furnishings, fittings and equipment of supported residential facilities (and require that such facilities, furnishings, fittings and equipment must be available at prescribed classes of supported residential facility);
- (e) make any provision in relation to prospectuses, resident contracts and service plans, including—
 - (i) the form of any prospectus, resident contract or service plan;
 - (ii) prescribed terms or conditions that must be included in any prospectus, resident contract or service plan;and
 - (iii) prescribed procedures that must be observed in respect of any variation, or proposed variation, of a prospectus, resident contract or service plan;
- (f) require the provision of prescribed information to residents or prospective residents of supported residential facilities;
- (g) require the provision of returns, reports and other forms of information to the Minister, local councils or licensing authorities;
- (h) require the proprietor of a supported residential facility to keep records that contain such information as the regulations may prescribe, and make provision for, or in relation to, the inspection of those records;
- (i) require the notification of any occurrence of a prescribed class to the Minister, a licensing authority or other prescribed person or body or person or body of a prescribed class;
- (j) require the display or provision of certain information at a supported residential facility;
- (k) prescribe standards that must be observed by persons who advertise the provision of services by supported residential facilities;
- (l) make any provision in relation to the management of a supported residential facility by an administrator appointed under this Act;
- (m) make any provision in relation to the management or application of the *Supported Residential Facilities Indemnity Fund*;
- (n) make any provision in relation to the transfer of any power or function of a council under Part 3 to a person or body specified by the Minister;
- (o) prescribe forms and fees for the purposes of this Act (including annual fees payable in respect of licensed premises);
- (p) prescribe codes of practice to be observed by proprietors of supported residential facilities and others in the provision of personal care services;
- (q) prescribe codes to be used—

(i) by councils and authorized officers in the administration and enforcement of this Act;

(ii) by licensing authorities to facilitate the implementation of uniform licensing practices under this Act;

and

(r) prescribe penalties, not exceeding a division 7 fine, for breach of, or non-compliance with, any regulation.

(3) Regulations under this Act—

(a) may be of general or limited application;

(b) may—

(i) leave any matter or thing to be determined, varied, dispensed with or regulated according to the discretion of any prescribed person or body, or person or body of a prescribed class;

(ii) confer other forms of discretionary powers;

(c) may make different prescriptions according to prescribed circumstances;

and

(d) may differentiate between various classes of persons.

(4) Regulations under this Act may incorporate, adopt, apply or make prescriptions by reference to, with or without modification, any document prepared or published by the Advisory Committee or any other body or authority as in force at the time that the regulations are made or as in force from time to time.

(5) Where—

(a) the proprietor of a facility who holds a licence under this Act applies to the licensing authority for an exemption from a regulation that applies in relation to the facility;

and

(b) the licensing authority is satisfied—

(i) that it can grant the exemption without seriously affecting the interests of a resident of the facility;

and

(ii) that it is appropriate for it to grant the exemption in the circumstances of the particular case,

the licensing authority may, by notice in writing to the proprietor, exempt the proprietor from the regulation to which the application relates and, in that event, proceedings cannot be taken against the proprietor for failing to comply with the regulation while such a notice remains in force.

(6) An exemption under subsection (5) may be granted by the licensing authority on such conditions as the licensing authority thinks fit.

(7) The licensing authority may, at any time, by further notice to the proprietor—

(a) revoke an exemption under subsection (5);

(b) vary or revoke a condition under subsection (6).

(8) A person who contravenes or fails to comply with a condition of an exemption is guilty of an offence.

Penalty: Division 7 fine.

Amendment of the Mental Health Act

58. The *Mental Health Act 1977* is amended by striking out Part 6.

Amendment of the South Australian Health Commission Act

59. The *South Australian Health Commission Act 1976* is amended by striking out subsection (3) of section 57b and substituting the following subsection:

(3) This section does not apply in relation to premises licensed under the *Supported Residential Facilities Act 1992*.

APPENDIX

DIVISIONAL PENALTIES

At the date of assent to this Act divisional penalties are, as provided by section 28a of the *Acts Interpretation Act 1915*, as follows:

Division	Maximum imprisonment	Maximum fine
1	15 years	\$60 000
2	10 years	\$40 000
3	7 years	\$30 000
4	4 years	\$15 000
5	2 years	\$8 000
6	1 year	\$4 000
7	6 months	\$2 000
8	3 months	\$1 000
9	—	\$500
10	—	\$200
11	—	\$100
12	—	\$50

Note: This appendix is provided for convenience of reference only.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

ROMA MITCHELL Governor