

THE RESIDENTIAL CARE HOMES BILL
(No VII of 2003)

Explanatory Memorandum

The object of this Bill is to regulate residential care homes by making provision for -

- (a) the licensing of residential care homes;
- (b) a regulatory body to be known as the Residential Care Homes Board which shall be responsible for the licensing, control and discipline of residential care homes; and
- (c) the Residential Care Homes Fund and the Residential Care Homes Advisory Committee.

S. Lauthan

*Minister of Social Security, National
Solidarity & Senior Citizen Welfare
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A BILL

To provide for the regulation of residential care homes

Enacted by the Parliament of Mauritius, as follows -

1. Short title

This Act may be cited as the Residential Care Homes Act 2003.

2. Interpretation

In this Act -

"Board" means the Residential Care Board established under section 4;

"Chairperson" means the Chairperson of the Board;

"disablement", in relation to a person, means that the person is blind, deaf, dumb, or substantially or partially handicapped by illness, injury or congenital deformity or other prescribed disability;

"Fund" means the Residential Care Homes Fund established under section 22;

"licence" means a licence issued under section 12;

"licensee" means the holder of a licence;

"Minister" means the Minister to whom responsibility for the subject of social security is assigned;

"personal care" means care which includes assistance with bodily functions of a person;

"residential care home" means an establishment specified in section 3;

"Secretary" means the Secretary of the Board.

3. Application of Act

(1) This Act applies to any establishment, **whether set up by statute or otherwise**, which provides, or intends to provide -

- (a) personal care and board for persons who by reason of old age, disablement, a physical handicap, dependence on alcohol or drugs, need personal care;

- (b) personal care and board for children and women;
- (c) nursing for persons suffering from sickness, injury or infirmity;
- (d) services for the reception of pregnant women, or women immediately after childbirth;
- (e) nursing, including care, habilitation, rehabilitation under medical supervision, including medical treatment, of persons suffering, or appearing to suffer, from a mental disorder;
- (f) a place of safety for persons in distress.

(2) Notwithstanding anything to the contrary provided in any other enactment, including any provision relating to exemption from payment of any duty, levy, fee, tax or other similar charge, any residential care home shall be governed by the provision of this Act.

(3) This Act does not apply to -

- (a) a hospital or a clinic providing in-patient and out-patient treatment to a person suffering from an illness;
- (b) a school, a college or a university;

(4) The Board may exempt, either wholly or partially, any establishment from the application of this Act on account of the number of persons being given personal care, or by reason of the nature of the care being dispensed, or any other reasonable ground.

4. The Board

(1) There is established for the purposes of this Act the Residential Care Homes Board, which shall consist of -

- (a) the Permanent Secretary of the Ministry, as Chairperson;
- (b) the officer in charge of the Welfare Unit of the Ministry;
- (c) a representative of the Ministry responsible for the subject of finance;
- (d) a representative of the Ministry responsible for the subject of public infrastructure;
- (e) a representative of the Ministry responsible for the subject of health;
- (f) a representative of the Ministry responsible for the subject of family affairs;

- (g) a law officer designated by the Attorney General;
- (h) 2 persons who are involved in the management of residential care homes;
- (i) 2 persons with wide knowledge in the field of residential care or health matters.

(2) The persons specified in subsection (1)(h) and (i) shall be appointed by the Minister.

5. Functions of the Board

The Board shall have such functions as are necessary to further the objects of this Act and, in particular to -

- (a) exercise general supervision and control over residential care homes;
- (b) monitor compliance by licensees with the conditions of their licences;
- (c) exercise control over inspectors in the discharge of their functions under this Act;
- (d) establish codes of practice for residential care homes, and monitor compliance with the codes.

6. Meetings of the Board

(1) The Chairperson, or in his absence, the officer in charge of the Welfare Unit of the Ministry, shall preside the meetings of the Board.

(2) The quorum of the Board shall be 6.

(3) The Board shall meet at least once every 2 months, but the Chairperson may on his own motion, or shall, at the request of at least 2 members, convene an extraordinary meeting.

(4) Subject to subsection (1), (2) and (3), the Board shall regulate its meetings in such manner as it thinks fit.

7. Secretary

(1) The Permanent Secretary shall designate a public officer to act as Secretary of the Board.

(2) The Secretary shall -

- (a) keep a record of every licence granted under this Act;
- (b) keep a record of particulars relating to licences and other matters relating to residential care homes;
- (c) carry out such duties as may be assigned to him by the Board;
- (d) in the exercise of his functions, act in accordance with such directions as he may receive from the Board.

