

**MENTAL HEALTH (DISABILITY SERVICES AND  
GUARDIANSHIP) AMENDMENT ACT 1987 No. 260**

NEW SOUTH WALES



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**MENTAL HEALTH (DISABILITY SERVICES AND  
GUARDIANSHIP) AMENDMENT ACT 1987 No. 260**

**NEW SOUTH WALES**



**Act No. 260, 1987**

An Act to amend the Mental Health Act 1983 in connection with the carrying out of certain medical treatment on patients under that Act; and for other purposes. [Assented to 16 December 1987]

*Mental Health (Disability Services and Guardianship) Amendment 1987***The Legislature of New South Wales enacts:****Short title**

**1.** This Act may be cited as the Mental Health (Disability Services and Guardianship) Amendment Act 1987.

**Commencement**

**2. (1)** Subject to this section, this Act shall commence on the date of assent to this Act.

**(2)** Schedule 1 (1), and section 3 in its application to that provision, shall commence on the commencement of Part 3 of the Disability Services and Guardianship Act 1987.

**(3)** The provisions of Schedule 1 (2), and section 3 in its application to those provisions, shall commence on—

(a) the commencement of Part 3 of the Disability Services and Guardianship Act 1987; or

(b) the commencement of Part V of the Mental Health Act 1983, whichever is the later.

**(4)** Schedule 1 (3), and section 3 in its application to that provision, shall commence on—

(a) the commencement of Part 3 of the Disability Services and Guardianship Act 1987; or

(b) the commencement of Part VI of the Mental Health Act 1983, whichever is the later.

**(5)** The provisions of Schedule 1 (4)–(6), and section 3 in its application to those provisions, shall commence on the commencement of Part 5 of the Disability Services and Guardianship Act 1987.

**Amendment of Act No. 178, 1983**

**3.** The Mental Health Act 1983 is amended as set out in Schedule 1.

**SCHEDULE 1—AMENDMENTS**

(Sec.3)

**(1) Section 4 (Definitions)—**

Section 4 (1)—

Omit the definition of “intellectually disabled person under guardianship”.

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(2) **Section 86 (Proceedings for inquiry before Magistrate)—**

- (a) **Section 86 (2) (b)—**  
Omit “in respect of a person other than a person to whom paragraph (e) applies.”.
- (b) **Section 86 (2) (e)—**  
Omit the paragraph.

(3) **Section 108 (Discharge of certain patients on relative's or friend's application)—**

Section 108 (2) (c)—  
Omit the paragraph, insert instead:

- (c) where the patient is a person under guardianship within the meaning of Part 3 of the Disability Services and Guardianship Act 1987—that person's guardian consents to the application.

(4) **Section 178 (Application for consent)—**

- (a) **Section 178 (2) (a)—**  
Omit “except as provided by paragraph (b) (iii).”.
- (b) **Section 178 (2) (b) (i)—**  
Omit “operation;”, insert instead “operation; or”.
- (c) **Section 178 (2) (b) (ii)—**  
Omit “person; or”, insert instead “person.”.
- (d) **Section 178 (2) (b) (iii)—**  
Omit the subparagraph.

(5) **Section 183A—**

After section 183, insert:

**Special medical treatment**

183A. (1) A person shall not carry out special medical treatment on a patient otherwise than in accordance with this section.

Penalty on indictment: imprisonment for 7 years.

(2) A registered medical practitioner may carry out special medical treatment on a patient if—

- (a) the medical practitioner is of the opinion that it is necessary, as a matter of urgency, to carry out the treatment on the patient in order to save the patient's life or to prevent serious damage to the patient's health; or
- (b) the Tribunal consents to the carrying out of the treatment.

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SCHEDULE 1—AMENDMENTS—*continued*

(3) Sections 177–179 apply to and in respect of the carrying out of special medical treatment in the same way as they apply to and in respect of the performance of a surgical operation.

(4) Consent to the carrying out of special medical treatment on a patient shall not be granted if the patient is under the age of 16 years.

(5) In this section—

“medical treatment” includes—

- (a) any medical procedure, operation or examination; and
- (b) any treatment, procedure, operation or examination declared by the regulations to be medical treatment for the purposes of this section;

“special medical treatment” means—

- (a) any medical treatment that is intended, or is reasonably likely, to have the effect of rendering permanently infertile the person on whom it is carried out; or
- (b) any other medical treatment that is declared by the regulations to be special medical treatment for the purposes of this section.

(6) Section 197 (Proceedings for offences)—

(a) Section 197—

Omit “Proceedings”, insert instead “Except as provided by subsection (2), proceedings”.

(b) Section 197 (2)—

At the end of section 197, insert:

(2) Proceedings for an offence under section 183A (1) shall be dealt with on indictment.