8. Residential care home to be licensed

No person shall carry on a residential care home unless he is licensed to do so under this Act.

9. Application for a licence

(1) Any person who intends to carry on a residential care home shall make an application to the Board in the prescribed form.

(2) The applicant shall furnish to the Board -

- (a) evidence of his honourable conduct, or where the applicant is a body corporate, such evidence in respect of every person involved in the management of the body corporate;
- (b) the following information as may be prescribed -
 - (i) the availability of land, building, and other infrastructure complying with the minimum norms of sanitary, security and fire safety requirements;
 - (ii) the availability of such staff, including medical and paramedical staff, in such number and possessing such qualifications as may be required for the type of services proposed to be offered at the proposed residential care home;
 - (iii) a feasibility study, including evidence of the financial viability of the applicant;
 - (iv) any other information in order to enable the Board to determine whether the applicant is a fit and proper person to hold a licence.
- (c) an approved preliminary environmental report under section 16(6) of the Environment Protection act 2002, or where such

is requested by the Minister responsible for the subject of environment, an EIA licence.

10. Publication and notice

(1) Where the information required under section 9 have been supplied, the Board shall request the applicant to cause the publications specified in subsection (2) to be made.

(2) Upon request received from the Board under subsection (1), the applicant shall cause notice of the application -

- (a) to be published in the *Gazette* and, for 2 consecutive days, in not less than 2 daily newspapers; and
- (b) to be given in such other manner as the Board directs.

(3) Any interested person may, within 21 days of the last publication specified in section (1), give a notice of objection, or make a representation, stating the grounds of objection or representation.

11. Consideration of the application

In determining whether to grant an application, the Board shall have regard to -

- (a) whether the building and the amenities are suitable for the purpose for which the licence is sought to be obtained;
- (b) whether the staff is adequate and possesses the appropriate qualifications;
- (c) whether the applicant is a fit and proper person to be granted a licence;
- (d) any objection raised under section 10;
- (e) such other criteria as may be prescribed.

12. Grant or refusal of licence

(1) The Board shall not later than 3 months from the date of the latest publication specified in section 10(2), make its decision whether to grant or refuse the application.

(2) Where the Board grants an application, it may impose such conditions as it may think fit, including -

- (a) the maximum number of persons for whom residential accommodation with board and personal care may be provided at any one time;
- (b) conditions regarding the age, sex, category of persons who may be received in the residential care home;
- (c) administration and internal structures of the residential care home;
- (d) financial control of the accounts of the residential care home;
- (e) conditions regarding training of personnel, recreational activities, catering services, provision of lighting, water and other amenities;
- (f) furnishing of a reasonable security bond;
- (g) such other conditions as may be prescribed.

(3) The Board shall notify any person who has given notice under section 10(2) of its decision to grant a licence within 7 days of the date of the decision.

(4) Where the Board grants an applicant, it shall issue a licence to the applicant -

- (a) on payment of the prescribed fee;
- (b) in respect of the residential care home from which the applicant proposes to carry on business;
- (c) specifying the activity for which the licence is granted;
- (d) the conditions imposed on the licensee.

13. Form and duration of licence

(1) A licence shall be issued in the prescribed form and shall specify the premises from which the licensee shall carry on business.

(2) A licence shall be valid for a period of one year, and be renewed for successive periods of one year upon application made by a licensee in the prescribed form.

14. Display of licence

- (1) A licensee shall display in a conspicuous place -

- (a) at his business premises a copy of the licence which relates to those premises;
- (b) at the entrance to his business premises, a sign of the prescribed size and style on which shall be written the words "Licensed Residential Care Home".

(2) Any correspondence or document emanating from a licensee shall state the fact that the licence was issued by the Board and the date and number of the licence at the top left hand corner.

15. Refusal of licence

- (1) The Board may refuse to grant an application if -
 - (a) the applicant does not furnish sufficient evidence of the matters set out in section 9(2);
 - (b) the applicant is not a fit and proper person to be granted a licence;
 - (c) it is not satisfied of the matters specified in section 11(a) and (b);
 - (d) any objection under section 10(3) is legitimately taken;
 - (e) the way in which it is intended to carry on the residential care home is such as not to provide services or facilities reasonably required.

(2) The Board shall notify the applicant by registered letter, within 7 days of its decision, of the refusal to grant the licence and the reasons for doing so.

16. Cancellation of licence

- (1) The Board may cancel a licence in respect of a residential care home -
 - (a) on any ground which would entitle it to refuse an application for a licence;
 - (b) on the ground that the annual fee in respect of the residential care home has not been paid on or before the due date;
 - (c) the licensee has failed to operate within 6 months from the date of the issue of the licence;
 - (d) the licensee has ceased his operation under the licence;

- (e) the licensee has failed to comply with any condition included in the licence and imposed by the Board;
- (f) on the ground that the licensee has been convicted of an offence involving fraud or dishonesty, or under this Act or regulations made under this Act, in respect of that or any other residential care home;
- (g) the licensee has failed to comply with such code of conduct as may be prescribed;
- (h) where it is in the public interest to do so.

(2) Before making a decision cancelling a licence, the Board shall, by notice in writing require the licensee, within 14 days from the date of service of the notice, to show cause why his licence ought not to be cancelled.

(3) Where the Board is satisfied that, having regard to all the circumstances of the case, and where necessary, after the holding of an oral hearing, it is expedient to do so, it may cancel the licence.

17. Cancellation in cases of urgency

(1) Where there is serious risk to life, health or the well-being of the residents of a residential care home, the Board may apply to the Judge in Chambers for an order -

- (a) cancelling the licence of a person in respect of a residential care home;
- (b) varying any condition in respect of such licence;
- (c) imposing any appropriate additional condition.

(2) An application under subsection (1) may be made *ex parte* and shall be supported by an affidavit setting down the Board's reasons for making the application.

18. Measures following cancellation

Where a licence has been cancelled, the Board may -

- (a) entrust to any other licensee the administration of a residential care home for a maximum period of one year;
- (b) take such other appropriate measures to protect the residents of the residential care home from any risks to their physical or mental health or to their property.

19. Appeal

- (1) An appeal against a decision of the Board shall lie to Minister.
- (2) The appeal shall be lodged within 21 days of the service of the notification of the decision of the Board.
- (3) The Minister may, on an appeal, give such direction as he may deem fit in the circumstances, including -
 - (a) varying any condition for the time being in force in respect of the residential care home;
 - (b) directing that any condition shall cease to have effect;
 - (c) directing that any condition as he thinks fit shall have effect in respect of the residential care home.

20. Inspection

- (1) There shall be designated by the Permanent Secretary of the Ministry responsible for the subject of social security a number of public officers who shall inspect and exercise the powers, and perform the duties, imposed upon them by this section.
- (2) Any person who has been designated inspector under subsection (1) shall take the oath of office in terms of the Schedule.
- (3) An inspector or a police officer, not below the rank of Inspector of Police, may, for the purpose of ensuring that this Act and any regulations made under this Act have been complied with -
 - (a) at all times enter and inspect any building, premises, means of transport and any other facility which are used, or which the inspector has reasonable cause to believe to be used, for the purposes of a residential care home;
 - (b) examine any record or document required to be kept under this Act or regulations made under this Act;
 - (c) establish contraventions against this Act, regulations made under this Act or for breach of conditions of a licence;
 - (d) institute proceedings for any breach of this Act, regulations made under this Act or for breach of conditions of a licence.
- (4) In exercising his functions under this section, the inspector or the police officer –

- (a) shall have regard to the privacy of residents;
- (b) treat every resident with humanity and respect.

(5) Where an inspector is so required by any person in charge, or concerned in the management of a residential care home, he shall produce some duly authenticated document showing his authority to exercise the powers of an inspector under this Act.

(6) For the purposes of exercising his duties and functions, an inspector or a police officer may interview any resident or staff of the residential care home, record a statement from him and secure any exhibit.

21. Contractual relationship

(1) No person shall be admitted to a residential care home unless a written contract is drawn up between the licensee and that person, or where he is incapacitated by reason of infirmity of body or mind, his next-of-kin.

(2) The contract specified in subsection (1) shall set out -

- (a) the name of the parties;
- (b) the exact location of the residential care home to which the person is admitted;
- (c) the services to be provided;
- (d) the length of stay agreed upon; and
- (e) such other matters as may be prescribed.

(3) The Landlord and Tenant Act shall not apply to a contract under this section.

(4) For the purposes of this section, next-of-kin means –

- (a) spouse, child, father, mother, brother, sister, grandparent, grandchild, uncle, aunt, nephew, niece;
- (b) includes any person with whom the person to be admitted ordinarily resides or under whose responsibility or control that person lives or has been placed;
- (c) any person who has taken charge of any other person.

22. The Residential Care Home Fund

(1) There is established a Residential Care Home Fund which shall be administered by the Minister in accordance with the Finance and Audit Act.

(2) There shall be paid into the Fund –

- (a) all donations and contributions;
- (b) grants from Government; and
- (c) all sums that may lawfully accrue to it.

(3) There shall be paid out of the Fund such sums as may be recommended by the Board and approved by the Minister, in respect of –

- (a) any financial assistance to be extended to the residential care homes, and
- (b) all administrative costs.

(4) (1) (a) No document shall be executed by or on behalf of the Fund unless it is signed by the Chairperson.

(b) No cheque shall be executed by, or on behalf of the Fund, unless it is signed by the Chairperson and the Secretary, or in the absence of the Chairperson, by any other member of the Board designated by the Board.

(2) (a) The Fund may sue or be sued in its name.

(b) Service of any process by or on the Fund shall be sufficient if made on behalf of the Chairperson.

23. Investments of assets of the Fund

Subject to the Finance and Audit Act, any surplus remaining in the Fund may be held on deposit with the Government or any other recognised financial institutions as may be determined by the Minister responsible for the subject of finance.

24. The Residential Care Home Advisory Committee

(1) The Minister may set up a Residential Care Home Advisory Committee on an *adhoc* basis.

(2) The Committee shall consist of a Chairperson and not more than 4 other members with wide knowledge in the field of residential care and health matters to be appointed by the Minister.

(3) The Chairperson and members shall hold office on such terms and conditions as the Minister may determine.

(4) There shall be a Secretary to the Committee who shall be a public officer designated by the Permanent Secretary.

(5) The Committee shall -

- (a) advise the Minister on all matters relating to residential care homes and health matters;
- (b) advise the Board on any matter relating to the functions of the Board, as may be referred to it by the Minister; and
- (c) consider any matter affecting the standard of service of residential care homes.

25. Regulations

(1) The Minister may make regulations as he thinks fit for the purposes of this Act.

(2) Without prejudice to subsection (1), the Minister may make regulations, in particular, with regard to-

- (a) the facilities and services to be provided in residential care homes;
- (b) the numbers and qualifications of staff to be employed;
- (c) the numbers and competency of staff to be on duty;
- (d) the records and registers to be kept;
- (e) the notification of events;
- (f) giving notices of absence of qualified staff;
- (g) religious ministrations of residents;
- (h) information to be supplied on application for a licence.

(3) The Regulations may provide for the levying of fees and charges.

26. Offences

(1) Any person who contravenes section 8 shall commit an offence and shall, on conviction, be liable to a fine of not less than 25,000 rupees and not more than 100,000 rupees and to imprisonment not exceeding 5 years.

(2) Any person who -

- (a) prevents an inspector or a police officer from entering or inspecting any residential care home;
- (b) hinders an inspector or a police officer in the exercise of his duties under this Act;
- (c) fails to comply with any lawful request of an inspector or officer in the execution of his duty under this Act;
- (d) refuses or neglects to give any information which may reasonably be required of him and which he has power to give;
- (e) in an application for a licence makes any statement which is false in any material particular;
- (f) fails to comply with any provision of this Act or regulations made under this Act,

shall commit an offence and shall, in conviction be liable to a fine not exceeding Rs. 50,000/- and to imprisonment not exceeding 2 years.

27. Jurisdiction

Notwithstanding -

- (a) section 114(2) of the Courts Act; and
- (b) section 72(5) of the District and Intermediate (Criminal Jurisdiction) Act,

a Magistrate shall have jurisdiction to try any offence under this Act and may impose any penalty provided by this Act.

28. Consequential amendment

The Environment Protection Act 2002 is amended in the First Schedule, in Part A, by adding immediately after item 35, the following new item –

35A. Residential care homes

29. Transitional provision

(1) A person who immediately before the date of coming into operation of this Act was operating a residential care home may continue to do so without a licence under this Act –

- (a) for a period of 6 months from that date; and
- (b) if within that period he applies for a licence, until the application is disposed of, or withdrawn.

(2) Where a licence is refused following an application under subsection (1)(b), the applicant may continue to operate the residential care home for a further period of 6 months from the date of notification of the refusal.

30. Commencement

(1) Subject to subsection (2), this Act shall come into operation on a date to be fixed by Proclamation.

(2) Different dates may be fixed for the coming into operation of different sections of this Act.

SCHEDULE
[section 20(2)]

Oath of Secrecy

I hereby make oath/solemn affirmation as a and declare that in the discharge of my duties as an inspector under the Residential Care Home Act 2003, I shall deal with and regard all documents and information to which I have access as SECRET AND CONFIDENTIAL and refrain from disclosing any such documents and information to any unauthorised person.

Sworn/solemnly affirmed by the deponent in Chambers,

This 20

Before me,
District Magistrate for